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Prenuptial Agreements and Palimony in Live-In Relationships under National Perspective

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ABSTRACT

This study examines how prenuptial agreements and palimony in live-in relationships function legally and socially in India. With changing socio-cultural dynamics, the study delves into the acceptance, enforcement, and challenges surrounding prenuptial marriage agreements, as well as the recognition and legal standing of palimony in relationships without formalized unions. A comparative analysis is conducted to understand the regional variations in applying and enforcing prenuptial agreements, considering factors such as economic disparities, cultural traditions, and gender dynamics. The study also investigates the evolving nature of family structures and the role of prenuptial agreements in adapting to these changes. Furthermore, the research explores the legal safeguards, if any, available for unmarried couples without formal agreements. The impact of mediation and alternative dispute resolution mechanisms in resolving conflicts related to prenuptial agreements and palimony is scrutinized, providing insights into potential avenues for amicable dispute resolution.

Keywords: *Marriages, Live-in Relationships, Prenuptial Agreements, Palimony and Legal Safeguards*

I. INTRODUCTION

The outside community continues to view India through the optical prism of a society where marriage is both conceptually and ritually considered sacred. Legally, a woman who lives with a man outside of marriage had the same rights as a wife, and this was known as the “common law wife” concept. The emergence of the “common law wife” in India is a direct result of the country’s shifting cultural preferences towards more Western ways of living. Society suffers any negative consequences if we grant marital privileges to a woman who has not yet entered a legally binding union.

Live-in relationships have been around for a while in our culture. These days, the only difference is that more and more people are talking about it. Formally, these types of agreements

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were called “*maitray karars*”² and they allowed people of different sexes to live together, be friends, and take care of each other. Our culture has seen a shift from planned weddings to love marriages and, more recently, to “Live-in-Relationships.” One possible explanation for the necessity of these types of interactions is the desire to escape accountability. Some people choose not to get married because they aren’t committed, they don’t value social bonds, or they can’t tolerate toxic relationships. A prominent New York-based psychologist named *Joel D. Block* has classified partnerships into three distinct types based on the duties that each partner is expected to perform. The very act of going together suggests sexual exclusivity; cohabitating further suggests an agreement to merge daily lives; and marriage promises everlasting commitment. A living arrangement is a compromise between the two extremes, the simplest (just going with someone) and the most complicated (marrying). Because of the intimacy, partners can provide each other constructive criticism, which helps them identify and change behaviours that harm their relationship.

Living relationships are less common among the ordinary class of individuals because they are subject to greater social scrutiny. Conversely, those with higher incomes and those with lower incomes both can welcome new types of relationships with greater openness. Living with a man of slightly higher socioeconomic standing without getting married is something that a lady from a poor family who is in dire need of shelter can think would not be harmful. For their children’s happiness, parents these days have gradually begun to approve of living arrangements. Our hectic schedules prevent us from checking into a couple’s past when they move to a new city or location. India’s cities serve as examples of the country’s ongoing belief in marriage and its attraction to alternative living arrangements.

Living together to eventually get married is the norm rather than the exception. Couples may have good intentions when they make “our way decision,” but the reality is that most housing arrangements do not lead to a lifelong commitment. People who are planning to get married or engage in a contract with each other before the primary agreement may sign a document called a prenuptial agreement, ante-nuptial agreement, premarital agreement, or simply pre-nup. In the case of a divorce or dissolution of the marriage, a prenuptial agreement will often provide for the split of assets and spousal maintenance, however, its exact wording can vary. Existing contract law, rather than Indian marital law, governs prenuptial agreements in India.

² Maitri karar (friendship contract) is a traditional contract system of Gujarat, now illegal, that legitimizes a matrimonial-type relationship, most commonly between a married man and his unmarried mistress.

II. MEANING AND DEFINITION OF PRENUPTIAL AGREEMENT AND PALIMONY

Prenuptial Agreement

A Pre-Nuptial Agreement is a comprehensive contract that is typically signed before marriage. A prenuptial agreement, often referred to as an antenuptial agreement, premarital agreement, or prenup, is a legally binding contract that is made before marriage and establishes the conditions for separation. It outlines the rights and responsibilities of the individuals involved in the marriage, including their personal and financial rights, in the event of a future divorce or separation. Matrimonial litigation, particularly in cases involving the determination of maintenance and alimony, frequently involves a protracted and acrimonious legal dispute between the parties. If a pre-nuptial agreement is already established, it can help alleviate the time, worry, and financial resources required by the parties involved.

Nowadays, young couples are embracing prenuptial agreements to safeguard their assets and optimise negotiations in the event of a potential dissolution of their marriage. The increasing prevalence of divorce is commonly recognised as a contributing reason motivating couples to enter into prenuptial agreements. However, the shifting societal perspective on marriage and the growing autonomy of women can also be seen as influential factors in the growing acceptance and utilisation of prenuptial agreements.³

Palimony

Palimony is awarded in cases where a couple cohabits without being legally married. Alimony refers to financial support provided to a spouse in need following the termination of a relationship. Palimony may be applied in the event of a failed love relationship between two cohabiting individuals if a dispute cannot be resolved and they decide to split. In such cases, the individual with a lower income may be entitled to receive necessary financial support. Palimony is a form of financial support that resembles alimony, but it does not require a legal marriage between the parties.

The term “palimony,” which is derived from “alimony,” refers to the practice of paying maintenance to a former live-in spouse upon their eventual separation. Nevertheless, it is limited to true relationships and does not apply when one partner is married to another. To qualify for alimony under the Domestic Violence Act, the relationship must be “in the nature of marriage” according to Section 2(f)⁴.

³ Amrita Ghosh & Pratyusha Kar, “Pre-Nuptial Agreements in India: An Analysis of Law and Society” 12 (2) *NUJSLR* 3 (2019).

⁴ (f) “domestic relationship means a relationship between two persons who live or have, at any point of time, lived

III. PRENUPTIAL AGREEMENTS IN THE UNITED KINGDOM

Traditionally, prenuptial agreements have not been recognised as legally enforceable in England. While this remains usually true, a significant legal case in 2010 involving Katrin Radmacher, a German heiress, and Nicolas Granatino, demonstrated that prenuptial agreements can carry significant influence in divorce settlements under certain circumstances.

Since the late 1990s, the lower courts in England and Wales have been struggling with the subject of prenuptial agreements, and their uncertain legal status has led to many demands for reform. Nevertheless, the Law Commission endeavoured to examine the several types of marital property arrangements. Before the release of the Consultation Paper by the Law Commission, the Supreme Court made a significant ruling on October 20, 2010, in the case of *Katrin Radmacher v. Nicolas Joseph Jean Granatino*.⁵ This decision is the most landmark decision on ancillary relief issues since *Miller v. Miller* and *McFarlane v. McFarlane*,⁶ and the Supreme Court has resolved “the most consequential issue of family law. With a majority of 8:1, the Supreme Court dismissed Granatino’s appeal, confirming the prior decision of the Court of Appeal. It would have taken serious wrongdoing for the prenuptial agreement to be considered unfair. The question of whether a prenuptial agreement can be enforced was settled upon.”

*“The court should enforce a prenuptial agreement that is willingly entered into by both spouses with a complete understanding of its consequences unless it would be unjust to hold them to the arrangement given the current circumstances.”*⁷

IV. PRENUPTIAL AGREEMENTS IN THE UNITED STATES OF AMERICA

Initially, American courts were reluctant to uphold prenuptial agreements that specified financial provisions for a divorce. This was due to the perception that such agreements acknowledged the possibility of divorce and thereby promoted divorce.⁸ During a time when fault-based divorce was prevalent in most states, divorce could not be granted solely based on mutual agreement. Consequently, agreements that discussed divorce were considered attempts

together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family.”

⁵ [2010] UKSC 42.

⁶ Andrew Hayward (et al) *The Gender Dimension of Prenuptial Agreements: Radmacher v Granatino* [2010] (June 27, 2020), <http://inherentlyhuman.wordpress.com/2010/11/02/the-gender-dimension-of-prenuptial-agreements/>

⁷ *Ibid.*

⁸ *Brooks v. Brooks*, 733 P.2d 1044, 1049 (Alaska 1987): See also *Crouch v. Crouch*, 385 S.W.2d 288, 293 (Tenn. Ct. App. 1964) “This contract encourages divorce and is considered invalid due to public policy reasons. Such contracts could incentivize a financially motivated husband to intentionally harm his wife, knowing that his financial responsibility would be restricted. Put simply, a husband could manipulate and mistreat his wife to the point that she feels compelled to initiate divorce proceedings, allowing him to obtain a divorce at a significantly reduced cost compared to what he would have otherwise been required to pay”.

to fabricate false evidence of fault grounds and were therefore prohibited. However, these agreements were permitted to direct matters related to death.

Prenuptial agreements are considered special contracts under American law because they do not include a simple commercial transaction between two people. This feature of prenuptial agreements is crucial in American law due to the distinctive history of individualism and the recognition of individual rights in American legal history and culture. The United States places great importance on contractual freedom, to the extent that the notion of the right to contract and the enforcement of those rights are explicitly protected in the United States Constitution.⁹ Later on, all fifty states of America and the District of Columbia recognise prenuptial agreements as valid contracts. A prenuptial agreement must also contain five things to be legally binding:

1. All prenuptial agreements must be in writing; verbal agreements are never acceptable;
2. Must be carried out willingly;
3. Being fully and fairly informed before execution;
4. Unconscionability cannot exist in the agreement;
5. Both parties must execute the document in the way necessary for it to be registered, which is commonly referred to as an acknowledgement, in the presence of a notary public.¹⁰

Prenuptial agreements, conversely, provide individuals the chance to guarantee consistency, strategize their future with enhanced assurance, and, above all, determine their fate. Furthermore, enabling couples to carefully consider the financial aspects of their marriage in advance will only enhance the resilience and longevity of that partnership. The contemporary acknowledgement by the judiciary of premarital agreements is more likely to foster marriage rather than deter it.¹¹

V. PRENUPTIAL AGREEMENTS IN OTHER STATES

Prenuptial agreements are widely acknowledged as legally binding in some European nations, including “France, Belgium, the Netherlands, Germany, Switzerland, Sweden, Denmark, Norway, and Finland.” In certain countries, there may be restrictions on the enforceability or validity of certain court-imposed limitations. However, a written contract that is properly

⁹ U.S. Constitution, art. I, § 10.

¹⁰ Prenuptial Agreements, http://en.wikipedia.org/wiki/Prenuptial_agreement#United_States.

¹¹ Prenuptial and Postnuptial Contract Law in the USA, Available at www.rbs2.com/dcontract.pdf.

initiated and mutually agreed upon cannot be contested by invoking factors such as the breakdown of a marriage or the behaviour of either party. Prenuptial agreements in France and Belgium are required to be established in the presence of a notary.

The Family Law Act 1975 (Commonwealth) acknowledges the validity of prenuptial agreements in Australia. Pre-Nuptial Agreements Australia (PNA) was founded in June 2000 to create a comprehensive and unbiased information source and raise public consciousness on pre-nuptial and other financial agreements.¹²

In France, legislation enacted in 1999 provides for the establishment of “civil solidarity pacts” which enable partners, including same-sex couples, to form a legal union and enjoy the same privileges as married couples in several domains such as taxation, inheritance, housing, and social assistance. Individuals desiring to establish such a partnership have the option to register their intent with a court clerk. They can terminate the agreement either independently or mutually by submitting a written statement and providing the partner with a three-month warning.

According to Article 147¹³ of the Family Code in the Philippines, if a man and a woman who can get married live together as a couple without being legally married or in a marriage that is considered invalid, their incomes will be owned equally by both of them. Additionally, any property that they acquire through their work or efforts will be governed by the rules of co-ownership.

In the previous case of *Mercado-Fehr v. Fehr*,¹⁴ the Supreme Court, when interpreting Article

¹² <http://www.pre-nuptialagreements.com.au/>.

¹³ “Art. 147. When a man and a woman who are capacitated to marry each other, live exclusively with each other as husband and wife without the benefit of marriage or under a void marriage, they shall own their wages and salaries in equal shares and the rules on co-ownership shall govern the property acquired by both through their work or industry.

In the absence of proof, properties acquired while they lived together shall be presumed to have been obtained by their joint efforts, work, or industry, and shall be owned by them in equal shares. For purposes of this Article, a party who did not participate in the acquisition by the other party of any property shall be deemed to have contributed jointly to the acquisition thereof if the former’s efforts consisted in the care and maintenance of the family and the household.

In the absence of proof, properties acquired while they lived together shall be presumed to have been obtained by their joint efforts, work, or industry, and shall be owned by them in equal shares. For purposes of this Article, a party who did not participate in the acquisition by the other party of any property shall be deemed to have contributed jointly to the acquisition thereof if the former’s efforts consisted in the care and maintenance of the family and the household.

When only one of the parties to a void marriage is in good faith, the party’s share in bad faith in the co-ownership shall be forfeited in favor of their common children. In case of default of or waiver by any or all the common children or their descendants, each vacant share shall belong to the respective surviving descendants. In the absence of descendants, such share shall belong to the innocent party. In all cases, the forfeiture shall occur upon the cohabitation's termination.”

¹⁴ (G.R. No. 152716. October 23, 2003).

147 of the Family Code, determined that:

“For Article 147 to be applicable, the man and woman involved must meet the following criteria: (1) they must have the legal capacity to marry each other; (2) they must live together solely as husband and wife; and (3) their union must either be without the benefit of marriage, or their marriage must be considered void. All these elements are present in the current case. There is no evidence to demonstrate that the petitioner and respondent faced any obstacles in getting married to each other. The petitioner and respondent cohabitated in the respondent’s apartment and subsequently formalised their relationship through marriage. However, their marriage was deemed invalid according to Article 36 of the Family Code due to the respondent’s psychological incapacity to fulfil fundamental marital duties.”

VI. POSITION OF PRENUPTIAL AGREEMENTS IN INDIA

Currently, there are no laws that directly address the issue of the prenuptial agreement of live-in relationships and their legal status. However, according to the “Protection of Women from Domestic Violence Act, 2005”, women who live in such agreements are entitled to all benefits because they fall under the definition of “domestic relationship” as stated in Section 2(f).¹⁵ The Domestic Violence Act offers safeguards to women who experience abuse from their husbands, live-in partners, and their respective families. Upon its implementation in October 2006, the law did not make a distinction between a married woman and a woman in a cohabiting relationship.

As the sole Central Act that extends beyond conventional marriages, it grants live-in partners the same legal protections as wives, including the ability to live together, receive financial support, and avoid physical and psychological abuse. Economic abuse is also encompassed under the Act’s expansive reach. Another kind of domestic violence is the denial of monetary aid that the victim is legally entitled to. The Act also covers emotional abuse. While the Domestic Violence Act does offer some protection, it does not legitimise a live-in partner in any way, either socially or legally.

The definition of “domestic relationship” in section 2(f) makes it clear that any relationship between married persons who share a home is considered a domestic relationship. What if the petitioner and respondent both chose to live together in a shared flat and run their household as a unit? The flat they lived in together meets the criteria for a “shared household” as outlined in

¹⁵ *Supra* Note 3

Section 2(s)¹⁶ of the Domestic Violence Act.

Therefore, based on the description of an aggrieved person in Section 2(a) of the Domestic Violence Act, the respondent is entitled to receive maintenance and a portion in the property according to the applicable provisions of the Protection of Women from Domestic Violence Act, 2005.

According to the Law Commission, the Protection of Women from Domestic Violence Act, 2005 provides a broad definition of domestic relationships, which includes relationships like marriage, such as live-in relationships, within the definition of “domestic relationship” under section 2(f).

Constitutional validity of prenuptial agreements

In accordance with the existing Indian legal system, a prenuptial agreement is void and ineffective and cannot be enforced. It is clear from several decisions that pre-nuptial agreements are not only unlawful but also legally null and void. The Indian courts’ unyielding stance on the non-applicability of pre-nuptial agreements is, to be sure, well-founded. The parties’ pre-nuptial agreements may not always align with the rights and responsibilities granted to them by the law. This is because the agreements outline the spouses’ rights and responsibilities regarding maintenance, custody, and separation, among other things, in the case that the marriage does not work out. Spouses may be required to forego legal protections for maintenance, alimony, and other marital issues, as well as their basic right to access justice, to be legally bound by a prenuptial agreement.¹⁷

The Indian Contracts Act, Section 10, accords prenuptial agreements the same weight as any other written or oral contract. According to the Madras High Court’s ruling in *Muniamal v. Raja*,¹⁸ the Allahabad High Court’s decision in *Muhammad Muin-ud-din v. Jamal Fatima*.¹⁹ served as an influence. It stated that if a prenuptial or ante-nuptial agreement aligns with the provisions of Section 23 of the Indian Contract Act and does not violate public policy, it is deemed legally binding.

¹⁶ “shared household, means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household.”

¹⁷ Adab Singh Kapoor, “Legal Validity of Pre-Nuptial Agreements” (Last Visited on 27th Jan. 2024) available at <https://www.livelaw.in/columns/legal-validity-of-pre-nuptial-agreements-155937>

¹⁸ AIR1978Mad103.

¹⁹ AIR1921All152.

“It has been noted that a prenuptial agreement made between the future wife on one side and the future husband and his father on the other (all parties being Muslims), to protect the wife from mistreatment and guarantee her adequate financial support in the event of such mistreatment, was not considered invalid due to being contrary to public policy.”

In the case of *A.E. Thirumal Naidu v. Rajammal*,²⁰ it was decided by Alagiriswami, J. that “if the contents or the objects of a prenuptial agreement are against the public policy then that agreement would not be held valid. According to the facts of the case, there is no presence of any object which may be termed as unlawful or against the public policy in the prenuptial agreement between the respondent and the petitioner.”

In religious courts, where they were not viewed as roadblocks to getting redress in marital disputes, separation agreements between spouses were formerly deemed unlawful and against public policy. However, in the common Law and Chancery courts, these agreements were often acknowledged, even by Lord Eldon, who frequently criticised them. The House of Lords firmly established their legitimacy in the case of *Wilson v. Wilson*,²¹ which ruled that specific performance of such agreements could be ordered. Agreements that allow couples to separate immediately are not automatically considered invalid, although they may be deemed invalid for other reasons. However, any arrangement made before or after marriage about future separation is completely invalid.

In the case of *D. Velusamy v. D. Patchaiammal*,²² Justices *Markandey Katju* and *T.S. Thakur* highlighted that the Domestic Violence Act specifically refers to a “relationship like marriage” rather than a “live-in relationship” when providing benefits to women afflicted by domestic violence. It was also noted that not all partners who live together will be considered a marriage-like tie for the Act, which would otherwise benefit women. A marital relationship is analogous to a marriage under common law. Even though they aren’t legally married, partners in a common law marriage must nevertheless behave as if they were married to the public. They must meet the minimum age requirement to get into a lawful marriage. To enter a legal marriage, they must meet the necessary qualifications, which include being single. To meet the criteria, it is necessary for them to have chosen to live together and publicly presented themselves as being like married partners for a considerable duration.

²⁰ AIR1968Mad201

²¹ 1848 1 HLC 538.

²² (2010) 10 SCC 46.

In the case of *Abhijit Bhikaseeth Auti v. State of Maharashtra and Anr.*,²³ On September 16, 2009, the Bombay High Court made a ruling stating that a woman can seek maintenance under Section 125 of the Criminal Procedure Code (CrPC) without providing rigorous proof of marriage. This innovative ruling by Justice Abhay Oka represents another step towards ensuring equal legal recognition for live-in couples, comparable to marital relationships.

There is currently a heated global debate regarding the distinctions between marriage and cohabitation. Legal recognition has been granted to unmarried couples in France since 1999. Being single is becoming more prevalent in Scandinavian countries. Italy has enacted a bill that provides legal recognition to certain couples for the first time. If a man and a woman can legally marry and cohabit in the Philippines, it is recognised as a valid marriage under Article 147 of the Family Code, but without being married or being in a marriage that is considered invalid, any money they earn will be owned by both equally. Additionally, any property they acquire through their work or efforts will be dominated by the rules of co-ownership.

VII. ROOT CAUSES: RECOMMENDATION AND SUGGESTION

The Malimath Committee was appointed by the Centre Government to propose changes to the Criminal Procedure Code. The committee is headed by Justice V.S. Malimath who was formerly the chief justice of the High Courts of Karnataka and Kerala. In 2003, the Malimath Committee recommended to the Law Commission of India that women should be granted the legal rights of wives after being in a “Live-in-Relationship” for an adequate amount of time.

The National Commission for Women (NCW) followed the recommendations of the Ministry of Women and Child Development in June 2008 when it sought to amend the definition of “wife” in Section 125 of the Criminal Procedure Code (Cr.P.C.). Maintenance is addressed in this section. The National Commission for Women (NCW) has proposed that women involved in cohabitation should have the right to receive financial support if their partner abandons them.

The Maharashtra government adopted the advice of the Malimath Committee on 8th October, 2008. The Maharashtra government has proposed to amend Section 125 of the Criminal Procedure Code (Cr.P.C.) to provide legal recognition and protection to women in live-in relationships. The purpose of the proposed change is to extend the definition of "wife" to include women who have lived with a man for an extended period.

The government could legalise live-in relationships and make the woman in them eligible for alimony in the event of a breakup if it did something about it. It can't become legislation without

²³ (2009) 1 AIR Bom R 212

the permission of the state. The state government has sent the request to the Centre for the President's assent since the Cr.P.C is on the concurrent list.

During the question hour in the Lok Sabha on December 15, 2008, Mr. H. R. Bhardwaj, who was the Union Law Minister at the time, stated that if society approves of live-in relationships, the government has the authority to create laws regarding them. Laws are formulated with consideration for prevailing socioeconomic patterns. Posing the question of whether we are considering enacting legislation to regulate cohabitation is purely speculative. Less than one percent of individuals are involved in such partnerships. If a law is implemented, it will inevitably be abused.

The term "palimony" was first used in the landmark decision in *Marvin v. Marvin*,²⁴ by the California Supreme Court in the United States. "Palimony" refers to the maintenance that a man is required to pay to a woman when he leaves her after they have lived together for a long time without getting married. This case involved the renowned actor *Lee Marvin* and his ex-girlfriend *Michelle*, who lived with him for a long time without getting married before he abandoned her, and she sued for palimony. The idea of palimony has subsequently been expanded and discussed in numerous decisions of US courts. While the US Supreme Court has been silent on the matter of palimony, numerous state courts have made rulings in favour of the practice. U.S. courts have reached different conclusions about palimony, with some upholding it and others rejecting it or imposing restrictions on its use. The right to palimony is thus a concept that is developed under American law.

On the other hand, the Indian Supreme Court did not even consider the definition of "palimony" until 2010. The court determined that palimony might be awarded in live-in relationships in the instances of *Chanmuniya v. Virendra Kumar Singh Kushwaha and Anr.*,²⁵ and *D. Velusamy v. D. Patchaiammal*.²⁶

Various Indian statutes, including the "Domestic Violence Act of 2005", Section 125 of the "Criminal Procedure Code", Section 25 of the Hindu Marriage Act, and Section 37 of the "Special Marriage Act of 1954", establish the concept of "alimony." The absence of a definition of "palimony" in any domestic statute is an important point to be noted. Consequently, the question of whether palimony is like alimony is a contentious one.

²⁴ (1976) 18 C3d660.

²⁵ (2011) 1 SCC 141

²⁶ SLP (Crl.) Nos. 2273-2274/2010; (2010) 10 SCC 46.

VIII. LEGAL STATUS OF RIGHTS TO PALIMONY

To ascertain the legality of the right to palimony, it is important to know the precise definition of palimony.

“Palimony refers to a form of financial support that serves as a replacement for alimony. It applies to situations when a couple cohabitated for a significant duration but were not legally married, and subsequently ended their relationship.”

Within that framework, the renowned divorce lawyer in the aforementioned case, Mr. Marvin Mitchelson, has introduced a novel term called “palimony,” which is a fusion of the words ‘pal’ and ‘alimony.’²⁷

The term “palimony” originated in the United States to refer to the act of providing financial assistance to a woman who has cohabitated with a man for an extended period without marriage, and then experiences abandonment by him. *Marvin v. Marvin*,²⁸ a famous case of the California Superior Court, was the first to rule on palimony. Michelle, a woman who lived with the famous actor Lee Marvin for a long time without marrying him, eventually claimed palimony after he departed her. The idea of palimony has subsequently been expanded and discussed in numerous decisions of US courts. Although there have been multiple rulings from lower courts in different states about the validity of palimony, the US Supreme Court has yet to rule on the matter. Some of these American courts have granted palimony, while others have denied it completely or have placed restrictions on its use. Therefore, the right to palimony is a concept whose legal status is fluid in the United States. As a result, the American judicial system has very different opinions about palimony. Palimony agreements are flatly rejected by some states, such as Tennessee and Georgia.

While there is no legal foundation for the award of palimony in the United States, the courts that have given it have done so based on a contractual agreement. Certain courts in the United States have established that a formal agreement, either written or oral, must exist between a man and a woman, stipulating that the man will provide palimony to the woman in the event of their separation. However, other courts have ruled that if a man and woman have cohabitated for a significant duration without getting married, it will be presumed that an implied or constructive contract exists, obligating the man to provide palimony upon their separation.²⁹

The next thing to consider is whether the practice of palimony in live-in relationships infringes

²⁷ *Ibid.*

²⁸ *Supra* Note 2

²⁹ D. Velusamy v. D. Patchaiammal

upon human dignity as recognised in Article 21.

It has been firmly established, during the *Maneka Gandhi v. Union of India*,³⁰ that the ‘process’ referred to in Article 21 must be just, fair, and reasonable. In the case of *Kartar Singh v. State of Punjab*,³¹ the Supreme Court has stated that the procedure laid out in Article 21 must adhere to the principles of being just, fair, and reasonable and should not be arbitrary, whimsical, or oppressive. To ensure that the procedure is correct, it must adhere to the concept of principles of natural justice.³²

In the case of *Jolly George Verghese & Anr v. The Bank of Cochin*,³³ the court emphasised the significance of human dignity. It stated that Article 21, along with Articles 14 and 19, enshrine the immense value of human dignity and the worth of every individual. Consequently, the state is obligated to refrain from incarcerating individuals unless it is done under a fair, just, and reasonable legal process.

“Section 25 of the Hindu Marriage Act guarantees lifelong alimony and maintenance. We can say that it is a procedure established by law as per the constitution of India. Therefore, requiring an individual to provide financial support to his wife and children through alimony and maintenance does not violate Article 21 of the Constitution of India.”

Therefore, it can be concluded that the case of *Chanmuniya v. Virendra Kumar Singh Kushwaha & Anr.*,³⁴ which is protected under the “*Protection of Women from Domestic Violence Act, 2005 assigns a very broad and expansive definition to the term ‘domestic abuse’ to include within its purview even ‘economic abuse’*. *Economic abuse includes the deprivation of financial and economic resources. Section 20 of the Act allows the Magistrate to direct the respondent to pay monetary relief to the aggrieved person, who is the harassed woman, for expenses incurred and losses suffered by her, which may include but is not limited to, maintenance under section 125 Cr.P.C. The Protection of Women from Domestic Violence Act, 2005 gives a very wide interpretation of the term ‘domestic relationship’ to take it outside the confines of a marital relationship, and even includes Live-in-relationships like marriage within the definition of ‘domestic relationship’*. Therefore, women in Live-in-relationship are also entitled to all the reliefs given in the said Act, they should also be allowed in proceedings under section 125 of Cr.P.C”. Consequently, the provision of alimony in divorce cases is not deemed to violate Article 21. Therefore, it follows that palimony, which serves as a replacement for

³⁰ AIR 1978 SC 597.

³¹ (1994) 3 SCC 569.

³² M.P. Jain, *Indian Constitutional Law* 1194 (8 ed. Lexis Nexis 2018).

³³ 1980 SCR (2) 913.

³⁴ *Supra* note 23

alimony and is awarded in circumstances of the termination of cohabitation partnerships, should not be deemed to violate Article 21.

Judicial Pronouncement

India is becoming increasingly accepting of Western concepts and habits, including the concept of live-in partnerships, which is a significant development. There has been extensive discussion and controversy over live-in relationships in India. It is crucial to comprehend the concept from a legal perspective. The judiciary takes the initiative to make clear regarding live-in-relationship.

According to the ruling of the Privy Council in the case of *Dinohamy v. W.L. Blahamy*,³⁵ a married couple's intimate relationship is presumed to have been a valid marriage rather than concubinage unless shown differently. Further, the Privy Council reversed its previous decision in *Mohabhat Ali v. Mohammad Ibrahim Khan*.³⁶ According to the statement, "the law treats a man and a woman as married rather than in a concubinage relationship if they have lived together for a long time. In order for a couple that lives together to be legally acknowledged as married, the court requires evidence of a specific amount of time that has passed, without specifying a specific minimum term."

A woman doesn't need to claim her entitlement to maintenance from her spouse under section 125 of the Code of Criminal Procedure, 1973, as the Supreme Court pointed out in the case of *Abhijit Bhikaseth Auti v. State of Maharashtra and Anr.*,³⁷ Financial help might be sought by a woman who is involved in a living relationship as well. The court ruled in *Radhika v. State of Madhya Pradesh*,³⁸ that "a child born out of a live-in relationship is legally recognised as legitimate since the law perceives it as a marriage. In addition, the court ruled that these children have a right to their parents' assets."

According to the Supreme Court's ruling in *Badri Prasad v. Dy. Director of Consolidation and Ors.*,³⁹ "a live-in relationship can be regarded as a legitimate marriage. Despite the couple's 50 years of cohabitation and the fact that their families recognised them as husband and wife, the court found the authorities guilty of casting doubt on their relationship." The Supreme Court considered the question of a child's validity and property rights in the case of *Bharata Matha v. R. Vijaya Renganathan*,⁴⁰ which involved a live-in relationship. Although such a child would

³⁵ (1928) 1 MLJ 388 (PC).

³⁶ AIR 1929 PC 135.

³⁷ AIR 1967 SC 799.

³⁸ AIR 1972 SC 124.

³⁹ 2001 (3) AWC 1778.

⁴⁰ AIR 1998 SC 3063.

be eligible to inherit their parent's estates, the court determined that they would have no claim to Hindu coparcenary property.

In the landmark case of *Payal Sharma v. Superintendent, Nari Niketan, and others*,⁴¹ the court decided in 2001 that a live-in relationship is not considered criminal. In a groundbreaking ruling on March 4, 2002, the Allahabad High Court declared that individuals, regardless of gender, have the right to cohabit without formal marriage if they so desire. While society may consider this behaviour immoral, it does not violate any laws. Law and morality are distinct concepts.

The Supreme Court, in the case of *Koppiseti Subbharao Subramaniam v. State of A.P.*,⁴² expanded the legal safeguard against dowry provided by Section 498 A of the Indian Penal Code to encompass women residing in such domestic partnerships. The statement suggests that "dowry" lacks any inherent mystical appeal. The term refers to a financial claim made in connection with a marriage. By comparing the legal recognition of children born from void and voidable marriages, the argument is made that a person who enters into a marital agreement should not be able to use a deceptive tactic to claim that the issue of dowry does not apply due to the deficiency of a valid marriage. This ruling strongly asserts that men cannot evade their obligation or legal accountability for women they cohabit with by merely abstaining from marriage.

In January 2008, the Supreme Court recognised intimate relationships as legally equivalent to marriage for decades. Supreme Court judges, Justice *Arijit Pasayat* and *P Santhasivam*, have ruled that children born from such relationships would no longer be deemed illegitimate.

In the case of *S. Khushboo v. Kannimmal*,⁴³ the Supreme Court stated that no legislation explicitly forbids cohabitation or sexual intercourse before marriage. The Supreme Court ruled that live-in relationships are only allowed for adult individuals of different genders who are not married. If one of the mentioned individuals is married, a man can be held accountable for the crime of adultery, which would be considered an infraction under section 497 of the Indian Penal Code (IPC).

A woman who is in a live-in relationship cannot receive financial support unless she fulfils certain requirements, according to a landmark Supreme Court decision in *D. Velusamy v. D. Patchaiammal*.⁴⁴ Further, the court underlined that having a one-night stand or spending the weekend together does not constitute a household relationship. The Court further stated that "if

⁴¹ AIR 2001 All. 254.

⁴² AIR 2009 SC 2684

⁴³ (2010) 5 SCC 600.

⁴⁴ (2010) 10 SCC 46.

a live-in relationship is considered like a marriage, then the woman involved is eligible to receive the protections provided by the Protection of Women from Domestic Violence Act, 2005”.

In the case of *Chanmuniya v. Virendra Kumar Singh Kushwaha & Anr.*,⁴⁵ the Supreme Court ruled that “women in live-in relationships are entitled to all the benefits granted by the Protection of Women from Domestic Violence Act, 2005. The Court should enforce agreements between unmarried partners unless the agreement involves the exchange of sexual services for payment. In the absence of explicit agreements, the courts should analyse the conduct of the parties to determine if their actions imply a contract, partnership, joint venture, or any other implicit understanding.”

IX. CONCLUSION

In assumption, the use of prenuptial agreements and the consideration of palimony in live-in relationships represent important legal mechanisms for addressing financial matters in the context of intimate partnerships. Prenuptial agreements offer a structured approach to asset protection, clarity in the division of assets, and the establishment of alimony arrangements, providing couples with a tool to navigate potential challenges in the event of a divorce.

On the other hand, palimony, though not explicitly recognized under Indian law, underlines the need for acknowledging financial contributions and sacrifices in non-marital cohabitation scenarios. The absence of a uniform legal framework for palimony in India requires careful consideration, and legal professionals play a pivotal role in guiding individuals through the complexities of such arrangements.

In the recent case of *Navtej Singh Johar & Ors. v. Union of India & Ors.*,⁴⁶ the court has made substantial strides in recognising same-sex relationships. Hence, it is crucial to construct a legal structure that protects the welfare and future opportunities of a child born from an extramarital relationship. The Hindu Marriage Act, 1955 confers legal recognition to any offspring resulting from a marriage that is valid, voidable, or void, considering them as legitimate. However, the allocation of property and maintenance rights is dependent on a corresponding legal requirement. If either parent chooses to end the cohabitation arrangement, the child will be entitled to inherit a portion of their assets.

Recognising live-in relationships would grant a ‘mistress’ the same legal standing as a married wife in all aspects, including property rights, inheritance, and financial support. However, this

⁴⁵ *Supra* note 23.

⁴⁶ AIR 2018 SC 4321.

directly contradicts the Hindu Marriage Act, 1955, which does not allow for the inclusion of a second wife in Hindu marriages. Furthermore, if live-in couples were to utilise the proposed revised legislation, it would imply an acknowledgement on their behalf that there exists a ‘second wife’, which is once again prohibited by the Hindu Marriage Act of 1955.

In addition, the time of cohabitation is not clearly defined by the judiciary, the Malimath Committee Report, and the plan put out by the Maharashtra government. As the proposed rule does not specify a specific duration for a “reasonably long” time of a live-in relationship, it is subject to different interpretations.

The concept of cohabitation entails a deliberate avoidance of the obligations and duties associated with marriage. Under those circumstances, it is unrealistic to anticipate a social and legal connection to a relationship that, by its very nature, can be terminated at any time. Any decision to modify Section 125 of the Criminal Procedure Code (CrPC) in connection to live-in relationships necessitates revisions in other laws such as the rules of evidence, succession, adoption, bigamy, and marriage. Thus, even in the absence of a legally recognised connection such as marriage, one should still be held responsible for providing financial support after a fair duration.

A connection cannot achieve greater strength and significance if there exists a means of avoiding commitment. The legalisation of live-in relationships necessitates the establishment of a comprehensive set of rules to control many aspects of these partnerships, such as protection in the event of abandonment or infidelity, financial support, inheritance rights, and other related matters. The occurrence of lawsuits would experience a significant and notable increase in this situation. These factors would contribute to the emergence of an unstable society. The primary reason why individuals choose to enter intimate relationships is a matter of great significance. Imposing several regulations on live-in relationships may undermine the fundamental concept of liberty associated with them. Now it is our responsibility to evaluate the advantages and disadvantages of this situation and plan based on it.
