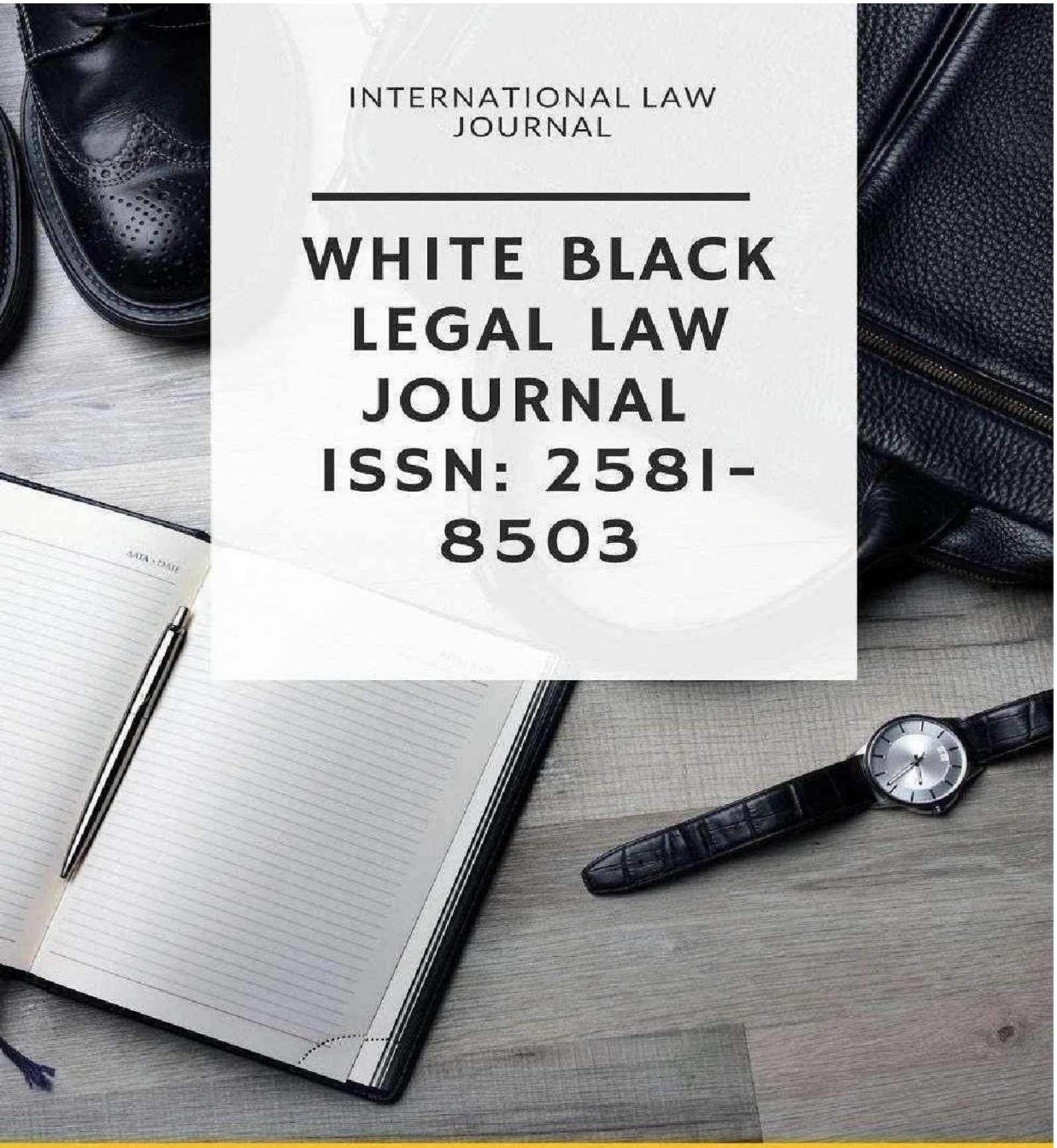


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LIVE-IN RELATIONSHIPS IN INDIA: BETWEEN SOCIAL MORALITY AND LEGAL PROTECTION

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ABSTRACT

Indian family law has long assumed that intimate life begins with marriage. Yet many couples live together without marrying, and courts have had to decide what rights they and their children should have. This paper traces how Indian courts moved from explaining cohabitation away through the presumption of marriage to accepting it as a lawful choice that deserves some protection. It examines the constitutional foundations of that shift, including Articles 14, 19 and 21, the statutory hooks that allow relief, notably the Protection of Women from Domestic Violence Act, 2005 and the maintenance provisions of the criminal procedure code, and the position of children. It then compares the approaches of England and Wales, Scotland and Australia and considers the registration regime introduced in Uttarakhand. The paper argues that Indian law protects partners according to how closely a relationship resembles marriage and not according to need, dependence and care, producing uneven outcomes. It concludes that legislation built on vulnerability and contribution, with strong privacy safeguards, is preferable to continued judicial improvisation.

Keywords: live-in relationship; relationship in the nature of marriage; presumption of marriage; domestic violence; maintenance; legitimacy of children; constitutional morality;

1. INTRODUCTION

1.1 Background

Every society decides, often without ever saying so, which forms of intimacy it will take seriously. In India the answer has long been marriage. A husband and wife are placed at the centre of a web of legal consequences: maintenance, residence, inheritance, legitimacy of children, the right to consent to medical treatment, even the right to claim a pension or to perform last rites. A couple who live together without marrying are, on paper, strangers to one another. Yet in kitchens, rented flats, hostels and village homes across the country, such couples share meals, rent, savings, grief and children. The law's silence about them does not make them

disappear. It only makes them vulnerable.

The phrase "live-in relationship" is a recent addition to the Indian legal vocabulary, but the underlying reality is old. Long cohabitation without a formal ceremony has always existed, particularly among poor and marginalised communities for whom the expense of a wedding, or the paperwork of registration, was never a practical option.[1] What has changed is visibility. Urbanisation, women's participation in paid work, delayed marriage and a more open public conversation about personal choice have pushed cohabitation into courtrooms, newspapers and living-room arguments.

Courts were the first institutions to respond. Over about four decades the Supreme Court and the High Courts moved from treating cohabitation as something to be explained away, usually by presuming a marriage that had never been performed, to accepting that it is a lawful choice deserving some protection. The legislature, by contrast, has said very little. The result is a body of law assembled from fragments: a presumption in the Evidence Act, a definition in a domestic violence statute, a maintenance provision written for wives, and a few judicial pleas to Parliament that have gone largely unanswered.

1.2 Statement of the Problem

The central problem is one of fairness. A woman who has spent twenty years running a household with a man, raising his children and giving up her own career, may find on separation that she has no claim to maintenance, no right to stay in the home and no share of what they built together, only because no priest, imam or registrar ever witnessed the relationship. Where courts have been willing to help her, they have often done so by asking how closely her life resembled a marriage. This paper argues that this is the wrong question. The law should be asking who is dependent, who is vulnerable and who has contributed, not who most resembles a wedded spouse.

1.3 Research Questions

- How have Indian courts historically treated long-term cohabitation, and what legal doctrines have they used to do so?
- What constitutional principles support the recognition of live-in relationships, and how far have courts relied on them?

[1]See the discussion of customary and informal unions in Flavia Agnes, *Family Law Volume I: Family Laws and Constitutional Claims* (Oxford University Press 2011).

- What statutory protections are presently available to partners and to children, and what are their limits?
- How do other legal systems handle unmarried cohabitation, and what can India learn from them?
- What reforms would best protect vulnerable partners without turning private life into an object of state surveillance?

1.4 Objectives

The paper aims to trace the judicial evolution of live-in relationships in India; to examine the constitutional and statutory framework within which courts have worked; to evaluate the "relationship in the nature of marriage" test critically; to assess the position of children; to compare selected foreign approaches; and to offer concrete, workable recommendations for reform.

1.5 Hypothesis

The working hypothesis is that Indian law protects live-in partners according to how closely their relationship imitates marriage, rather than according to their actual need and vulnerability, and that this produces uneven and sometimes unjust outcomes that only legislation can remedy.

1.6 Research Methodology

The research is doctrinal and analytical. It relies on primary sources, namely the Constitution of India, statutes and reported judgments of the Supreme Court and High Courts, and on secondary sources such as textbooks, commentaries, law reform reports and journal articles. Judgments are read for their reasoning, not just their outcomes. The paper also draws briefly on comparative materials from Scotland, England and Wales, and Australia. It does not claim empirical fieldwork. Where it speaks about the lived experience of couples, it does so cautiously and by reference to what courts have recorded in their judgments.

1.7 Scope and Limitations

The paper concentrates on heterosexual cohabiting couples because that is where most Indian case law lies, though it notes the position of same-sex couples where the reasoning overlaps. It does not examine the personal laws of every community in detail. Since the law in this area is developing quickly, particularly at the state level, readers should check for newer decisions and legislation before relying on any statement here.

1.8 Review of Literature

Scholarship on Indian family law has traditionally focused on marriage, divorce and succession within religious personal laws. Paras Diwan's textbooks on family law and Mulla's treatises set out the formal rules of each community. Feminist scholars such as Archana Parashar and Flavia Agnes have drawn attention to the gap between the formal equality promised by the Constitution and the unequal reality women face inside families.[2] On the question of cohabitation specifically, much of the writing appears in the form of case comments on *D. Velusamy* and *Indra Sarma*, many of which welcome the recognition but criticise the narrow test.

Outside India, Martha Fineman has argued that the law's insistence on the independent, self-sufficient adult is a myth, and that vulnerability is a universal human condition which the state should respond to through institutions that support dependency and care.[3] Martha Nussbaum's capabilities approach, which asks what people are actually able to do and to be, offers a similar lens.[4] These ideas inform the approach taken in this paper, which treats family law as a means of protecting human beings in their dependency and care, and not only as a means of regulating a status.

1.9 Chapterisation

Chapter 2 sets out the conceptual and social background. Chapter 3 examines the early presumption-of-marriage cases. Chapter 4 looks at constitutional foundations. Chapter 5 studies the statutory framework. Chapter 6 analyses the leading cases on live-in relationships. Chapter 7 deals with children. Chapter 8 offers a comparative perspective. Chapter 9 considers registration, with special reference to Uttarakhand. Chapter 10 provides a critical analysis, Chapter 11 makes suggestions, and Chapter 12 concludes.

[2]Archana Parashar, *Women and Family Law Reform in India: Uniform Civil Code and Gender Equality* (Sage 1992); Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* (Oxford University Press 1999).

[3]Martha Albertson Fineman, *The Autonomy Myth: A Theory of Dependency* (New Press 2004); Martha Albertson Fineman, 'The Vulnerable Subject: Anchoring Equality in the Human Condition' (2008) 20 Yale Journal of Law & Feminism 1.

[4]Martha C Nussbaum, *Creating Capabilities: The Human Development Approach* (Harvard University Press 2011).

2. CONCEPTUAL AND SOCIAL FRAMEWORK

2.1 What Is a Live-In Relationship?

No Indian statute defines a "live-in relationship". The expression is a label that courts and commentators use for an arrangement in which two adults live together in a shared household, with some degree of intimacy and mutual commitment, without having solemnised or registered a marriage. Within that broad description there is enormous variety. Some couples are engaged and waiting for family approval. Some have deliberately rejected marriage as an institution. Some are older people who fear losing a pension or an inheritance if they remarry. Some are unable to marry because one of them is still legally married to someone else. Some have lived together for forty years and raised four children.

This variety is exactly why a single definition has proved difficult. A rule that works well for a long-term couple with children may be unfair to someone who shared a flat for three months. The challenge for the law is to be precise without being cruel, and flexible without being arbitrary.

2.2 Marriage as the Gateway to Family Rights

Family rights in India arrive through marriage. Under the Hindu Marriage Act, 1955, a marriage must satisfy the conditions in section 5 and be solemnised under section 7 in accordance with customary rites. Muslim marriage is a civil contract requiring proposal, acceptance and consent in the presence of witnesses. Christian and Parsi marriages are governed by their own statutes, and the Special Marriage Act, 1954 provides a civil route for couples of any faith or none. Each of these laws then attaches consequences: maintenance, residence, legitimacy of children, rights of succession and the ability to seek a judicial remedy when the marriage breaks down.

A couple outside this structure receives none of these consequences automatically. The partner who is financially weaker, in most cases the woman, has to find some other legal peg on which to hang her claim. That is why so much of the live-in case law is really about borrowing: borrowing the presumption of marriage from the law of evidence, borrowing maintenance from the Code of Criminal Procedure, borrowing protection from the domestic violence statute.

2.3 The Social Reality

Comprehensive national data on cohabitation is limited, partly because census and survey instruments were designed around married households and partly because couples themselves

may be reluctant to report an arrangement that attracts disapproval. What can be said with reasonable confidence is that live-in arrangements are more commonly discussed in metropolitan settings, but that informal unions have long existed in rural and low-income communities where formal marriage can be costly or socially complicated.

It is important not to romanticise or demonise either group. For some women, a live-in arrangement is an exercise of freedom: a way to test compatibility, to avoid a dowry-driven match or to escape the pressure of family-arranged marriage. For others, it is a precarious situation entered into on a promise of marriage that is later broken. Courts see more of the second type than the first, because people come to court when something has gone wrong. This shapes the case law and, in turn, the way judges talk about these relationships.

2.4 A Human-Centred Approach

A humanist reading of family law begins with the person rather than the institution. It asks what a household actually does for the people in it. Households provide care for children, the sick and the elderly; they pool income and share risk; they give people a place to belong. These functions are performed equally well, and equally badly, inside and outside marriage. A law that protects these functions only when a ceremony has been performed confuses the form of a relationship with its substance.

This does not mean that marriage has no special place. Marriage is a public commitment, and the state has legitimate reasons to support it. The argument here is narrower: that the vulnerabilities which family law exists to address, such as economic dependency after separation, the care of children and the security of a home, do not disappear when the label changes. Where those vulnerabilities exist, a humane legal system should respond to them.

The distinction between social morality and constitutional morality is also helpful. In his speech to the Constituent Assembly, Dr B R Ambedkar warned that constitutional morality is not a natural sentiment and has to be cultivated.[5] The Supreme Court has repeatedly said that courts must apply constitutional morality, which respects dignity and equality, rather than the shifting moral opinions of the majority.[6] That principle is the proper compass for judging how the law should treat people who live together outside marriage.

[5]Constituent Assembly Debates, vol VII (4 November 1948), speech of Dr B R Ambedkar.
[6]*Navtej Singh Johar v Union of India* (2018) 10 SCC 1.

3. EARLY JUDICIAL APPROACH: THE PRESUMPTION OF MARRIAGE

3.1 The Evidentiary Foundation

The earliest Indian cases that look anything like live-in disputes were not decided as live-in disputes at all. They were decided as questions of whether a valid marriage could be inferred. The source of that inference is section 114 of the Indian Evidence Act, 1872, which allows a court to presume the existence of any fact it thinks likely to have happened, having regard to the common course of natural events and human conduct.[7] The idea is intuitive. If a man and woman have lived together for many years, are known to their neighbours as husband and wife, and have brought up children as a family, then it is reasonable to suppose they are married.

The principle has colonial roots. The Privy Council, in cases such as *A Dinohamy v W L Blahamy* and *Mohabbat Ali Khan v Muhammad Ibrahim Khan*, held that where a man and woman have lived together as husband and wife, the law presumes they were living together in consequence of a valid marriage and not in a state of concubinage.[8] The presumption is rebuttable, but the burden on the person who denies the marriage is heavy.

3.2 Badri Prasad and Its Successors

In *Badri Prasad v Deputy Director of Consolidation*, the Supreme Court dealt with a couple who had lived together for a very long period as husband and wife.[9] The Court said that where a man and woman have cohabited continuously for a long time, a strong presumption arises in favour of a valid marriage, and that law leans in favour of legitimacy and against concubinage. The practical point was that a couple who had lived as spouses for decades should not see their status wiped out because a document could not be found or a ceremony could not be proved.

The same logic was applied in *S P S Balasubramanyam v Suruttayan*, where the Court held that a man and woman who live together as husband and wife are presumed to be married, and that children born of such a union are legitimate unless the contrary is established.[10] In *Madan Mohan Singh v Rajni Kant*, the Court again accepted that long cohabitation can support a presumption of marriage, though it also stressed that the presumption weakens where there is

[7]Indian Evidence Act 1872, s 114. Under the Bharatiya Sakshya Adhiniyam 2023, which replaced the 1872 Act with effect from 1 July 2024, the corresponding provision is s 119; readers should confirm the current section number.

[8]*A Dinohamy v W L Blahamy* AIR 1927 PC 185; *Mohabbat Ali Khan v Muhammad Ibrahim Khan* AIR 1929 PC 135.

[9]*Badri Prasad v Deputy Director of Consolidation* (1978) 3 SCC 527.

[10]*S P S Balasubramanyam v Suruttayan* (1994) 1 SCC 460.

clear evidence that no marriage took place.[11] More recently, in *Dhannulal v Ganeshram*, the Court reaffirmed that continuous cohabitation raises a presumption of marriage and that the burden of rebutting it lies on the person who challenges it.[12]

3.3 What the Presumption Does and Does Not Do

The presumption of marriage is a generous doctrine, but it is also a limited one, and the limits matter for any discussion of live-in relationships.

First, the presumption protects marriage, not cohabitation. Its logic is that the couple must have been married, so the rights of a married couple should follow. A woman who says plainly "we never married, we chose to live together" cannot invoke it. In other words, the doctrine rewards those who claim to be married and offers nothing to those who are honest about not being married.

Second, the presumption is vulnerable to the facts. If either partner was already married to someone else, the presumption cannot help, because a second marriage during the subsistence of the first is void under section 11 read with section 5(i) of the Hindu Marriage Act, 1955. Courts have recognised that this leaves such women in a harsh position. In *Rameshchandra Daga v Rameshwari Daga*, the Supreme Court considered the plight of a woman whose marriage was void because of her husband's earlier marriage, and examined which maintenance remedies, if any, remained open to her. The discussion shows how thin the available protection was.[13]

Third, the presumption turns on public reputation. A couple who live quietly, or who move to a city where nobody knows them, or who choose not to present themselves as married, will find it difficult to prove the necessary public acknowledgment. This disadvantages precisely those couples who might seek the greatest freedom from social scrutiny.

Fourth, and most importantly for the argument of this paper, the presumption forces the law to speak in the language of fiction. The court says, in effect, "we will treat you as married because we cannot bring ourselves to protect you otherwise." This is a kind of legal politeness that has served many families, but it leaves unaddressed the question of what to do when no fiction is available.

[11] *Madan Mohan Singh v Rajni Kant* (2010) 9 SCC 209.
[12] *Dhannulal v Ganeshram* (2015) 12 SCC 301.
[13] *Rameshchandra Daga v Rameshwari Daga* (2005) 2 SCC 33.

3.4 The Lingering Moral Colouring

Older judgments often contain language about "concubinage" and "keeps", words which carry a moral verdict as well as a legal classification. The woman who is not a wife is described by what she is not. This vocabulary, inherited from the nineteenth-century common law, shaped how later courts approached the question and explains the reluctance with which they first acknowledged that unmarried cohabitation could be something other than immorality. As the next chapters show, the shift away from that vocabulary was gradual and is still incomplete.

4. CONSTITUTIONAL FOUNDATIONS

4.1 Liberty, Dignity and Choice

Courts did not begin with a doctrine of cohabitation; they began with a doctrine of personal liberty. Article 21 of the Constitution guarantees that no person shall be deprived of life or personal liberty except according to procedure established by law, and since *Maneka Gandhi* it has been read to include dignity, privacy and autonomy. Article 19(1)(a) protects expression, Article 19(1)(c) association, and Article 14 equality before the law. Read together, these provisions support the proposition that an adult may choose with whom to share a life.

In *K S Puttaswamy v Union of India*, a nine-judge bench held that privacy is a fundamental right and that it includes autonomy over intimate decisions such as marriage, procreation and family life.[14] If privacy protects the decision to marry, it must also protect the decision not to, and the decision to share a home without the formalities. The right would mean little if it were limited to choices of which the majority approves.

4.2 Choice of Partner: Lata Singh, Shafin Jahan and Shakti Vahini

The Supreme Court's cases on inter-caste and inter-faith marriage supply much of the moral vocabulary later used for cohabitation. In *Lata Singh v State of UP*, the Court said that a person who is a major is free to marry whomever she likes and that a couple who enter an inter-caste marriage are not committing any offence. It directed the police to protect such couples from harassment and violence.[15] Although the case was about marriage, the reasoning rests on adult choice and applies naturally to the more informal arrangement.

In *Shafin Jahan v Asokan K M*, the Court set aside a High Court order that had annulled the marriage of an adult woman, Hadiya, and effectively placed her under parental custody. It held

[14] *Justice K S Puttaswamy (Retd) v Union of India* (2017) 10 SCC 1.
[15] *Lata Singh v State of UP* (2006) 5 SCC 475.

that the choice of a life partner is an aspect of liberty and dignity, and that neither family nor state may substitute its own preference for hers.[16] In *Shakti Vahini v Union of India*, the Court condemned "honour" violence and directed preventive, remedial and punitive measures against it, again emphasising that the consent of two adults is paramount.[17]

4.3 Criminal Law and Moral Disapproval

A related line of cases separates what is merely disapproved from what is criminal. In *S Khushboo v Kanniammal*, an actress faced a string of criminal complaints after speaking publicly about premarital sex and the need for precautions. The Supreme Court quashed the proceedings. It observed that there is no law that prohibits living together, and that a man and woman living together without marriage cannot be said to be committing any offence. The Court added that such a relationship may be unacceptable to some in society, but that this does not make it unlawful. It also noted, by way of illustration, that the mythological relationship of Radha and Krishna has long been celebrated in Indian culture.[18]

The Court has taken the same approach to other forms of intimate choice. In *Navtej Singh Johar v Union of India*, it decriminalised consensual same-sex relations between adults, insisting on constitutional morality over popular morality.[19] In *Joseph Shine v Union of India*, it struck down the offence of adultery under section 497 of the Indian Penal Code, in part because the provision treated a married woman as her husband's possession and denied her sexual autonomy.[20] The thread running through these decisions is that the state may not use the criminal law to enforce a particular vision of intimate life among consenting adults.

4.4 Capacity and Age

In *Nandakumar v State of Kerala*, a young couple had been prevented from marrying because the man was just under twenty-one, the minimum age for marriage of a man. The Supreme Court held that although they could not validly marry, they were both adults and were free to live together, even outside the institution of marriage. It noted that live-in relationships are recognised by the law and that they are not an offence.[21] The case is notable because it separates the right to cohabit from the right to marry, treating the first as a matter of liberty and the second

[16] *Shafin Jahan v Asokan K M* (2018) 16 SCC 368.
[17] *Shakti Vahini v Union of India* (2018) 7 SCC 192.
[18] *S Khushboo v Kanniammal* (2010) 5 SCC 600.
[19] *Navtej Singh Johar v Union of India* (2018) 10 SCC 1.
[20] *Joseph Shine v Union of India* (2019) 3 SCC 39.
[21] *Nandakumar v State of Kerala* (2018) 16 SCC 602.

as subject to legal conditions.

4.5 Same-Sex Couples and the Limits of Recognition

The question of non-marital partnerships took a further turn in *Supriyo v Union of India*, where the Supreme Court declined to recognise a constitutional right to marry for same-sex couples or to read civil unions into the Special Marriage Act. The Union government told the Court that it would constitute a committee to examine the practical difficulties such couples face.[22] Whatever one thinks of the outcome, the case highlights a broader point. Where marriage is unavailable by law, as it is for same-sex couples, the question of non-marital protection ceases to be a matter of lifestyle preference. It becomes a matter of basic access to family rights.

4.6 Assessment

The constitutional case for recognising cohabitation as a lawful choice is strong and has been accepted. The constitutional case for protecting the vulnerable partners within such relationships is less developed. Courts have been quicker to say what the state may not do (punish, harass, separate) than to say what the state must do (provide maintenance, security of residence, succession). This asymmetry is the key to understanding the gap that the following chapters explore.

5. STATUTORY FRAMEWORK

5.1 The Protection of Women from Domestic Violence Act, 2005

The most important statute for live-in partners is the Protection of Women from Domestic Violence Act, 2005 (the DV Act). Its purpose is to provide civil remedies to women who suffer abuse within a domestic relationship. Section 2(f) defines "domestic relationship" as a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, "or through a relationship in the nature of marriage", adoption, or as members of a joint family.

The words "in the nature of marriage" were a legislative decision to extend protection beyond the legally married wife, and they were included after debate about the vulnerability of women in informal unions. The Act then provides several kinds of relief: protection orders against further violence; residence orders, which can prevent the woman from being dispossessed of

[22] *Supriyo @ Supriya Chakraborty v Union of India* 2023 SCC OnLine SC 1348. The detailed holdings of the individual opinions should be checked against the full report.

the shared household; monetary relief for expenses and losses; custody orders for children; and compensation for mental and physical injury.

The Act does not, however, define the phrase on which its application to live-in couples depends. It uses only the words "in the nature of marriage" and leaves the courts to decide what they mean. Section 2(a) defines the "aggrieved person" as any woman who is, or has been, in a domestic relationship with the respondent and who alleges domestic violence. By its own terms, therefore, the Act is available only to women.

5.2 Maintenance: Section 125 CrPC and Section 144 BNSS

Section 125 of the Code of Criminal Procedure, 1973 allowed a magistrate to order a person with sufficient means to pay maintenance to his wife, children or parents who are unable to maintain themselves. It was a social-justice measure aimed at preventing destitution, and it applied across religions. With effect from 1 July 2024 the Bharatiya Nagarik Suraksha Sanhita, 2023 replaced the Code, and the maintenance provision now appears as section 144.[23]

The difficulty is the word "wife". The explanation to the provision includes a divorced woman but says nothing about a woman who was never formally married. Some courts have read the term broadly, using the presumption of marriage to bring long-term partners within it. In *Chanmuniya v Virendra Kumar Singh Kushwaha*, the Supreme Court expressed the view that "wife" should be given a wide and expansive interpretation to include a woman who lived with a man as his wife for a long time, even without strict proof of marriage, so that the beneficial purpose of the law is not defeated by technicalities. The Court also thought the question important enough to be considered by a larger bench.[24] Other decisions have been more cautious, insisting that a valid marriage be shown or at least that the relationship satisfy the tests laid down for the DV Act.

Calls for amendment have been made more than once. The Malimath Committee on criminal justice reform in 2003 recommended that the word "wife" in section 125 be widened to include a woman living with a man like his wife, and a similar proposal was floated by the National Commission for Women and by the Maharashtra government later in the decade.[25] None of these has resulted in a general amendment.

[23]Bharatiya Nagarik Suraksha Sanhita 2023, s 144 (corresponding to Code of Criminal Procedure 1973, s 125). The commencement date should be verified against the notification.

[24]*Chanmuniya v Virendra Kumar Singh Kushwaha* (2011) 1 SCC 141.

[25]Committee on Reforms of Criminal Justice System, *Report* (Ministry of Home Affairs, Government of India 2003). The later proposals are mentioned in the secondary literature and should be verified against primary sources before citation.

5.3 Personal Laws and Succession

Succession is where the difference between married and unmarried partners is starkest. Under the Hindu Succession Act, 1956, the Indian Succession Act, 1925, and the various personal laws, heirs are defined by blood or marriage. A surviving cohabitant is not an heir. If the deceased partner left no will, the survivor may be left with nothing from a shared life, however long. Even where a will exists, it may be contested by relatives, and a court's attitude to the survivor's relationship may colour how the dispute is viewed.

Section 16 of the Hindu Marriage Act, 1955 offers some protection to children of void and voidable marriages by deeming them legitimate, and the Supreme Court has extended their property rights in *Revanasiddappa v Mallikarjun*.[26] But the provision speaks of marriages, however defective, not of relationships that were never marriages at all. A woman in a live-in relationship therefore cannot rely on it for herself, and the position of her children depends on the way courts have interpreted legitimacy, as the next chapters show.

5.4 Evidence Law

Section 114 of the Evidence Act supplies the presumption of marriage discussed earlier, and section 112 provides that a child born during a valid marriage is conclusively presumed to be legitimate unless non-access is proved. These provisions are significant because they shift the practical burden of proof to the party attacking the relationship or the child's status. They help only where the couple were, or can be shown to have appeared to be, married.

5.5 Criminal Law: Promise of Marriage

A rather different statutory issue arises when a live-in relationship ends and one partner alleges that sexual relations took place on a false promise of marriage. For many years such disputes were prosecuted as rape on the theory that consent obtained by deception was no consent. The Supreme Court tried to draw a line between a promise that was false from the start and a promise that was sincerely made but later broken, as in *Pramod Suryabhan Pawar v State of Maharashtra*.[27] The Bharatiya Nyaya Sanhita, 2023 now contains a specific offence, in section 69, dealing with sexual intercourse by deceitful means, including a false promise of marriage.[28] This area calls for sensitivity in both directions. Some women are genuinely deceived and deserve the law's protection. Equally, not every failed relationship is a crime, and the criminal

[26] *Revanasiddappa v Mallikarjun* (2011) 11 SCC 1.
[27] *Pramod Suryabhan Pawar v State of Maharashtra* (2019) 9 SCC 608.
[28] Bharatiya Nyaya Sanhita 2023, s 69. Its scope and the case law interpreting it are still developing and should be checked.

law should not be used as a tool of revenge against a partner who changed his mind. The risk is that the criminal process becomes the only door through which a woman in an informal relationship can seek redress, because the civil door is closed.

6. THE LEADING CASES ON LIVE-IN RELATIONSHIPS

6.1 Early High Court Signals

Before the Supreme Court addressed the subject directly, High Courts had begun to say that a live-in relationship is not unlawful. The Allahabad High Court in *Payal Sharma v Superintendent, Nari Niketan* took the view that a man and woman who are adults can live together without marrying, and that this may be seen as immoral by some but is not illegal.[29] High Courts have not always been consistent. Benches of the same High Court have, in the same year, taken opposite approaches to couples seeking police protection, one emphasising their right to life and liberty and another expressing discomfort with the social acceptability of the arrangement. This inconsistency is itself a sign of the absence of a legislative standard.

6.2 D Velusamy v D Patchaiammal (2010)

The decisive Supreme Court statement came in *D Velusamy v D Patchaiammal*.[30] The woman claimed maintenance from a man with whom she said she had lived as his wife. The Court examined what the DV Act meant by a relationship "in the nature of marriage" and laid down four conditions. First, the couple must hold themselves out to society as being akin to spouses. Second, they must be of legal age to marry. Third, they must otherwise be qualified to enter into a legal marriage, including being unmarried. Fourth, they must have voluntarily cohabited and held themselves out to the world as spouses for a significant period of time.

The Court added that merely spending weekends together or a one-night stand would not make a "domestic relationship". It also said that a man who keeps a woman and maintains her financially, using her mainly for sexual purposes or as a servant, would not be in a relationship in the nature of marriage. The Court's concern was to avoid extending the Act to every kind of liaison, and it described the line it drew as one that distinguishes a marriage-like relationship from a casual one.

The decision was a breakthrough in the sense that it brought some live-in relationships inside a statute designed for the protection of women. But its test had a built-in difficulty. The

[29] *Payal Sharma v Superintendent, Nari Niketan Kalindri Vihar, Agra* (2001) (Allahabad High Court). The report citation should be confirmed on a legal database.
[30] *D Velusamy v D Patchaiammal* (2010) 10 SCC 469.

conditions are heavily oriented towards the marital model. The couple should look married, behave as married people do, and be eligible to be married. A woman whose partner is already married, however long they lived together and however completely she depended on him, is outside the test.

6.3 Indra Sarma v V K V Sarma (2013)

The Supreme Court revisited the issue in *Indra Sarma v V K V Sarma*.[31] The woman had lived with a married man for a considerable period and was aware of his marriage. The Court held that the relationship was not one "in the nature of marriage", and that she was not entitled to relief under the DV Act as an aggrieved person. In reaching that view it listed factors relevant to deciding whether a given relationship qualifies: the duration of the relationship, the existence of a shared household, the pooling of resources and financial arrangements, domestic arrangements, sexual relations, whether there were children, socialisation in public, and the intention and conduct of the parties.

The judgment is notable for its candour. The Court recognised that some women in non-marital relationships would fall outside the Act and noted that Parliament should consider legislation to protect women who are not in a relationship in the nature of marriage and the children born of such relationships. It also drew distinctions among kinds of relationship, for example between those with an unmarried partner and those with a married partner, and left a woman in the second category to whatever other remedies the civil law might give her.

The humane reading of the case is that the Court saw the difficulty but felt bound by the language of the statute. The critical reading is that it endorsed a hierarchy of blame, in which the woman who knew her partner was married is treated as less deserving, even though in many cases her dependence on him was every bit as real.

6.4 Later Developments

Subsequent decisions have applied *Velusamy* and *Indra Sarma* with varying degrees of generosity. In *Lalita Toppo v State of Jharkhand*, the Supreme Court proceeded on the footing that a woman in a live-in relationship that satisfies the tests may claim maintenance under the DV Act, and that the High Court had erred in treating the matter as governed only by section 125 of the Code.[32] The Court emphasised the beneficial purpose of the Act and approached the

[31] *Indra Sarma v V K V Sarma* (2013) 15 SCC 755.
[32] *Lalita Toppo v State of Jharkhand* (2018) 13 SCC 674.

case as one of protecting a vulnerable woman.

High Courts have meanwhile dealt with a variety of situations: couples seeking protection from hostile families, women claiming residence in the shared household, and men and women disputing property. Many of these decisions repeat the *Velusamy* factors without much analysis, while others show greater sensitivity to the facts. The overall impression is of a doctrine that is workable in clear cases but unpredictable at the margins.

6.5 Cohabitation and Marital Offences

A further body of case law concerns the situation of a married person who lives with someone else. This invites different legal consequences: the married partner may face a petition for divorce on grounds of adultery or desertion under the personal law, and the third party may face allegations under laws that survive decriminalisation. After *Joseph Shine*, adultery is no longer an offence, but it remains a ground for divorce. The point is that cohabitation is not legally neutral for those who are still married to someone else, and courts have sometimes struggled to balance the rights of the lawful spouse and the cohabitant.

7. THE RIGHTS OF CHILDREN

7.1 Why Children Come First

Of all the people affected by the legal status of their parents' relationship, children have the least say and the most to lose. A child does not choose whether her parents marry. Yet the label "illegitimate" has historically followed such a child into school forms, property disputes and social life. A human-centred approach to this question is simple: a child's rights should not depend on the legal form of her parents' relationship.

7.2 Legitimacy Through Presumption

The courts' first technique was the presumption of marriage already discussed. In *Tulsa v Durghatiya*, the Supreme Court dealt with a child born out of a long relationship between a man and a woman who had lived together for many years. The Court held that a child born of such a relationship should not be treated as illegitimate, and that the presumption in favour of marriage applies where the relationship was one of continuous cohabitation resembling a marriage.[33] The decision shifted attention from the conduct of the parents to the protection of the child.

[33] *Tulsa v Durghatiya* (2008) 4 SCC 520.

The presumption works, however, only if the parents lived in a relationship that looked like marriage. Where the relationship was short, or concealed, or where one parent was already married, the court may find that the presumption is rebutted. The child then has to rely on other legal provisions.

7.3 Property Rights

In *Bharatha Matha v R Vijaya Renganathan*, the Supreme Court considered the claim of a child born of a relationship that was not a valid marriage. The Court held that such a child could claim a share in the self-acquired property of the parent but not in ancestral coparcenary property.[34] *Revanasiddappa v Mallikarjun* later widened the rights of children of void and voidable marriages under section 16 of the Hindu Marriage Act, holding that they may claim a share in the property of their parents.[35] These decisions soften the consequences of birth outside a valid marriage, but they leave a patchwork: a child's entitlement may depend on whether the parents' relationship is classified as a void marriage, a presumed marriage or no marriage at all.

7.4 Maintenance and Guardianship

Maintenance of children does not depend on the parents' marital status. Section 125 of the Code, and now section 144 of the BNSS, expressly extends to legitimate and illegitimate minor children. Under the Guardians and Wards Act, 1890 and the Hindu Minority and Guardianship Act, 1956, the natural guardian of an illegitimate child is the mother, with the father coming after her. These provisions confirm that the law's concern for the welfare of the child is stronger than its concern for the form of the parents' union. What is missing is a single, clear statement that all children are legitimate irrespective of the marital status of their parents, together with equal succession rights.

7.5 International Standards

India is a party to the Convention on the Rights of the Child, Article 2 of which requires states to respect the rights of every child without discrimination on any ground, including the status of the child's parents. The principle that the best interests of the child are a primary consideration, set out in Article 3, is also well established in Indian family courts. Together they provide a basis for treating children of cohabiting couples equally with other children.

[34] *Bharatha Matha v R Vijaya Renganathan* (2010) 11 SCC 483.
[35] *Revanasiddappa v Mallikarjun* (2011) 11 SCC 1.

8. A COMPARATIVE PERSPECTIVE

8.1 Why Look Abroad?

Comparative study is useful here because many legal systems have faced the same problem, with different results. None of the foreign models can simply be transplanted to India, where personal laws, social attitudes and legal institutions differ. They are useful as examples of the range of choices open to a legislature.

8.2 England and Wales

England and Wales offer a cautionary example of reform that did not happen. Despite the rising numbers of cohabiting couples, the law gives cohabitants no general right to financial relief when the relationship ends. Disputes are resolved through the law of trusts and property. In cases such as *Burns v Burns*, a woman who had lived with a man for nearly two decades, raised the children and managed the home had no claim to a share of the house because she had not contributed to its purchase.[36] Later cases such as *Stack v Dowden* and *Jones v Kernott* have allowed courts more flexibility in deciding the shares of a jointly owned home, but only where there is a property to divide.[37] The Law Commission recommended a statutory scheme for cohabitants in 2007, but successive governments did not enact it.[38] The English experience shows how long a legislative silence can leave families exposed.

8.3 Scotland

Scotland took a different route. The Family Law (Scotland) Act 2006 introduced financial remedies for cohabitants when a relationship ends and a limited right to claim on the death of a partner who died without a will. A court may consider whether one cohabitant has gained an economic advantage or suffered an economic disadvantage from contributions made during the relationship, and whether there is an economic burden from the care of a child.[39] The scheme is notable because it does not try to turn cohabitants into spouses. It asks instead what each person contributed and what each has lost, which is closer to a needs-and-contribution approach than to an imitation of marriage.

[36] *Burns v Burns* [1984] Ch 317.
[37] *Stack v Dowden* [2007] UKHL 17; *Jones v Kernott* [2011] UKSC 53.
[38] Law Commission, *Cohabitation: The Financial Consequences of Relationship Breakdown* (Law Com No 307, 2007).
[39] Family Law (Scotland) Act 2006, ss 25 to 29. See also *Gow v Grant* [2012] UKSC 29, where the Supreme Court discussed the approach to the statutory remedy.

8.4 Australia

Australia's Family Law Act 1975 now covers "de facto relationships" for the purposes of financial and property matters, following the referral of powers by the states. A de facto relationship is a relationship between two adults, of any sex, who live together on a genuine domestic basis and are not married or related by family. The court looks at factors such as the duration of the relationship, the nature of shared residence, the sexual relationship, financial dependence and interdependence, ownership and use of property, the care and support of children, and the reputation and public aspects of the relationship. A person can usually apply for financial orders if the relationship lasted a minimum period, or if there is a child, or if substantial contributions were made.[40] The Australian model shows that a flexible multi-factor test can be written into a statute, giving courts guidance without freezing the law.

8.5 Lessons for India

Three lessons emerge. First, protection can be linked to contribution, dependence and care, not just to the label of marriage. Second, a statute can leave room for judicial discretion while still setting out the factors the court must weigh. Third, the choice not to legislate has costs, and the families who bear those costs are those least able to litigate. India's current approach, which leaves the matter to a handful of court decisions, resembles England's more than Scotland's.

9. REGISTRATION AND STATE REGULATION: THE UTTARAKHAND EXPERIENCE

9.1 The Uniform Civil Code Legislation

The most visible recent legislative step is the Uttarakhand Uniform Civil Code Act, 2024. Among other things, the Act requires that live-in relationships within the state, and those of residents of the state living elsewhere, be registered with a designated registrar. As reported, failure to register within the prescribed time, or providing false information, can attract imprisonment or fines, and the registrar may inform the parents or guardians of persons below a stated age.[41] The Act also addresses the status of children born of registered live-in relationships, treating them as legitimate.

[40]Family Law Act 1975 (Cth), Pt VIIIAB and s 4AA. Exact eligibility thresholds should be verified against the current text.

[41]Uttarakhand Uniform Civil Code Act 2024, provisions on live-in relationships. The precise sections, penalties, age thresholds, rules and implementation status (including any challenges before the High Court or Supreme Court) must be checked against the text of the Act and current reports before publication.

9.2 Arguments in Favour

Supporters of registration offer practical arguments. A certificate is documentary proof that the relationship existed, which could help a woman claim maintenance or residence and could help a child establish parentage. It could reduce the burden of proof in court, where cases now turn on oral evidence about how the couple lived. It might also discourage exploitative relationships in which one partner later denies that the relationship existed.

9.3 Arguments Against

Critics reply that compulsory registration, backed by criminal penalties, converts a private choice into a regulated one. Couples who most need privacy, for example inter-faith or inter-caste couples who fear family hostility, may be least willing to put their address and details on an official record. Notification to parents of young adults risks undermining the autonomy that the Supreme Court has protected in *Lata Singh* and *Shafin Jahan*. The penalties for non-registration punish exactly those who might be too poorly informed or too wary of authority to comply. And a registration regime that excludes unregistered couples from protection risks being a trap: a woman in an unregistered relationship might be told that she has no claim because she failed to fulfil a formality.

The privacy dimension is particularly important after *Puttaswamy*. Any state-mandated disclosure of intimate relationships must satisfy the requirements of legality, legitimate aim and proportionality. It is at least arguable that compulsory registration, with penalties and parental notification, struggles to satisfy proportionality when less intrusive means exist. The proper function of registration, if there is to be any, is to serve as optional proof to help the vulnerable, not as a condition of lawfulness.

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9.4 A Middle Path

A better design might make registration voluntary and beneficial: registered couples enjoy a clear, simple route to certain rights, but non-registration does not remove protection from those who can prove a genuine relationship by other evidence. Records should be confidential, with strict limits on access by police, family and third parties. This approach preserves the evidentiary advantage while respecting privacy.

10. CRITICAL ANALYSIS

10.1 Protection by Resemblance

The most basic criticism of the present law is that it protects partners in proportion to how much their relationship resembles marriage. The *Velusamy* conditions ask whether the couple held themselves out as spouses and whether they were qualified to marry. Consider two women. One has lived with an unmarried man for ten years, is known in the neighbourhood as his wife, and has two children. The other has lived for twenty years with a man who was already married, bore his children, nursed him through illness and gave up her job to run his home. By the standards of the test, the first is protected and the second is not. By the standards of need, the second may be more vulnerable. The law is asking the wrong question.

10.2 The Persistence of Morality in Legal Reasoning

Courts say that morality is not the proper basis for decisions, and then use words like "illicit", "keep" and "concubine". The language of the *Velusamy* judgment about a man "keeping" a woman is telling. Such words might be a convenient shorthand for a lack of commitment, but they also import a judgment about the woman's character. Even where the result is favourable, the language can be diminishing. Judicial education on constitutional morality and on the dignity of all litigants would help.

10.3 Gender Asymmetry

The DV Act is designed to protect women, which is a legitimate legislative purpose given the statistics on domestic violence. But economic dependency and vulnerability are not confined to women. A man who is the primary carer for a child, or who is ill or elderly, may be dependent on his female partner. A same-sex partner has no access to the Act at all. A comprehensive statute should consider whether some remedies, such as residence and maintenance on the ground of dependency, should be available regardless of sex, while preserving targeted protection for women against violence.

10.4 The Gap in Property and Succession

Maintenance and residence orders deal with the immediate aftermath of a breakdown. They do not answer the question of what the partners built together. A woman who contributed through unpaid domestic labour has no clear claim to a share of property held in her partner's name. Indian courts have recognised the value of homemaking contributions in marriage, but they have not extended the same reasoning to cohabitation in any systematic way. The result is that

the person who stays at home, usually the woman, leaves empty-handed.

10.5 Inconsistency Between Courts

The absence of a statute leaves each bench free to apply its own views. One High Court bench grants police protection to a couple in the name of Article 21, while another bench of the same court denies it in the name of social morality. A litigant's outcome should not depend on which judge happens to hear the case. Predictability is itself a form of justice, and it can only come from legislation.

10.6 The Risk of Over-Regulation

There is a risk on the other side as well. If the law responds to the problem with mandatory registration, penalties and monitoring, it may protect no one while imposing a moral order on everyone. The goal of reform should be to give vulnerable partners a remedy, not to create new ways of controlling consenting adults. Respecting dignity means that the law must stay out of private life unless there is a good reason to enter it.

10.7 Testing the Hypothesis

The hypothesis was that Indian law protects live-in partners according to how closely their relationship imitates marriage and not according to need. The analysis supports this. The presumption of marriage, the *Velusamy* conditions and the *Indra Sarma* factors all measure resemblance to marriage. Need and vulnerability enter, if at all, as an afterthought. The hypothesis is therefore substantially confirmed, with the qualification that courts have been more generous when the facts are sympathetic, and that the Supreme Court has itself recognised the problem by inviting Parliament to act.

11. SUGGESTIONS

On the basis of the discussion, the following reforms are proposed.

- **A central statute.** Parliament should enact a law on domestic partnerships or cohabitation that defines the relationship by objective factors (duration, shared household, financial interdependence, children, care) instead of by resemblance to marriage.
- **Need-based remedies.** The statute should provide maintenance, a right to remain in the shared home for a reasonable period, and a fair share of jointly built property, calculated

by reference to contribution, dependence and care, including unpaid domestic work.

- **Gender-neutral drafting.** Remedies based on dependency should be available to any partner. Targeted protection against violence should continue to exist for women.
- **Succession rights.** A surviving long-term partner should have a limited statutory claim on intestacy, and a right to apply for reasonable provision from the estate where the deceased partner left no adequate provision.
- **Equal status for children.** The law should declare that every child is legitimate irrespective of the marital status of the parents, with equal rights of maintenance and succession in the parents' property.
- **Amendment of maintenance provisions.** Section 144 of the BNSS should be amended to make clear that a woman who has lived with a man in a relationship that meets the statutory criteria can claim maintenance.
- **Voluntary registration with privacy safeguards.** If registration is introduced, it should be optional, confidential and incentive-based, and should not be used for parental notification or police monitoring.
- **Recognition of cohabitation agreements.** The law should clarify that written agreements between partners about property and support are enforceable, subject to fairness and public policy, so that couples can plan their affairs.
- **Judicial and police sensitisation.** Training programmes should emphasise constitutional morality, the protection of adult choice, and neutral language in judgments.
- **Legal aid and awareness.** Information on rights of partners and children should be made available through legal services authorities, because many people who need protection do not know it exists.

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12. CONCLUSION

Indian law has travelled a considerable distance on the question of live-in relationships. It began with the assumption that a couple who lived as spouses must be married, and has moved to the recognition that adults may lawfully choose to live together outside marriage and that the most vulnerable of them, usually women and children, are entitled to some protection. These are real achievements, and they owe much to judges who looked at the person in front of them and not just at the technical rule.

But the protection is thin and uneven. It depends on borrowed statutes, on how closely a

relationship mirrors a wedding, and on the instincts of the judge. A woman who made a home with a man who was already married, a partner whose contribution was care and not income, a child whose parents never registered anything: each may find the door closed. The Supreme Court itself has asked Parliament to step in, and the call has not yet been answered.

A humane family law is one that asks what people need from one another and from the state, and answers with fairness. It protects dependency, rewards care, safeguards children and respects privacy. It does not insist that every household be modelled on one template. Legislation built on these principles would serve couples, children and courts better than continued reliance on case-by-case improvisation, and would bring the law closer to the constitutional promise of dignity for all.

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