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LEGAL STATUS OF LIVE-IN RELATIONSHIPS **UNDER INDIAN LAW: A STUDY OF JUDICIAL** **INTERPRETATION**

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Abstract

India has no central law that defines or regulates live-in relationships. What legal standing they have has been worked out by judges, usually while deciding some other dispute: a claim for maintenance, a partition suit, a plea for police protection, or an application under the Protection of Women from Domestic Violence Act, 2005. This paper reads that body of case law closely. It shows how the courts moved from inferring a marriage out of long cohabitation to accepting cohabitation as a choice that adults are free to make under Article 21 of the Constitution. It then argues that the protection the courts offer still depends heavily on how much a relationship looks like a marriage, so that the women in the least secure arrangements tend to be the ones left without a remedy. The paper also considers what the 2023 criminal codes and the Uttarakhand registration scheme of 2025 have changed, and ends with suggestions for a law that looks at how a relationship actually worked rather than at its resemblance to marriage.

Keywords: live-in relationship, relationship in the nature of marriage, Article 21, presumption of marriage, maintenance, Bharatiya Nagarik Suraksha Sanhita 2023, Uniform Civil Code of Uttarakhand.

1. Introduction

Marriage in India has always carried more than private meaning. It decides who belongs to which family, who inherits, and whose children the law recognises. Two adults who share a home without marrying therefore stand outside most of family law. Such couples were once rare or hidden. Today, with young people moving to cities for work, marrying later and insisting on choosing their own partners, cohabitation is a visible part of urban life, even though it remains socially contested.

Parliament has not legislated on the subject. The only central statute that looks beyond marriage is the Protection of Women from Domestic Violence Act, 2005, which covers a woman in a

"relationship in the nature of marriage".¹ Everything else, from whether cohabitation is lawful to whether the children can inherit, has been answered by the courts one case at a time. The difficulty is that these answers have come from separate branches of law, namely evidence, constitutional liberty, protection from domestic violence and succession, and they are rarely read together. No study appears yet to have examined how they fit together after the 2023 criminal codes replaced the old Code of Criminal Procedure, Penal Code and Evidence Act, and after Uttarakhand made registration of live-in relationships compulsory. That gap matters, because while the law stays fragmented, a woman's protection depends on how closely her relationship imitates a marriage.

The paper asks four questions:

1. How have the higher courts shaped the legal status of live-in relationships without any statutory definition to work from?
2. How far does the "relationship in the nature of marriage" test protect women and children, and whom does it leave out?
3. What have the 2023 criminal codes and the Uniform Civil Code of Uttarakhand, 2024 changed?
4. What reforms would bring coherence to this area without taking away the freedom that makes these relationships a matter of choice?

The study is doctrinal. It relies mainly on reported decisions of the Supreme Court and selected High Courts between 1952 and 2025, read for their reasoning, the tests they apply and the values they rely on. Statutes, committee reports and a few foreign laws are used as secondary material. The standard texts on Hindu law treat cohabitation mostly as evidence of a marriage that cannot otherwise be proved,² while feminist writing has focused on the 2005 Act and on the way later judgments narrowed it.³ This paper tries to bring those strands together. It concentrates on heterosexual couples, where most of the case law lies, and on the Hindu Marriage Act, 1955 in matters of inheritance.

¹The Protection of Women from Domestic Violence Act, 2005 (Act 43 of 2005), s. 2(f).

²Paras Diwan and Peeyushi Diwan, *Modern Hindu Law: Codified and Uncodified* (Allahabad Law Agency, Faridabad, 27th edn., 2025).

³See generally Flavia Agnes, *Family Law Volume II: Marriage, Divorce, and Matrimonial Litigation* (Oxford University Press, New Delhi, 2011); Indira Jaising and Pinki Mathur Anurag (eds.), *Conflict in the Shared Household: Domestic Violence and the Law in India* (Oxford University Press, New Delhi, 2019).

2. Meaning of a Live-in Relationship

No Indian statute defines the term. In ordinary speech it describes two unmarried adults who share a home and an intimate life over a continuing period. The lack of a definition causes real trouble, because the same facts can be treated differently depending on which court hears the case and for what purpose. A family court deciding maintenance, a magistrate hearing a domestic violence complaint and a civil court dividing family property may each ask a different question.

Three kinds of cohabitation keep turning up in the reported cases. In the first, both partners are free to marry and live exactly as a married couple would, except that no ceremony has taken place. In the second, both are free to marry but have chosen not to, perhaps as a trial or because they reject the institution. In the third, one partner already has a spouse, or the relationship could not become a valid marriage for some other reason. The courts have been most generous to the first group and least sympathetic to the third. The trouble is that the third group is where a woman is most likely to be left with nothing when the relationship ends.

3. Presumption of Marriage from Long Cohabitation

The oldest route to recognition runs through the law of evidence. Courts may infer that something probably happened when ordinary experience of human behaviour points that way. That power sat in section 114 of the Indian Evidence Act, 1872 and now sits in section 119 of the Bharatiya Sakshya Adhiniyam, 2023.⁴ Where a man and a woman have lived openly as husband and wife for years and been accepted as such, a court may infer that they were validly married.

The Supreme Court accepted the idea early on in *Gokal Chand v. Parvin Kumari*, while warning that the inference can be displaced by contrary circumstances.⁵ In *Badri Prasad v. Deputy Director of Consolidation*, a couple had been together for about fifty years; the Court was prepared to infer a valid marriage and put a demanding onus on anyone who wanted to prove otherwise.⁶ Later decisions such as *Tulsa v. Durghatiya* and *Dhannulal v. Ganeshram* applied the same reasoning,⁷ and in *Kattukandi Edathil Krishnan v. Kattukandi Edathil Valsan* the Court relied on it to hold that the son of a long-cohabiting couple could claim his share of

⁴The Bharatiya Sakshya Adhiniyam, 2023 (Act 47 of 2023), s. 119; corresponding to the Indian Evidence Act, 1872 (Act 1 of 1872), s. 114.

⁵*Gokal Chand v. Parvin Kumari*, AIR 1952 SC 231.

⁶*Badri Prasad v. Deputy Director of Consolidation*, (1978) 3 SCC 527.

⁷*Tulsa v. Durghatiya*, (2008) 4 SCC 520; *Dhannulal v. Ganeshram*, (2015) 12 SCC 301.

the family property.⁸

The doctrine has done justice in many individual cases, but its logic is conservative. The court does not recognise the cohabitation itself. It recognises a marriage it assumes must have taken place. That is no help to a couple who never meant to marry, and none at all to a woman whose partner already had a wife, since no valid marriage can be inferred in that situation. The presumption answers the question whether two people were married. It says nothing about what they owe each other if they were not.

4. Constitutional Protection and Personal Liberty

A second line of cases treats cohabitation as a matter of personal freedom. In *Payal Sharma v. Superintendent, Nari Niketan, Kalindri Vihar, Agra*, an adult woman had been placed in a state home after her father went to the police. The Allahabad High Court set her free, reasoning that two adults who live together without marrying may offend public sentiment but break no law, and that a court must keep the two apart.⁹ The Supreme Court took a similar line in *Lata Singh v. State of U.P.*, holding that an adult may marry whoever she chooses and directing the police to act against those who harass such couples.¹⁰

The clearest statement came in *S. Khushboo v. Kanniammal*. An actress faced a string of criminal complaints over remarks in a magazine survey that seemed to approve of cohabitation before marriage. The Supreme Court quashed them all. It reasoned that the decision of two adults to share their lives is protected by Article 21, that no penal law makes such cohabitation a crime, and that public dislike of a practice is no reason to prosecute someone for defending it.¹¹

The ground became firmer after *K.S. Puttaswamy v. Union of India* recognised privacy, including freedom over intimate decisions, as a fundamental right.¹² In *Shafin Jahan v. Asokan K.M.* the Court held that neither the State nor parents can override an adult's choice of partner.¹³ In *Nandakumar v. State of Kerala*, a marriage was invalid because the young man was under the minimum age, but the Court held that the invalidity did not take away the couple's freedom as adults to share a home, and noted that Parliament itself had acknowledged such arrangements

⁸*Kattukandi Edathil Krishnan v. Kattukandi Edathil Valsan*, 2022 SCC OnLine SC 737.

⁹*Payal Sharma v. Superintendent, Nari Niketan, Kalindri Vihar, Agra*, AIR 2001 All 254.

¹⁰*Lata Singh v. State of U.P.*, (2006) 5 SCC 475.

¹¹*S. Khushboo v. Kanniammal*, (2010) 5 SCC 600.

¹²*K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.

¹³*Shafin Jahan v. Asokan K.M.*, (2018) 16 SCC 368.

in the 2005 Act.¹⁴ *Joseph Shine v. Union of India* then struck down the offence of adultery.¹⁵ Later, in *Deepika Singh v. Central Administrative Tribunal*, the Court observed that unmarried partners and same-sex couples can also form families with an equal claim to legal protection,¹⁶ and in *Supriyo v. Union of India* all the judges agreed that queer couples may live together free from threat, even though the Court declined to recognise a right to marry.¹⁷

The High Courts, which hear most petitions from couples seeking police protection, have not always followed this lead. In *Gulza Kumari v. State of Punjab*, a nineteen-year-old woman and her partner told the Punjab and Haryana High Court that they feared her parents. In an order of a few lines, a single judge declined to act, treating the petition as an attempt to obtain judicial approval of a relationship that could not be accepted on moral and social grounds.¹⁸ Other benches have granted protection in similar situations. It is submitted that orders like the one in *Gulza Kumari* cannot stand with *Khushboo* and *Shafin Jahan*. A couple asking for protection are not asking the court to bless their relationship. They are asking it to stop someone from hurting them, and that right cannot depend on a judge's view of how they choose to live.

5. The Protection of Women from Domestic Violence Act, 2005 and Maintenance

Under the 2005 Act, a woman may seek relief against a person with whom she shares or has shared a household, if the two are connected in one of the ways the Act lists. Marriage, blood, adoption and the joint family are on that list, and so is a "relationship in the nature of marriage".¹⁹ She may obtain protection orders, residence orders, monetary relief, custody orders and compensation.²⁰ Since this phrase is the only statutory recognition of cohabitation at the national level, much has turned on how the courts read it.

In *D. Velusamy v. D. Patchaiammal*, the Supreme Court compared such a relationship to a common law marriage and required four things. The partners had to present themselves to the community as husband and wife. Both had to be old enough to marry. Neither could be under any other legal bar to marriage, and in particular neither could have a living spouse. And their life together had to be voluntary and to have lasted a substantial time.²¹ Casual encounters

¹⁴*Nandakumar v. State of Kerala*, (2018) 16 SCC 602.

¹⁵*Joseph Shine v. Union of India*, (2019) 3 SCC 39.

¹⁶*Deepika Singh v. Central Administrative Tribunal*, 2022 SCC OnLine SC 1088.

¹⁷*Supriyo @ Supriya Chakraborty v. Union of India*, 2023 SCC OnLine SC 1348.

¹⁸*Gulza Kumari v. State of Punjab*, 2021 SCC OnLine P&H 896.

¹⁹*Supra* note 1.

²⁰*Id.*, ss. 18-22.

²¹*D. Velusamy v. D. Patchaiammal*, (2010) 10 SCC 469.

would not count. The Court also excluded a woman supported by a man who treated her essentially as a sexual companion or domestic help, a passage that drew wide criticism for its tone and for shutting out the very women the Act was meant to reach.

The Court returned to the question in *Indra Sarma v. V.K.V. Sarma*. The appellant had lived with the respondent for about eighteen years, knowing he had a wife and children. The Court held that her relationship did not qualify, since she had entered it knowing of his marriage.²² It offered a set of indicators for later courts: how long the couple were together, whether they lived under one roof, whether their money was mixed, how the home was run, whether the bond was emotional as well as physical, whether they raised children, how others saw them, and what they themselves intended. These factors are sensible, and eighteen years together would satisfy most of them. The appellant lost because the Court treated capacity to marry as a gate that had to be passed before the factors counted. The Court seemed uneasy with its own result. It noted that such women are often left destitute and suggested that Parliament bring them within the Act.²³ That has not happened.

Maintenance under the criminal procedure code has had a similar history. The provision covers a "wife", including a divorced wife, but has never expressly reached a woman who was not married to the man. The Malimath Committee proposed in 2003 that it should also cover a woman who had shared a man's life as his partner over a considerable period.²⁴ In *Chanmuniya v. Virendra Kumar Singh Kushwaha*, the Supreme Court leaned towards such a reading and sent the question to a larger bench.²⁵ In *Lalita Toppo v. State of Jharkhand*, a three-judge bench avoided a direct answer, holding that even a woman who could not claim under the Code had a remedy under the 2005 Act, which in fact offers wider relief because it also protects her right to stay in the shared home.²⁶

When the Bharatiya Nagarik Suraksha Sanhita, 2023 re-enacted the maintenance provision as section 144, it left the definition of "wife" untouched.²⁷ That was a missed chance. Parliament had the Malimath proposal, the reference in *Chanmuniya* and the plea in *Indra Sarma* before it. A woman in a long cohabitation must still either persuade a court to infer a marriage or satisfy the *Velusamy* and *Indra Sarma* tests. If her partner was already married, she can usually

²²*Indra Sarma v. V.K.V. Sarma*, (2013) 15 SCC 755.

²³*Ibid.*

²⁴Government of India, *Report of the Committee on Reforms of Criminal Justice System*, vol. I (Ministry of Home Affairs, March 2003) (Chairperson: Justice V.S. Malimath).

²⁵*Chanmuniya v. Virendra Kumar Singh Kushwaha*, (2011) 1 SCC 141.

²⁶*Lalita Toppo v. State of Jharkhand*, Criminal Appeal No. 1656 of 2015, Supreme Court of India, decided on Oct. 30, 2018.

²⁷The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), s. 144; corresponding to the Code of Criminal Procedure, 1973 (Act 2 of 1974), s. 125.

do neither.

6. Children and the Criminal Law after the 2023 Codes

Courts have been kinder to children than to their parents, on the sound principle that a child should not pay for choices it had no part in. Section 16 of the Hindu Marriage Act, 1955 treats children of void and voidable marriages as legitimate but limits their inheritance to their parents' property.²⁸ In *Bharatha Matha v. R. Vijaya Renganathan*, the Supreme Court held that a child of a live-in relationship could inherit from the parents but had no claim to ancestral coparcenary property.²⁹ That limit was doubted in *Revanasiddappa v. Mallikarjun*,³⁰ and in 2023 a three-judge bench decided that such a child can succeed to whatever share the parent would have taken had the joint family property been divided just before the parent died, though the child does not become a coparcener by birth.³¹ Whether this helps a child whose parents never went through any form of marriage at all is still uncertain, and children under other personal laws have received little attention. A child's rights should not depend on the parents' religion or on the shape of their relationship.

The 2023 codes touch live-in relationships in three places. First, the Bharatiya Nyaya Sanhita, 2023 does not re-enact adultery, following *Joseph Shine*. Second, section 69 makes it an offence to have sexual intercourse with a woman through deceit, including a promise of marriage never meant to be kept.³² Under the old Penal Code such cases were prosecuted as rape, and the Supreme Court drew a line between a promise that was false from the start and a genuine promise later broken, treating only the first as destroying consent.³³ Complaints under section 69 often follow the breakdown of a live-in relationship, so courts will need to hold on to that distinction if the provision is not to turn every failed relationship into a prosecution.

Third, section 85 of the Sanhita, which replaces section 498A of the Penal Code, punishes cruelty by a woman's "husband" or his relatives.³⁴ In *Reema Aggarwal v. Anupam*, the Supreme Court read "husband" to include a man whose marriage to the woman was void.³⁵ Whether that reaches a man who never went through any marriage is doubtful, and the new code kept the old

²⁸The Hindu Marriage Act, 1955 (Act 25 of 1955), s. 16.

²⁹*Bharatha Matha v. R. Vijaya Renganathan*, (2010) 11 SCC 483.

³⁰*Revanasiddappa v. Mallikarjun*, (2011) 11 SCC 1.

³¹*Revanasiddappa v. Mallikarjun*, (2023) 10 SCC 1.

³²The Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), s. 69.

³³*Uday v. State of Karnataka*, (2003) 4 SCC 46; *Deepak Gulati v. State of Haryana*, (2013) 7 SCC 675; *Pramod Suryabhan Pawar v. State of Maharashtra*, (2019) 9 SCC 608.

³⁴*Supra* note 32, ss. 85-86.

³⁵*Reema Aggarwal v. Anupam*, (2004) 3 SCC 199.

wording. Section 119 of the Sakshya Adhiniyam, meanwhile, keeps the evidentiary basis for inferring marriage, and the easier admission of electronic records means that joint tenancy papers, bank accounts, messages and photographs posted online can now be used more readily to prove a shared life.

7. The Uttarakhand Code and Lessons from Other Countries

Uttarakhand is the first State to regulate cohabitation directly. Under Part 3 of the Uniform Civil Code of Uttarakhand, 2024, in force since 27 January 2025, couples cohabiting in the State, and residents of the State cohabiting elsewhere, must file a declaration of their relationship with a designated official. Registration is refused where a partner has a living spouse or another live-in partner, is under eighteen, or falls within the prohibited degrees. If a partner is under twenty-one, the official must inform the parents. Failing to file within a month can lead to up to three months in prison, a fine of up to ten thousand rupees, or both.³⁶ The Code also treats children of such relationships as legitimate and gives a deserted woman a claim to maintenance.

Some of this is welcome. Children now have a statutory basis for legitimacy, and a deserted partner can claim support without proving that her relationship resembled a marriage. But the Code again shuts out the partner of a married man, and by making registration compulsory and punishable it turns a private arrangement into something that must be reported to the State and, for younger couples, to their families. That is hard to reconcile with *Puttaswamy*, which demands that any intrusion on privacy be backed by law, serve a legitimate aim and be proportionate. A voluntary scheme would serve the protective purpose with far less intrusion. Challenges to these provisions are pending in the Uttarakhand High Court.

Other countries offer useful comparisons. England and Wales still give cohabitants no general status; the Law Commission proposed financial remedies in 2007, but they were never enacted.³⁷ Scotland lets a former cohabitant apply for a financial award, judging the relationship by its length and nature.³⁸ Australia identifies a de facto relationship through several circumstances, such as a common home, financial dependence and care of children, none of which is decisive by itself.³⁹ France lets couples choose a registered partnership if they

³⁶The Uniform Civil Code of Uttarakhand, 2024, Part 3, ss. 380, 386, 387.

³⁷Law Commission of England and Wales, *Cohabitation: The Financial Consequences of Relationship Breakdown* (Law Com No. 307, 2007).

³⁸The Family Law (Scotland) Act 2006, ss. 25-29.

³⁹The Family Law Act 1975 (Cth), s. 4AA.

want one.⁴⁰ *Indra Sarma* in effect adopted a functional test like the Australian one, but placed capacity to marry in front of it as an absolute bar, which neither Scotland nor Australia does. Uttarakhand borrowed the idea of registration but made it compulsory. The better course for India would be a functional test for relief and optional registration for couples who want certainty.

8. Findings, Suggestions and Conclusion

The four questions set out at the start can now be answered.

1. The courts have built the status of live-in relationships along three largely separate paths. The law of evidence treats long cohabitation as proof of marriage; constitutional law treats cohabitation as a freedom the State must protect but need not regulate; and the 2005 Act treats some cohabitations as relationships in the nature of marriage. The result is a set of partial statuses rather than one, and what a couple can claim depends on which path they can use.
2. The "relationship in the nature of marriage" test serves quasi-marital couples reasonably well, and the *Indra Sarma* factors are sensible on their own. But because capacity to marry is treated as a threshold, the test excludes women in long relationships with married men, who are often the most dependent. Because it values public holding out, it also disadvantages couples who kept quiet out of fear of their families.
3. The 2023 codes largely carried the old law forward. Maintenance was not extended, the cruelty provision was not widened, and the presumption of marriage was kept. The only real change, section 69 of the Nyaya Sanhita, may add to criminal litigation after break-ups. The Uttarakhand Code is a genuine attempt at legislation, but its compulsory and penal character raises serious privacy concerns.
4. Judicial interpretation has gone about as far as it can. The following reforms are therefore addressed to the legislature. Parliament should amend the 2005 Act, or pass a short separate law, so that cohabitation is judged by how the relationship actually functioned, and capacity to marry should no longer be an absolute bar; where one partner was married, the court should weigh the cohabitant's claim against the rights of the spouse and children. The definition of "wife" in section 144 of the Nagarik Suraksha Sanhita should be widened, as the Malimath Committee proposed, so that a woman who depended on a partner through a long cohabitation can claim maintenance in her own

⁴⁰Code civil (France), arts. 515-1 and 515-8.

right. The rights of children born of such relationships should be set out in one statute that applies whatever the parents' religion. Any registration scheme should be voluntary and confidential. And courts hearing protection petitions should be guided to grant protection to adults under threat without passing judgement on how they live. Interviews with family court judges, protection officers and lawyers would be a useful next step to see how these tests are applied at trial level.

Over seventy years the courts have brought live-in relationships from the margins of the law to a position of constitutional respect, from the cautious inference in *Gokal Chand* to the recognition of unmarried families in *Deepika Singh*. Yet most of the protection they offer is still borrowed from marriage. The law has not yet asked, on its own terms, what two people who have shared a life owe each other when it ends. The 2023 reforms were a chance to begin answering that question, and it was not taken. Until Parliament acts, the status of live-in relationships in India will continue to be settled the way it always has been, one case at a time.

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