

NAVIGATING THE GREY: SIMPLIFYING THE LEGAL COMPLEXITIES OF LIVE-IN RELATIONSHIPS AND EVOLVING JURISPRUDENCE

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ABSTRACT

The traditional framework of family law, which has historically linked legal rights and responsibilities to formal marriage, increasingly encounters the realities of contemporary cohabitation. Live-in relationships and other de facto unions challenge a legal framework that does not always provide clear rules concerning maintenance, children's rights, residence, and property. This article looks at the movement from a mainly formalist and morality-focused model to a functional approach that takes into account the real features of domestic relationships. Using functionalism and social constructivism, the article treats the family both as a legally created status and as a social institution whose meaning is shaped by patterns of cohabitation, economic interdependence, caregiving, and public recognition. It looks at three areas of legal uncertainty: the availability of financial support after separation, the protection of children no matter what the parents' marital status is, and how property is divided when the formal title does not match the domestic contribution. The article gives attention to the Indian framework under the Protection of Women from Domestic Violence Act 2005 and the Supreme Court's treatment of relationships 'in the nature of marriage.' It also references *Marvin v. Marvin* in the United States and *Stack v. Dowden* in the United Kingdom for comparison. The article points out gaps that arise because there is no statutory regime for adult cohabitation. These gaps include uncertainty about evidentiary thresholds, property consequences, and the legal effect of commitments. It proposes a three-analytical framework that relies on temporal stability, social manifestation, and economic integration. The article concludes that judicial development can reduce vulnerability. It cannot fully replace clear legislation. Predictability would be enhanced through well-designed agreements of cohabitation and statutory criteria without compromising personal freedom.

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I. INTRODUCTION

Marriage has been treated as a key part of family law in many places, with different cultures and legal systems. For a long time, rules about money support, who receives an estate, where a spouse can live, children's legal status, and who gets to make key choices were tied to whether a couple was married. The difference between the married and the unmarried household therefore operated not merely as a classification but as a boundary around the distribution of legal protection. A person who is treated as a spouse moves into a system with set duties and rights. Someone who just lives with another person may fall under regular contract law, property rules, and equity rules. This can be true even when the day-to-day life looks a lot like a marriage.

The contemporary social landscape complicates this binary. De facto unions and live-in relationships have become a type of family life in many places. The reasons for de facto unions and live-in relationships differ. Some couples think that marriage is not needed. Others wait for money or personal reasons. Some choose to stay without a formal marriage. The legal system now faces a problem. How should the legal system act when people rely on each other in a situation that does not have the marriage status that is normally the first step to legal family protection?

Empirical evidence suggests that this shift in domestic arrangements is far from marginal in India. A 2023 industry survey found that one in two urban Indians considered cohabitation important before entering a committed relationship, while more than a third of respondents believed their parents would be open to the arrangement.² Yet acceptance in principle has not translated into openness in practice, since an earlier nationwide poll found that although a majority of young respondents supported the idea of living together before marriage, most couples who actually cohabited still concealed the arrangement from their families for fear of social censure.³

This question becomes particularly acute at dissolution. Marriage generally provides a legal roadmap for separation, maintenance, custody, residence, and property. Cohabitation does not

² afaqs! news bureau, '1 in 2 Indians Prefer Living In Before They Get Married: Lionsgate Play Report' (afaqs!, 13 February 2023) <<https://www.afaqs.com/news/media/1-in-2-indians-prefer-living-in-before-they-get-married-lionsgate-play-report>> accessed 18 September 2026.

³ Poorvi Gupta, 'Over 80% Millennials Support Live-in Relationships: Survey' (SheThePeople, 22 May 2018) <<https://www.shethepeople.tv/news/indian-live-relationships-inshorts-survey>> accessed 18 September 2026.

ordinarily produce one integrated legal regime. Instead, the parties may have to rely on a combination of family-protection statutes, contract, property law, equity, evidence, and judicially developed principles. The result can be fragmented. A claimant may succeed on one dimension of the relationship while remaining without an effective remedy on another⁴. The difficulty is not simply that the law is silent; rather, different legal fields may recognize different aspects of the same domestic reality. The jurisprudential movement examined in this article may be understood through two complementary theories. Legal functionalism concerns itself with what a relationship does, namely whether the persons in question live together, share finances, help one another, and perform functions normally associated with a family relationship. Social constructivism, on the other hand, holds that such concepts as family, spouse, and partner are socially constructed based on actions and institutional recognition. These two ideas explain why courts today look more at what's real and what is happening instead of just looking at official status.

The main point is not that every relationship where people live together should be treated like a marriage. That would cause problems with people's right to make their choices and with their decision to not get married. The more precise issue is whether law can identify relationships in which significant dependency, contribution, and social commitment have developed without converting every form of cohabitation into a marriage substitute. This article therefore examines the grey area between complete non-recognition and full marital equivalence.

The analysis proceeds in four stages. First, it traces the movement from a moralistic and formalist understanding of cohabitation toward functional assessment. Second, it examines maintenance, children's rights, and property as the principal areas in which legal uncertainty becomes visible. Third, it proposes a three-pronged framework based on temporal stability, social manifestation, and economic integration. Finally, it considers the limits of judicial discretion and the potential role of statutory guidance and cohabitation agreements. The comparative references are used to illuminate different legal techniques rather than to suggest that one jurisdiction provides a universal model.

II. THE JURISPRUDENTIAL EVOLUTION: FROM MORALISM TO FUNCTIONALISM

⁴ Martha Fineman, *The Neutered Mother: Law, Family, and the Politics of Care* (University of Chicago Press 1989) 45.

i. THE HISTORICAL FORMALIST PARADIGM AND THE ‘MORAL POLICE’

Historically, cohabitation outside marriage was frequently assessed through moral and status-based categories. The formalist paradigm assumed that the legal family was identifiable through a recognized institution rather than through the factual organization of domestic life. In jurisdictions influenced by older common-law and religious traditions, non-marital unions could be described through concepts such as concubinage or meretricious relationships⁵. The legal consequence was often to deny the relationship the status-based incidents of marriage.

The formalist logic was closely connected to a perceived public interest in preserving marriage. If marriage generated a package of rights and obligations, extending equivalent benefits to an informal union could be understood as weakening the incentive to marry. The law consequently treated formal status as evidence of a deliberate decision to enter a regulated institution. This reasoning, however, produced a significant difficulty: the absence of formal status did not necessarily mean the absence of reliance, contribution, or dependency.

The gendered consequences of this model were particularly significant. Domestic labor, caregiving, and unpaid contributions may be economically valuable without creating a formal title or a documented contractual entitlement. A partner who spent years maintaining a household could therefore possess a substantial practical contribution while lacking a straightforward proprietary claim at separation. The formalist system was consequently capable of producing a gap between social contribution and legal recognition. This historical gap in the valuation of domestic contribution has not been fully closed by the passage of time. National time-use data collected in 2024 show that women in India continue to spend more than three times as many minutes each day on unpaid domestic work as men, with the government itself estimating the value of this unpaid labour at between fifteen and seventeen per cent of national income.⁶

The language of ‘moral policing’ captures this historical tendency but should be used analytically rather than as a blanket description of every historical legal system. The important jurisprudential point is that the legal validity of a relationship was once closely tied to its conformity with a

⁵ William Blackstone, *Commentaries on the Laws of England* (1st edn, Clarendon Press 1765) vol 1, 63.

⁶ Richard Mahapatra, 'Women's Poverty of Time' (Down To Earth, 6 March 2025) <<https://www.downtoearth.org.in/governance/womens-poverty-of-time>> accessed 18 September 2026.

recognized moral and institutional form. Contemporary family law increasingly confronts the difficulty that social practices may change faster than statutory categories.

ii. THE RISE OF THE FUNCTIONAL TEST: SUBSTANCE OVER FORM

The functional approach changes the principal question from ‘Are the parties married?’ to ‘What characteristics does their relationship display?’ A functional inquiry does not necessarily grant marital status. Instead, it asks whether the relationship exhibits feature’s that justify particular forms of protection. Shared residence, duration, public presentation, economic interdependence, mutual care, and the organization of domestic responsibilities can therefore become relevant evidence.

The Indian legal framework illustrates this movement. Section 2(f) of the Protection of Women from Domestic Violence Act 2005 describes a domestic relationship⁷ as consisting of those people who either cohabit in a joint family setup or who have at any point in time cohabited in a joint family setup, including amongst others, 'a relationship in the nature of marriage.' The Act also provides forms of protection concerning residence, protection orders, and monetary relief, demonstrating that recognition can be functional and remedial rather than status-equivalent.

The Supreme Court’s discussion in *D. Velusamy v. D. Patchaiammal* further illustrates the attempt to distinguish relationships that resemble marriage from casual or temporary relationships⁸. The Court referred to factors including shared household, social presentation as spouses, legal capacity to marry, and significant duration of cohabitation. Later Supreme Court discussion has reiterated that not every live-in relationship falls within the statutory category⁹. The functional approach therefore expands protection while retaining a threshold for recognition.

The functional turn in Indian jurisprudence has also had an institutional dimension outside the courts. As early as 2008, the National Commission for Women recommended to the Ministry of Women and Child Development that the definition of 'wife' under the maintenance provision of the Code of Criminal Procedure be widened to cover women in live-in relationships, and a committee headed by Justice Malimath subsequently recommended a similar amendment in its 2009 report. Although neither recommendation was enacted into law, they illustrate that the

⁷ Protection of Women from Domestic Violence Act 2005, s 2(f).

⁸ *D Velusamy v D Patchaiammal* (2010) 10 SCC 469.

⁹ *Indra Sarma v VKV Sarma* (2013) 15 SCC 755.

movement toward functional recognition was debated within statutory bodies concerned with women's welfare and not confined to judicial reasoning alone.¹⁰

The jurisprudential significance of the functional test lies in its ability to identify dependency that formal status alone may conceal. It also creates a new challenge: the more flexible the test becomes, the more important the evidentiary criteria become. Courts must decide which facts demonstrate commitment, which facts are merely incidental, and how much weight should be given to conflicting evidence. Functionalism thus solves one problem—rigid formalism—while creating another—uncertainty about the boundary of recognition.

iii. THE CONFLICT OF AUTONOMY VS. PROTECTION

The trend towards functionalism creates an ongoing tension between autonomy and fair protection. The autonomy argument begins with the proposition that adults are entitled to choose whether to marry. Marriage carries legal consequences, and a person who deliberately avoids marriage may reasonably expect not to acquire every obligation associated with it. Automatically imposing marital consequences on cohabitants could therefore undermine the very choice that distinguishes cohabitation from marriage.

The protection argument starts from a different premise. Domestic relationships are not always negotiated through formal contracts. Economic dependence may develop gradually; one partner may undertake unpaid caregiving or household work; and decisions may be made on the assumption that the relationship will continue. When the relationship ends, the absence of a written agreement may expose one partner to losses that were not contemplated when the contributions were made. In such cases, a strict reliance on formal autonomy can produce an evidentiary and distributive problem.

A functional legal response therefore requires calibration. The law should not presume that cohabitation equals marriage, but neither should it assume that non-marriage eliminates every legitimate claim arising from contribution and dependence. The more appropriate inquiry is issue-specific: the threshold for domestic-violence protection may differ from the threshold for

¹⁰ Prithav Bang, *'The Need for Legislation on Live-in Relationships'* (Bar and Bench, 13 September 2021) <<https://www.barandbench.com/apprentice-lawyer/the-need-for-legislation-on-live-in-relationships>> accessed 18 September 2026.

proprietary redistribution, and the rights of a child should not necessarily depend upon the contractual choices of the parents.

This distinction between status and remedy is central to the proposed approach. Recognition for one remedial purpose does not have to create a comprehensive marital status. A woman may be protected against domestic violence because she falls within a statutory 'relationship in the nature of marriage' without thereby becoming a spouse for every purpose of succession, divorce, or matrimonial property¹¹. Functionalism is therefore most coherent when it is transparent about the particular legal consequence being justified.

III. CRITICAL AREAS OF LEGAL CONTENTION

i. ALIMONY AND MAINTENANCE: THE PROBLEM OF PROOF AND 'PALIMONY'

Financial support after separation is one of the clearest areas in which the difference between marriage and cohabitation becomes legally consequential. Marriage ordinarily activates a structured set of maintenance and dissolution rules. Cohabitation, by contrast, may require a claimant to identify an independent statutory or contractual basis for support. The issue is rather whether the legal system has some source of obligation that can respond to the economic vulnerability of the claimant.

The case from the US experience will be helpful here. In *Marvin v. Marvin*, the Supreme Court of California ruled that parties in non-marital relationships may use express agreements for enforcement¹² and that courts could look at the behavior of the parties to see if there was an implied agreement, partnership, joint venture, or any other implied relationship. In some situations the court could give fair solutions to make things right. The significance of *Marvin* lies in its rejection of the proposition that non-marital status, by itself, makes economic agreements between cohabitants legally irrelevant. At the same time, the claimant must still establish the legal basis of the claim.

The concept popularly described as 'palimony' should therefore not be understood as an automatic form of alimony for unmarried partners¹³. It refers to support claims grounded in contract or related doctrines rather than to a general statutory entitlement equivalent to spousal maintenance. This

¹¹ *Indra Sarma v VKV Sarma* (2013) 15 SCC 755, para 55

¹² *Marvin v Marvin* 18 Cal 3d 660, 557 P 2d 106, 134 Cal Rptr 815 (1976).

¹³ See Andrea D. Goldmann, 'Palimony and the Law' (1977) 12 *Family Law Quarterly* 123.

distinction is important because it illustrates the evidentiary problem at the heart of cohabitation law: the claimant often has to prove an agreement or a factual basis for equitable relief after the relationship has already broken down.

The Indian position is structurally different. The Protection of Women from Domestic Violence Act 2005 creates a protective framework¹⁴ for women in domestic relationships, including relationships in the nature of marriage. Section 2(f) defines the relevant domestic relationship, while sections concerning residence, protection, and monetary relief provide remedial mechanisms. The statute therefore demonstrates how legislative recognition can protect a person without formally converting the relationship into a marriage.

In *D. Velusamy v. D. Patchaiammal*, the Supreme Court explained that not every live-in relationship is a relationship in the nature of marriage¹⁵. The Court identified factors relevant to determining whether the parties' relationship possessed a sufficiently marriage-like character. The inquiry included whether the couple held themselves out to society as akin to spouses, whether they were legally capable of marrying, whether they voluntarily cohabited for a significant period, and whether they shared a household. The purpose of such criteria is to distinguish relationships that generate legally significant domestic dependency from casual arrangements.

The difficulty is that social relationships do not always fit neatly into these categories. The two people can cohabit for less time but become financially dependent on each other. The other two people may have been living together for many years but kept themselves independent in terms of money and social life. The strict criteria, therefore, will lead to both under-representation and over-representation. A more flexible framework should treat the factors as indicators rather than as isolated conditions while requiring courts to explain the connection between the evidence and the remedy sought.

Maintenance claims also raise a broader jurisprudential issue concerning unpaid domestic labor. A partner who has sacrificed employment opportunities to care for the household may have created economic value that is difficult to capture through conventional property documents. The law's response should not depend entirely on whether the parties used the vocabulary of contract. At the

¹⁴ Protection of Women from Domestic Violence Act 2005, ss 12, 18, 20.

¹⁵ *D Velusamy v D Patchaiammal* (2010) 10 SCC 469, para 14.

same time, courts must avoid creating obligations that contradict clear and lawful agreements. The problem lies in acknowledging the dependency and contribution without negating the autonomy of adults. This vulnerability is compounded by the continuing gap in women's economic independence, notwithstanding recent improvement. Periodic Labour Force Survey data analysed by economists show that the female labour force participation rate for working-age women rose from about twenty-three per cent in 2017-18 to roughly thirty-four per cent in 2022-23, meaning that a majority of Indian women of working age remain outside the paid workforce and therefore economically reliant on a partner's income. Such reliance is precisely the kind of dependency that a functional approach to maintenance is designed to address, regardless of whether the underlying relationship was solemnised by marriage.¹⁶

ii. THE RIGHTS OF CHILDREN: THE DESTITIGATION OF ILLEGITIMACY

The legal position of children provides a different and particularly important dimension of cohabitation law. A child does not choose the marital status of the parents. Consequently, a legal system that makes the child's basic entitlements dependent upon the formal status of the parental relationship risks transferring the consequences of adult choices to a person who had no role in making them.

The trend in family law in contemporary times has been the shift away from the stigma of status to a child-oriented paradigm¹⁷. The welfare of the child forms an essential criterion in interpretation for issues such as custody, care, maintenance, etc. The jurisprudential shift is significant because it changes the question from whether the parents formed a formally recognized union to what legal obligations arise from parenthood itself¹⁸.

The distinction between partner rights and child rights should nevertheless be maintained. Recognition of a child's entitlement to maintenance or care does not necessarily require the law to recognize the parents as spouses. A functional approach can therefore be more protective when it

¹⁶ Ashwini Deshpande, *'Illusory or Real? Unpacking the Recent Increase in Women's Labour Force Participation in India'* (CEDA, Ashoka University, 15 December 2023) <<https://archive.ceda.ashoka.edu.in/?p=7118>> accessed 18 September 2026.

¹⁷ See *ABC v State (NCT of Delhi)* (2015) 10 SCC 1.

¹⁸ United Nations Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3, art 7.

separates the child's interests from the status dispute between adults. This prevents the legal uncertainty of cohabitation from becoming a mechanism for reducing the child's protection.

The issue also demonstrates why a single cohabitation statute must be carefully designed. A comprehensive framework should avoid assuming that every question—maintenance between partners, custody, child support, property, succession, and residence—requires the same definition of a qualifying relationship. Different interests may justify different thresholds. The child's entitlement to parental support, for example, can be grounded in parenthood rather than in the existence of a marriage-like relationship.

iii. PROPERTY DIVISION AND THE 'CONTRIBUTION TRAP'

Property is often the most difficult area of cohabitation law because formal title and substantive contribution can diverge. Marriage regimes may provide a statutory mechanism for dividing property or accounting for contributions. Cohabitants may instead remain subject to ordinary title rules, trusts, contract, or equitable doctrines. Where one partner holds legal title, the other may have to prove a beneficial interest through evidence of contribution or common intention.

The 'contribution trap' describes the situation in which the non-owning partner contributes to the household through mortgage payments, renovations, domestic work, childcare, or other indirect contributions but lacks formal title. The problem is evidentiary as much as substantive. Financial payments may be traceable, whereas domestic labor is harder to quantify. A legal system focused exclusively on documentary title may therefore underestimate the economic structure of the household. National survey data corroborate the practical significance of this evidentiary asymmetry. According to the fifth National Family Health Survey, a large proportion of Indian women report owning no house or land in their own name, whether alone or jointly, and more than half of the states and union territories surveyed recorded a decline in this proportion compared to the previous round of the survey. Because formal title so rarely rests with women, a legal framework that treats documentary ownership as the primary indicator of entitlement risks systematically undervaluing the domestic and indirect contributions that non-owning partners bring to a shared household.¹⁹

¹⁹ Shaurya Srivastava and Nand Lal Mishra, *'What Does NFHS-5 Data Tell Us About State of Women Empowerment in India'* (Down To Earth, 30 December 2021) <<https://www.downtoearth.org.in/economy/what-does-nfhs-5-data-tell-us-about-state-of-women-empowerment-in-india-80920>> accessed 18 September 2026.

Stack v Dowden illustrates the complexity of beneficial ownership in a non-marital context²⁰. The House of Lords considered the parties' common intention and the circumstances in which beneficial ownership may differ from a simple assumption based on legal title²¹. The case demonstrates the evidentiary nature of cohabitation disputes: courts may have to reconstruct intention from conduct, financial arrangements, and the parties' treatment of the property.

The comparative lesson is that not common intention automatically produces equal division. Rather, it shows why property law needs a method for addressing situations where formal ownership does not completely describe the parties' economic relationship. The Indian context presents a related challenge because the absence of a comprehensive matrimonial-property regime for cohabitants means that claims may arise through different legal routes depending upon the facts and the remedy sought.

A coherent framework should therefore recognize both direct and indirect contribution while preserving the distinction between ownership and support. A partner's contribution to household welfare should not automatically create ownership in every asset. However, rather than considering automatic distribution to be the question, the law should consider whether the evidence shows a contract, common intention, unjust enrichment, a trust, or some other ground for a legal remedy. What is important is to avoid the disappearance of substantive contribution from the law.

IV. FRAMEWORK TO BE USED: THE TRIAD TEST

The framework for the determination of de facto recognition should be based on the following three parameters: temporal consistency, social presence, and economic engagement. These indicators are not intended to create an automatic marital status. Rather, they provide a disciplined method for assessing whether the factual relationship has generated a level of commitment and dependency capable of justifying a particular legal remedy.

First, temporal stability examines the duration and continuity of cohabitation. Duration can operate as evidence of commitment because a relationship maintained over a substantial period is less likely to be a purely transient arrangement. Nonetheless, it ought to be noted that duration is a relative factor that can serve as an index but not as a universal criterion. The establishment of an

²⁰ *Stack v Dowden* [2007] UKHL 17, [54], [60]-[63]

²¹ *Stack v Dowden* [2007] UKHL 17, [2007] 2 WLR 831

arbitrary limit can yield absurd results since it will imply that an applicant who has been cohabiting with his/her partner for nearly two years is unprotected since he/she does not have two years.

Second, social manifestation examines how the parties represented their relationship to the outside world. Public recognition can provide evidence that the parties understood themselves to be a committed domestic unit. These may include joint invitations, references to each other as partners or spouses, attending family functions together, emergency contact details, or any other consistent behavior. There may also be digital evidence available, but it should be considered carefully. A social media status alone may be ambiguous and should not be treated as conclusive proof of legal commitment.

Third, economic integration examines the financial organization of the household. Joint bank accounts, shared loans, insurance nominations, household expenses, property contributions, and other evidence of economic interdependence can demonstrate that the parties organized their lives as a unit. Economic integration is particularly relevant to property and maintenance claims because it connects the relationship to concrete financial consequences. Yet financial separation should not automatically negate the existence of a qualifying relationship: some couples deliberately maintain separate finances while sharing substantial domestic responsibilities.

The three indicators should operate cumulatively but flexibly. A court should identify the evidence supporting each indicator, consider contradictions, and then explain why the relationship does or does not justify the particular remedy sought. This approach would be preferable to an unstructured impressionistic test because it makes judicial reasoning more transparent. It would also permit appellate courts and future litigants to understand how factual evidence has been evaluated.

The framework should also distinguish between recognition and remedy. A relationship may satisfy a threshold for protection from domestic violence without establishing a proprietary entitlement to an asset. Conversely, evidence of a specific property agreement may support a proprietary claim even if the parties did not publicly present themselves as spouses. This issue-specific method protects against the conceptual error of treating cohabitation as an all-or-nothing status.

Finally, the framework should incorporate an explicit autonomy safeguard. Where parties have entered a lawful written agreement concerning property or financial responsibilities, the agreement

should ordinarily be given substantial weight, subject to statutory protections and ordinary doctrines concerning validity, coercion, unconscionability, and public policy²². This would allow adults to define their economic relationship while retaining a safety net against exploitation.

V. DISCUSSION: THE GAP OF UNCERTAINTY

The central weakness of the current fragmented approach is uncertainty. When legal consequences depend heavily on judicial evaluation of relationship characteristics, similarly situated parties may face different outcomes depending upon the evidence available to them, the legal remedy selected, and the factual interpretation adopted by the court. Judicial discretion is necessary in family law because domestic relationships are fact-sensitive, but discretion without sufficiently articulated statutory criteria can increase litigation costs and make outcomes difficult to predict.

The phrase ‘lottery justice’ is rhetorically powerful but should not be taken to mean that judicial decisions are random²³. The more precise concern is that an absence of clear legislative standards may shift too much of the burden onto evidentiary reconstruction after separation. A claimant who preserved documents, messages, financial records, or property agreements may be able to demonstrate the relationship more effectively than a similarly situated person whose contributions were largely informal. The resulting inequality is partly an information problem.

Cohabitation agreements offer one possible response. Like prenuptial agreements, they can record the parties’ intentions before a dispute arises²⁴. Such agreements may address ownership of property, responsibility for expenses, treatment of joint purchases, financial support, debt, and arrangements upon separation. Their value lies not in converting cohabitation into marriage but in reducing uncertainty about the economic consequences of the parties’ choices. The relative unfamiliarity of contractual planning within Indian family relationships is not confined to cohabitation. Even prenuptial agreements, which address a more established institution, remain legally unenforceable in India and are reported to be used only by a small, generally affluent segment of the population, notwithstanding judicial observations that formalising such agreements could reduce post-separation disputes. The comparatively slow uptake of prenuptial agreements

²² See *Radmacher v Granatino* [2010] UKSC 42, [75]-[80]

²³ See Law Commission of England and Wales, *Cohabitation: The Financial Consequences of Relationship Breakdown* (Law Com No 307, 2007).

²⁴ Rebecca Probert, *The Changing Legal Regulation of Cohabitation: From Fornicators to Family, 1600–2010* (Cambridge University Press 2012) 125.

suggests that cohabitation agreements, which address a still less institutionalised relationship, are likely to face at least the same resistance before they gain widespread use.²⁵

There are, however, socio-legal barriers to widespread use of such agreements. Incompatibility between financial planning and romance or trust is an issue that couples may feel. The couple's bargaining powers may be unequal, and this could give rise to doubt as to whether both parties consented freely to the agreement. These agreements may become obsolete with time, as relationships undergo transformation. There is a need for legislation that encourages revision and does not rely solely on the existence of a document whenever there is coercion or fraud involved²⁶.

Reform of law may complement the private agreements. A statutory framework could define core indicators of qualifying cohabitation, specify the remedies available for particular forms of dependency, clarify evidentiary presumptions, and protect children independently of the parents' marital status. It could also clarify the legal treatment of property acquired during cohabitation without automatically imposing a community-property regime.

The objective should therefore be codification without over-formalization. A statute that simply reproduces marriage rules for unmarried couples would undermine the distinction between the institutions²⁷. A statute that provides no guidance would preserve the existing uncertainty. The preferable middle ground is a framework that recognizes functional dependency, respects adult autonomy, and provides transparent rules for particular remedies.

VI. CONCLUSION

The jurisprudence of live-in relationships demonstrates a broader transformation in family law: the movement from moralism, through functionalism, toward the demand for clearer codification. The formalist model treated marriage as the principal gateway to legal protection. The law has increasingly come to understand that domestic dependency can be achieved outside of marriage and that the law needs to react to this form of dependency without having to grant marriage automatically.

²⁵ Ritika Jain, 'Is India Ready For Pre-Nuptial Agreements?' (BOOM, 15 November 2023) <<https://www.boomlive.in/law/marriage-and-divorce-laws-of-india-prenuptial-agreement-prenups-23582>> accessed 18 September 2026.

²⁶ See Uniform Premarital Agreement Act 1983 (USA), § 6.

²⁷ See *Marvin v Marvin* 18 Cal 3d 660, 557 P 2d 106, 134 Cal Rptr 815 (1976)

The functional approach is valuable because it examines the lived reality of relationships. Temporal stability, social manifestation, and economic integration provide useful indicators for determining whether cohabitation has generated legally significant commitment and dependency. Yet functionalism cannot eliminate every difficulty. Its flexibility creates evidentiary uncertainty, and courts must distinguish between casual cohabitation, deliberate non-marital partnership, and relationships in which one party has become substantially dependent upon the other.

The analysis of maintenance, children's rights, and property shows that no single rule can resolve every consequence of cohabitation²⁸. Partner maintenance may depend on statutory protection or agreement; property disputes may require evidence of title, intention, contribution, or equitable entitlement; and children's rights should be grounded primarily in parenthood and welfare rather than in the marital status of their parents. It follows that an adequate legal regime will have to be issue-oriented and not status-based.

The urgency of codification is reinforced by the practical condition of the forums in which cohabitation disputes must currently be litigated. Government data placed before Parliament in 2026 recorded more than 4.76 crore cases pending across the Supreme Court, the High Courts, and the subordinate courts, including the family courts in which most maintenance, custody, and property disputes arising from cohabitation are heard. A fact-intensive, judicially developed framework of the kind proposed in this article can only function effectively if litigants are able to obtain a timely hearing, which makes the case for clearer statutory criteria a matter of practical access to justice and not merely one of doctrinal tidiness.²⁹

The next step in legal evolution will have to balance judicial flexibility with legislative certainty. Guidance from legislation could set minimum standards without sacrificing judicial latitude in considering the facts³⁰. Cohabitation agreements can complement such a regime by letting couples specify their economic arrangements in advance. Neither mechanism should displace protections against coercion, exploitation, or domestic violence.

Ultimately, the 'grey area' surrounding live-in relationships is not simply a problem created by changing social behavior. It is also a problem of legal design. Where the pace of change in social

²⁸ See *Indra Sarma v VKV Sarma* (2013) 15 SCC 755.

²⁹ 'Over 4.76 Crore Court Cases Pending Across India: Govt Informs Parliament' (IANS, 13 February 2026) <<https://ianslive.in/over-476-crore-cases-pending-across-indian-courts-govt-tells-parliament--20260213184542>> accessed 18 September 2026.

³⁰ See New South Wales Law Reform Commission, *Relationships* (Report 113, 2006).

relationships outstrips that of statutory classifications, it becomes incumbent on the courts to interpret lived reality in terms of legal concepts that have been designed on entirely different premises. Thus, a well-thought-out approach must necessarily take account of the realities of modern family life without infringing upon the liberty of adults to decide how and whether to legalize their relationship. Consequently, the shift from moralism to functionalism must necessarily give way to principled codification and not mere transformation of cohabitation into marriage³¹.



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³¹ Martha Albertson Fineman, *The Autonomy Myth: A Theory of Dependency* (The New Press 2004).