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Property Rights of Live-in Partners in India

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Marriage, in the Indian legal imagination, has always been more than a personal commitment, it is the doorway to a host of civil rights, from inheritance and maintenance to property ownership and succession. For those who live together without marrying, that doorway remains largely shut. India's law has no comprehensive statute governing live-in relationships, and the result is a situation where millions of cohabiting couples exist in a legal grey zone, their everyday arrangements entirely unregulated and their rights on separation or death largely unprotected.

Courts have not been entirely silent. The Supreme Court in *S. Khushboo v. Kanniammal*¹ made it clear that two adults choosing to live together is neither a criminal offence nor a social wrong deserving condemnation. That observation was important, but it only addressed the legitimacy of the relationship itself. What it did not do and what no statute has done either is translate that legitimacy into enforceable property entitlements. Permitting a thing is not the same as protecting those who choose it.

This article explores the specific question of property rights. It asks: what does the law currently offer a woman who has spent years building a life with a man she never formally married? What happens to the home they shared, the assets they accumulated, and the future she planned? The answers, drawn from judicial decisions, statutory provisions, and constitutional doctrine, reveal a legal framework that is half-built - generous in rhetoric, thin in substance.

Defining Live-in Relationships: The Legal Threshold

¹S. Khushboo v. Kanniammal, (2010) 5 SCC 600 (India).

There is a threshold question that must be answered before any rights can be claimed: what counts as a live-in relationship in the eyes of Indian law? The only central statute that engages with this question is the Protection of Women from Domestic Violence Act, 2005 (PWDVA). Section 2(f) of the Act extends its protections to women in relationships "*in the nature of marriage*,"² a phrase that is deliberately expansive yet meaningfully bounded.

What that phrase means was authoritatively settled in *D. Velusamy v. D. Patchaiammal*.³ The Supreme Court held that a relationship qualifies only if the couple lived together for a significant period, presented themselves to the world as akin to spouses, and were legally capable of marrying each other. A casual or purely physical arrangement does not qualify. The Court was emphatic: a "*walk-in and walk-out*" relationship, however intimate, falls outside the protective scope of the Act.

A further refinement came in *Indra Sarma v. V.K.V. Sarma*,⁴ where the Court categorised live-in relationships into three types: one between two unmarried individuals, one between a married man and an unmarried woman, and one where both parties are already married. Only the first type qualifies as a relationship "*in the nature of marriage*." The other two, however prolonged or sincere, are excluded from the PWDVA's protective umbrella entirely. This taxonomy is not merely academic, it determines, at the threshold, whether a woman can access any legal protection at all.

Property Rights Under the Protection of Women from Domestic Violence Act, 2005

The PWDVA is the closest thing Indian law has to a statute protecting cohabiting women's interests. It is, however, a law built on the logic of protection from violence, not on the logic of property rights. That distinction matters enormously.

- Right to Residence

Section 19 of the PWDVA gives a Magistrate the power to issue a residence order, preventing the male partner from throwing the woman out of the shared home. The provision is important because it operates independently of ownership: the woman need not have her name on any title deed to invoke it. However, it does not give her ownership. She may stay but she cannot sell, mortgage, or claim a share. The residence order keeps her physically in the home; it does not make it legally hers.

²The Protection of Women from Domestic Violence Act, 2005, § 2(f) (India).

³*D. Velusamy v. D. Patchaiammal*, (2010) 10 SCC 469 (India).

⁴*Indra Sarma v. V.K.V. Sarma*, (2013) 15 SCC 755 (India).

- Maintenance and Monetary Relief

Sections 20 and 22 of the PWDVA allow courts to direct monetary compensation to the aggrieved woman, covering lost earnings, medical expenses, and the cost of supporting herself and her children. These are remedial provisions responding to harm already done. They do not address the forward-looking question of how property accumulated during a long cohabitation should be divided when the relationship ends without violence or legal fault.

The Andhra Pradesh High Court in *Koppiseti Subbharao v. State of A.P.*⁵ extended the scope of matrimonial cruelty under Section 498A IPC (now Section 85 of the Bharatiya Nyaya Sanhita, 2023)⁶ to live-in relationships. That move reflects a broader judicial inclination to treat cohabiting women with something approaching the protections accorded to wives. But the critical distinction between being protected from abuse and having enforceable property rights remains. Judicial sympathy is not a substitute for statutory entitlement.

The Judicial Presumption of Marriage and Its Property Implications

Where statute is silent, courts in India have reached for an old common law tool: the presumption of marriage. Under Section 114 of the Indian Evidence Act, 1872 (now Section 127 of the Bharatiya Sakshya Adhiniyam, 2023), a court may presume the existence of facts that are the usual consequence of known facts. Applied to cohabitation, this means that a couple who have lived together for many years, presenting themselves as husband and wife, may be presumed to have been validly married even without any ceremony.

The Supreme Court invoked this presumption in *Tulsa v. Durghatiya*,⁷ upholding the legitimacy of children born from a long-standing live-in relationship. The reasoning was straightforward: if the parties behaved as spouses, the law will treat them as such, at least for certain purposes. Once that presumption is drawn, it opens a pathway to matrimonial property rights that would otherwise be closed.

A more consequential step was taken in *Chanmuniya v. Virendra Kumar Singh Kushwaha*,⁸ where the Court held that the word "wife" in Section 125 of the Code of Criminal Procedure (now Section 144 of the Bharatiya Nagarik Suraksha Sanhita, 2023) should be read broadly enough to include women in live-in relationships, entitling them to maintenance. The Court's

⁵Koppiseti Subbharao v. State of A.P., (2009) 12 SCC 331 (India).

⁶IPC, § 498A (India) (now Bharatiya Nyaya Sanhita, 2023, § 85).

⁷Tulsa v. Durghatiya, (2008) 4 SCC 520 (India).

⁸Chanmuniya v. Virendra Kumar Singh Kushwaha, (2011) 1 SCC 141 (India).

rationale was frank: a narrow interpretation would leave vulnerable women with nothing, which is an outcome the law should not sanction. Maintenance and property rights are not the same thing, but the logic of *Chanmuniya* that economic dependency created within a relationship deserves legal recognition has obvious implications for the broader question of property entitlement.

Inheritance and Succession Rights

If the residence order under the PWDVA is the law's most limited concession to cohabiting women, the law of succession is its most complete silence. The Hindu Succession Act, 1956,⁹ the Indian Succession Act, 1925,¹⁰ and analogous statutes for other personal law communities all define inheritance in terms of legal marriage or blood. A live-in partner, no matter how many years she shared a life and a household with the deceased, inherits nothing by operation of law. She is simply not on the list.

The only way to change that outcome is through a will. Section 63 of the Indian Succession Act¹¹ allows a person to bequeath their property to anyone they choose, including a cohabiting partner. But a will requires foresight and a degree of legal awareness that many people, especially in informal relationships, may not have. More practically, a will can be challenged and can be revoked at any time. The partner's security depends entirely on the goodwill and planning of the other which is a fragile foundation.

The most significant judicial intervention in this space came in *Revanasiddappa v. Mallikarjun*,¹² where the Supreme Court held that children born from live-in relationships are legitimate and entitled to inherit their parents' property. The Court grounded this in Article 21¹³ of the Constitution, reasoning that a child cannot be punished for the choices her parents made about how to structure their relationship. The decision is a landmark, but it addresses only the second generation. The adult partner herself (the woman who shared the relationship) remains without any inheritance right.

The decisions in *SPS Balasubramanyam v. Suruttayan*¹⁴ and *Madan Mohan Singh v. Rajni Kant*¹⁵ reinforced the legitimacy of children from cohabiting unions, and in doing so indirectly acknowledged the quasi-marital character of such relationships. But the gap

⁹The Hindu Succession Act, 1956, § 8 (India).

¹⁰The Indian Succession Act, 1925, §§ 57, 63 (India).

¹²*Revanasiddappa v. Mallikarjun*, (2011) 11 SCC 1 (India).

¹³INDIA CONST. art. 21.

¹⁴*SPS Balasubramanyam v. Suruttayan*, (1992) 2 SCC 304 (India).

¹⁵*Madan Mohan Singh v. Rajni Kant*, (2010) 9 SCC 209 (India).

between recognising a relationship's legitimacy and conferring rights on the adult partners within it has yet to be crossed by any statute or definitive judicial ruling on inheritance.

Stridhan, Jointly Acquired Property, and Equitable Claims

The concept of *stridhan* property that belongs exclusively to a woman is deeply rooted in Hindu personal law. Gifts received at the time of marriage, jewellery, and other personal property given by relatives are recognised as the woman's own, immune from her husband's control. For a woman in a live-in relationship, no equivalent doctrine applies automatically. She may claim gifts received during the relationship on ordinary principles of contract or gift law, but she cannot invoke *stridhan* protection as such, because that doctrine is tied to the institution of marriage.

When property is acquired jointly during a live-in relationship whether a home bought together or savings pooled from both parties' incomes the law of trusts offers a partial remedy. A resulting trust arises where one person contributes to the purchase price of property registered in another's name: the law implies that the contributing party holds a beneficial interest in proportion to her contribution. The doctrine is sound in principle, but its practical application is demanding. Financial records are often informal, contributions are frequently intermingled, and the emotional and domestic labour that one partner provides which is no less real than an economic contribution rarely finds recognition in trust law.

The Allahabad High Court's ruling in *Payal Sharma v. Nari Niketan*¹⁶ affirmed that live-in relationships are constitutionally valid and that cohabiting adults exercise a fundamental freedom. The decision did not resolve property questions, but it is significant because it closed off any argument that the relationship itself is too legally disreputable to attract equitable relief. That foundation matters when a court is asked to fashion a remedy in the absence of a statute.

Property Rights of Children Born from Live-in Relationships

The rights of children born from live-in relationships have been addressed with considerably more clarity than the rights of the adult partners themselves. In *Revanasiddappa v. Mallikarjun*,¹⁷ The Supreme Court was unambiguous: children born from such relationships are legitimate and are entitled to inherit their parents' property. The child cannot be penalised

¹⁶Payal Sharma v. Nari Niketan, AIR 2001 All 254 (India).

for a status she did not choose, and Article 21's guarantee of dignity extends to protecting her from the legal stigma of illegitimacy.

The decision in *Bharata Matha v. R. Vijaya Renganathan*¹⁸ introduced a nuance worth noting. Children born from void or voidable marriages and by analogy those born from live-in relationships may inherit their parents' *self-acquired* property, but not ancestral or coparcenary property held within a Hindu Undivided Family. The distinction turns on the statutory framework: Section 16 of the Hindu Marriage Act, read with the Hindu Succession Act, extends legitimacy only so far. A child may be legitimate for the purpose of claiming what her parents individually owned; she cannot be admitted as a coparcener into a family she was never formally a part of.

This two-tier approach to children's rights is analytically defensible but practically significant. Where a father's wealth lies primarily in self-acquired assets as is increasingly common in urban India the child is adequately protected. Where the wealth is tied up in ancestral land or family property, she is not. The protection is, in that sense, context-dependent.

Maintenance Rights and Their Intersection with Property

Maintenance law has functioned as a parallel and partially compensatory track for women in live-in relationships. Section 125 of the Code of Criminal Procedure, as broadened by *Chanmuniya*¹⁹ and subsequent decisions, allows courts to award maintenance to women who, while not legally married, have lived with a man in a marital capacity. The practical effect is that such a woman is not entirely without financial recourse on separation and she may claim periodic support, even if she cannot claim a share of the property.

Maintenance, however, is not the same as property. It is income-based and ongoing, not asset-based and lump sum. A woman may receive monthly maintenance but walk away from the relationship with no share of the home, the savings, or the investments accumulated during years of cohabitation. Courts have recognised this problem. In *SPS Balasubramanyam v. Suruttayan*²⁰ and cases that followed, the judiciary consistently held that women in long-term cohabiting relationships are entitled to financial protection comparable to that available to wives under personal law. But comparable does not mean identical, and the structural gap between maintenance and property remains.

¹⁸*Bharata Matha v. R. Vijaya Renganathan*, (2010) 11 SCC 483 (India).

²⁰*S. P. S. Balasubramanyam v. Suruttayan*, (1994) 1 SCC 460 (India).

Section 25 of the Hindu Marriage Act, 1955,²¹ and Section 36 of the Special Marriage Act, 1954,²² provide for permanent alimony to legally married spouses. Neither provision applies directly to a live-in partner. What courts have done instead is read Section 125 CrPC generously, essentially importing a maintenance right that Parliament did not explicitly provide. This is creative jurisprudence, but it is not a substitute for legislation that directly addresses the division of property on the end of a cohabiting relationship.

Constitutional Dimensions and the Right to Equality

The constitutional argument for reform is not difficult to construct. Article 14 guarantees equality before the law; Article 21 protects personal liberty and dignity. When the law permits adults to live together freely as *Lata Singh v. State of U.P.*²³ confirmed it does but denies them the economic rights that any comparable relationship would generate, the result is an inconsistency that is hard to justify. The freedom to enter a relationship and the freedom from destitution when it ends are not separate concerns; they are two sides of the same constitutional coin.

Article 21 has been interpreted by the Supreme Court to include the right to live with dignity, the right to livelihood, and the right to shelter. A woman who contributes years of her life, domestic labour, and often financial resources to a live-in relationship, only to find herself with no enforceable claim to any of the assets accumulated during that time, has arguably had those rights violated, not by her partner's actions, but by the law's failure to protect her. The constitutional foundation for comprehensive reform is already in place; what is missing is legislative will.

The position becomes even more difficult to defend when one considers that the same law which denies property rights to cohabiting partners does not criminalise their relationship, impose social penalties on them, or treat their children as legally inferior. The law has arrived at a peculiar halfway house: it tolerates the relationship but refuses to underwrite it.

Critical Analysis and Reform Imperatives

What emerges from the foregoing analysis is not a system, but a patchwork. Courts have done their best with tools that were not designed for the task. The presumption of marriage

²¹The Hindu Marriage Act, 1955, § 25 (India).

²²The Special Marriage Act, 1954, § 36 (India).

²³*Lata Singh v. State of U.P.*, (2006) 5 SCC 475 (India).

helps some women in some circumstances. The PWDVA offers shelter and maintenance to others. Constitutional reasoning protects the children. But none of these instruments addresses the core question of property rights directly, completely, or consistently.

Three gaps stand out as particularly urgent. First, there is no provision for the equitable division of property accumulated during cohabitation. A couple who live together for a decade, jointly building a household, have no statutory mechanism to divide those assets fairly if they separate. The woman's claim depends on what she can prove in court under trust law - a time-consuming, expensive, and uncertain process. Second, intestate succession law simply excludes cohabiting partners. The man may intend for his partner to inherit; if he dies without a will, the law overrides that intention and gives everything to his legal heirs. Third, the PWDVA's protections are gendered and marriage-analogous in their design. Male partners in live-in relationships, and partners in same-sex relationships, have no comparable statutory protection at all.

Reform is both overdue and achievable. A Domestic Partnerships Act modelled on frameworks in South Africa or Ontario, Canada could define qualifying relationships by duration and mutual economic dependency, confer limited succession rights on surviving partners in the absence of a will, provide for equitable distribution of jointly acquired assets, and extend protections to all qualifying partners regardless of gender or sexual orientation. Absent such legislation, the property rights of live-in partners will continue to depend on which judge they appear before and how sympathetically that judge reads statutes that were never meant to cover them.

Conclusion

India's legal system is caught in a contradiction of its own making. It tells couples that they are free to live together, that their children will be treated as legitimate, and that violence against a cohabiting woman will be punished. But it also tells those same couples that the property they accumulate together belongs, in law, to whoever holds the title deeds; that if one partner dies, the other inherits nothing unless there is a will; and that the economic partnership built over years of shared life has no legal weight when it ends.

The courts have worked hard to soften this contradiction. The Supreme Court's decisions on maintenance, on the presumption of marriage, and on children's legitimacy represent genuine efforts to extend the law's protection to people the legislature has ignored. But judicial

improvisation is not a long-term solution. It produces inconsistent outcomes, depends on sympathetic readings of inapplicable statutes, and leaves many people without any remedy at all.

A dedicated statute is the only adequate response. The constitutional basis exists. The social need is plain. What is required is a legislature willing to acknowledge that live-in relationships are not a passing phenomenon to be tolerated at arm's length, but a genuine social reality deserving a principled and comprehensive legal framework. Until that happens, the property rights of live-in partners in India will remain what they are today: uncertain, incomplete, and contingent on the generosity of courts working beyond their proper institutional role.