

AN ANALYSIS OF THE RIGHT OF MAINTENANCE OF WOMEN LIVING IN UNMARRIED COHABITATION IN INDIA

UMA ANÁLISE DO DIREITO DE MANUTENÇÃO DAS MULHERES QUE VIVEM EM COABITAÇÃO NÃO CASADAS NA ÍNDIA

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Palavras-chave: Coabitação não conjugal. Manutenção. Direito das mulheres. Direito da família.

Abstract: Unmarried cohabitation is a union that entails both cohabitation and consortium of emotions, joint lifestyle and economic cooperation between its partners. It has been on the rise in different jurisdictions, including India. In this changing social reality, it must be given both constitutional recognition, as well as, statutory protection. Maintenance is an important element of this relationship, especially for the female partner. This paper focuses on heterosexual unmarried cohabitation in India and the right of the woman's maintenance within it. Through an examination of the provisions of the Constitution of India, the authors have discussed the need for protection of these relationships. The authors have also analysed the development of the right of maintenance in unmarried cohabitation, primarily through case laws on the subject. The authors have attempted to suggest a framework to strengthen the current law of maintenance for the female partners to make it a more effective remedy.

Keywords: Unmarried cohabitation. Maintenance. Women's right. Family law.

Resumo: A coabitação não casada é uma união que implica tanto a coabitação como o consórcio de emoções, estilo de vida conjunto e cooperação

econômica entre os seus parceiros. Tem vindo a crescer em diferentes jurisdições, incluindo a Índia. Nesta realidade social em mutação, deve receber reconhecimento constitucional, bem como uma protecção estatutária. A manutenção é um elemento importante desta relação, especialmente para o parceiro do sexo feminino. Este documento concentra-se na coabitação heterossexual não casada na Índia e no direito de manutenção da mulher dentro dela. Através de um exame das disposições da Constituição da Índia, os autores discutiram a necessidade de protecção destas relações. Os autores analisaram também o desenvolvimento do direito de manutenção na coabitação não conjugal, principalmente através de jurisprudência sobre o assunto. As autoras tentaram sugerir um quadro para reforçar a atual lei de pensões de alimentos para as parceiras femininas, de modo a torná-la um recurso mais eficaz.

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1. Introduction

In most of modern society, marriage is a way of life. Both socially and legally, it is a mode of creating a family. Marriage is a form of kinship, where members are bound by emotional, socio-economic and religious ties. Historically, it has been understood to be the unit of a heterosexual union of husband and wife and their biological children. Marriage carries with it the element of public good as discussed in *Dawood v Minister of Home Affairs*:

[Marriage is] an important institution that provide(s) for the security, support and companionship of members of the society and bear an important role in the rearing of children. The celebration of marriage gives rise to important moral and legal obligations...[which] play an important social function.

Some of the moral and legal obligations include right to companionship, right to cohabitation, right to maintenance and right to inheritance. Marriage includes both cohabitation as well as consortium. As was rightly held in *Harvinder Kaur v Harmander Singh Choudhry*, a case to understand the nature of a marital relationship to decide upon the remedy of restitution of conjugal rights, marriage is a sharing of two lives, a sharing of joys and sorrows of each party, of their successes and disappointments. “In its fullest sense it implies a companionship between each of them, entertainment of mutual friends, sexual intercourse all those elements which, when combined justify the old common law dictum that a man and his wife are one person.”

However, with change in times, societies have also observed change in ways of forming families. The ever-expanding scope of the law now also recognises unmarried cohabitation as a union leading to formation of families. This legal acceptance has led to development of rights of cohabiting partners, such as that of maintenance, custody and inheritance to property. In India, relationships of unmarried cohabitation are in a nascent stage, but definitely rising. This paper attempts to trace the development of the economic right of maintenance of the female partner in an unmarried cohabitation.

In this paper, the authors have traced the religious and legal status of the institution of marriage in India. Though marriage is a norm of creating families, the authors have analysed the growth of unmarried cohabitations in India and the constitutional right of choice through which such relationships get their legitimacy. Thereafter, the authors have identified the statutory framework governing unmarried cohabitation in India. The

authors have focused on the historical evolution of maintenance and analysed the development of the economic right of maintenance of female partners in unmarried cohabitation. The last part of the paper, discusses the challenges surrounding granting of maintenance to female partners and provides suggestions to overcome them. The authors report that there are no competing interests to declare. The research has received no specific grant from any funding agency in the public, commercial, or not-for-profit sectors.

2. Religious and legal recognition of marriage in India

India is a country dominated by primarily three religious groups- Hindus, Muslims and Christians. Each of these religions is governed by their religious and customary practices of marriage. These practices have been codified in statutory law. Besides these religious groups, there is a significant tribal population in the country. These tribes have their own customary practices and marriage unions are governed by those practices.

Under the classical Hindu law, marriage is a *samskara* (a rite of passage) as it ensures the perpetuity of the household of the family. The foundation of the Hindu household is religion and worship. The aim of every Hindu household is the perpetuation of the *sacra*, or the religious duties and sacraments, which are essential for the unity and continuity of the household (Hearn, 1878). The *Rigveda* (a classical Hindu text comprising of hymns addressed to divine powers) in *Mandala X, verse 85* (Rigvedic wedding hymn) celebrates the marriage of Surya (the daughter of the Sun God) through ritualistic formalities performed publicly. This verse is sometimes quoted as part of the rituals of present-day Hindu marriages.

In Islam, the ceremony of marriage is called *nikah*. The essential conditions of marriage require that the proposal and acceptance of the offer of marriage are witnessed by at least two male witnesses. Marriage is one of the core pillars of Islam as any union outside of marriage is considered to be *haram* (forbidden) and illegal.

In Christianity, marriages were often times solemnised in secret and could have been equated with private contracts. Marriage was a sacrament that reflected the inward spiritual grace of those entering the union (Kandoian, 1987). Thus, informal and secret marriages between man and woman were even recognised by the Roman Catholic and Anglican churches. These marriages came to be known as common law marriages in the UK and USA. This sacred nature of marriage placed it outside state control and in the

private realm. For instance, in the Council of Trent in 1563, when decree relating to marriage was passed, making its validity dependant on it being performed before a priest in the presence of two or three witnesses, fifty-six prelates dissented maintaining that the church had no power to nullify a sacrament (Kandoian, 1987, p. 1853). However, informal and secret marriages were completely abolished in the United Kingdom through Lord Hardwicke's Act, 1753. This statute mandated that a valid marriage could only take place before a priest and witnesses. Gradually, several states of America too, declared common law marriages as invalid.

Presently, in India the religious precepts of marriage have been codified in separate laws. The Hindus are governed by the Hindu Marriage Act, 1955; the Christians are governed by The Indian Christian Marriage Act, 1872; the Muslims continue to be governed by their religious law of marriage. Under these laws, the parties who intend to get married, have to follow the religious ceremonies of solemnising a marriage. However, if they wish to enter in a civil marriage, the secular law of India is the Special Marriage Act, 1954. Besides these religious marriages, the tribal communities of India follow their own customary practices of solemnisation of marriage.

3. Growth of unmarried cohabitation in India

Marriage has been the norm of social fabric in the Indian society. However, as analysed by Menon (2012) the institution rests on defined hierarchies of gender and is a tool to perpetuate forms of patriarchal private property ownership and lineage. However, with change in times, the society has also observed an increased acceptance of alternate ways of forming families. One such way is unmarried cohabitation. This form of living together finds its basis in the Constitution of India which recognises dignity and autonomy of an individual. It guarantees the fundamental right to life and liberty, which envisages the individual as the primary agent through which the state engages (Kirpal, 2020, p.118).

Under the fundamental right to life and liberty, every individual has the right to form a union. However, this union does not mean only the union of marriage. As rightly held in the landmark decision of *Navej Singh Jobar v Union of India*, union, in fact means, "companionship in every sense of the word i.e., physical, mental, sexual or emotional. An important aspect of dignity is an individual's choice as to who enters his house, how he lives and in what relationship." The choice of a partner and the nature of relationship

(within or outside marriage) shared with that partner is, therefore, a manifestation of an individual's autonomy and dignity. In this backdrop, unmarried cohabitations have gained constitutional and legal sanctity. As recently as 2022, the Supreme Court of India in the case of *Deepika Singh v Central Administrative Tribunal* has held that familial relationships may take the form of domestic, unmarried partnerships or queer relationships. These manifestations of love and family may not be typical but they are as real as their traditional counterparts. Such atypical manifestations of the family unit are equally deserving not only of protection under law but also of the benefits available under social welfare legislation.

Unmarried cohabitation is of various types. It includes within its ambit an adult heterosexual relationship couple living together; an unmarried adult woman living with a married adult male, with or without the knowledge of the marriage of the man; an unmarried adult male living with a married woman; or, a homosexual couple living together. Legal recognition has been given only to the first and last type of unmarried cohabitation. However, currently there is no statute to protect the rights of homosexual cohabitants. Though the government of India at present does not collect any national data on the number of unmarried cohabitations in India, an informal survey carried out by a news organisation found that 80% respondents out of the 1.4 lakh surveyed from urban and rural areas support unmarried cohabitation. 26% also said they would prefer lifelong live-in relationships over marriage (India TV, 2021).

The growing incidences of unmarried cohabitation in India can also be observed from the rising number of cases being filed in the courts. Couples have started approaching courts of law for safeguarding their rights at the time of dissolution of such relationships, either due to death of one partner, or separation. Initially, the courts mirrored the social set up by stating that unmarried cohabitation may be immoral, but it is not illegal¹. However, in 2013, the Supreme Court of India, as a beacon of social change in the country, in the landmark decision of *Indra Sarma v VKV Sarma* has supported the view that living together is neither a sin nor a crime, though socially unacceptable in India. Recently, in 2021, the High Court of Allahabad in *Zeenat Parveen v State of Uttar Pradesh* upheld that unmarried cohabitation has become part and parcel of our lives and must be viewed from the lens of personal autonomy, instead of social morality. In this case and similar such cases, where family members of unmarried cohabitants were creating hurdles for the couples living

¹ *Payal Sharma v Nari Neketan*, AIR 2001 All 254; *Lata Singh v State of UP* (2006) 5 SCC 475; and *Gulza Kumari & Ors. v State of Punjab & Ors* PLR (2021) 202 P&H 711 (2)

together, the court passed orders directing the police authorities to protect the life and liberty of the couples.

4. Unmarried Cohabitation in India- Statutory Framework

The statutory recognition of unmarried cohabitation in India can be found in Section 114 of the Indian Evidence Act, 1872- wherein the court can draw a presumption of marriage; and, The Protection of Women from Domestic Violence Act, 2005 which protects the female partner living in unmarried cohabitation from domestic violence.

The courts in India have time and again maintained that under Section 114 of the Indian Evidence Act, 1872 the law presumes in favour of marriage and against concubinage when a man and woman have cohabited continuously for a number of years. For instance in *Badri Prasad v Dy Director of Consolidation* where the man and woman lived together for fifty years, the court rejected the contention of examining priest and other witnesses to sustain the ceremonial process of marriage. It presumed in favour of the union by drawing a presumption of marriage.

In order to establish this presumption, it has to be proved that the man and woman were living together for long years as husband and wife; and that they projected themselves to the society as a married couple. To arrive at this conclusion, the court can consider in evidence the opinion of persons closely related to the people whose relationship is in question. If a child is born to such a couple, then there is a presumption in favor of legitimacy of that child. Examples of facts that have been considered by courts in drawing this presumption include reliance on any public documents like voters list, ration cards (a card denoting eligibility for public distribution system) etc that indicate the couple live as husband and wife; competent witnesses in the family or vicinity who can testify about the relationship; and, reputation of being recognised as spouses in the society. For instance, in the case of *M. Shanmugha Udayar v Sivanandam & Ors* the sons of the man, born to him from his first marriage, chose to live in the same house with their father and the woman with whom he was not legally wedded. The presumption of marriage was drawn by the court because if the woman would have been a concubine, then it was unlikely that the sons would have allowed her to live together.

The Protection of Women from Domestic Violence Act, 2005 (hereinafter, the PWDVA, 2005) is a legislation that has been decreed by the Parliament in keeping with its

international commitments to address gender specific grievances of women. In the 1970s, both internationally as well as nationally, there was a wave of feminist movements which gave momentum to the demand for rights and safer environments for women in the private sphere to the forefront (Krolokke, 2006) and sparked action. The pressures exerted culminated into the passing of several international instruments such as the Convention on Elimination of Discrimination against Women, 1979; the Declaration of Elimination of Violence against Women, 1993; the Vienna Declaration and Programme of Action, 1993 and the Beijing Declaration and Platform for Action, 1995.

The Indian Parliament passed the PWDVA in 2005 which is distinguished from earlier laws on cruelty and violence against women as it gives civil remedies to the woman who is aggrieved by domestic violence. These remedies are protection orders that prevent the aggressor from contacting her or coming within her vicinity; residence orders, which include the right to reside in the home that she shares with her partner; monetary reliefs for her expenses; custody orders for her children; and, compensation orders which can be in addition to the abovementioned reliefs. Before passing of the PWDVA, 2005, the shortcomings observed in the legal framework existing then was that the provisions were only penal in nature and did not provide relief in the nature of property or monetary compensation. Moreover, they dealt with severe acts of domestic violence, but did not recognize the overall mistreatment of women in the household such as physical, sexual, emotional or economic (Karanjawala & Chugh, 2009).

In order to claim a relief under this Act, the aggrieved woman needs to prove domestic violence suffered at the hands of a person with whom she was in a domestic relationship with. Section 2 (f) of the PWDVA, 2005 defines a domestic relationship as a 'relationship between two persons who live or have lived together in a shared household when they are related by consanguinity, marriage, adoption or through a relationship in the nature of marriage.' Relationships in nature of marriage are unmarried cohabitations in the Indian legal framework. The need to include relationships in nature of marriage can be found in the Report of the Parliamentary Standing Committee on The Protection from Domestic Violence Bill, 2002, wherein the Committee has acknowledged that there are many instances in India where a man and woman, though not legally married, still live together as husband and wife and have social sanction for it as well. Therefore, such relationships have to be addressed within the framework of the law to ensure that such women who are victims of any kind of violence that occurs within the family are protected.

The term relationship in nature of marriage or unmarried cohabitation, was for the first time interpreted by the Supreme Court of India in its landmark judgment of *D. Velusamy v D. Patchaiammal*. It held that a relationship in nature of marriage is analogous to a common law marriage. Thus, the four characteristics of such a relationship require the couple to hold themselves out to the society as being akin to spouse; to be of legal age to marry; to be otherwise qualified to enter into a marriage, including being unmarried; and to voluntarily cohabit for a significant period of time. This test was further refined in the case of *Indra Sarma v VKV Sarma* and the Court laid down certain guidelines to determine the nature of the relationship. Factors such as duration of period of relationship, shared household, pooling of resources and financial arrangement, domestic arrangements, sexual relationships, decision to have children, socialisation in public and the intention and conduct of parties play a key role in determining whether the relationship is a relationship in nature of marriage.

The shortcoming in the present legal framework, recognizing unmarried cohabitation is that the law only recognizes unmarried cohabitation, when it is on the verge of a breakdown due to a conflict between the couple. This conflict is grave, in that it is in the form of domestic violence. Unfortunately, the law is silent about rights and remedies of unmarried cohabitants in the case of mutual dissolution of the relationship, or, cessation of the relationship due to demise of one partner.

5. History of Maintenance

As a statutory remedy, originally alimony was a remedy of the English ecclesiastical courts. These courts provided the remedy of divorce *a mensa et thoro* i.e the husband and wife are not legally obligated to live together, but their marriage is not dissolved. Neither spouse has the right to remarry in such case. Complete divorces at that time were available only through legislative action, and gender roles in marriages were strictly defined and rigidly implemented. Therefore, there was gendered division of labour where the men were breadwinners for the family, and women would take care of the household. Since there was economic inequality between spouses, therefore, pecuniary provision for the injured wife was necessary as a matter of social economy (Vernier & Hurlburt, 1939, p 198). The rationale for this was the fact that only very serious and aggravated type of marital transgressions entitled the wife for a divorce, and the social

reality of the times was the discriminatory scheme of marital property rights (Ibid). Five historical basis for grant of alimony are: reinforce the husband's economic obligations towards the wife and children and to prevent them from becoming a responsibility of the state; to reward marital behaviour and sanction wrongdoing; to maintain a standard of living after divorce; to compensate a woman for her labour during marriage; and, to reinforce the view of marriage as a shared partnership (Shehan et al., 2002, p. 309).

Thus, it was a moral obligation of the husband to support his wife since she was dependant on him. The ecclesiastical courts would make orders for permanent alimony, the objective of which was to provide continuing maintenance for the wife. Thus, due to the gendered notion of the family, alimony was granted for an indefinite period of time.

Courts usually follow two methods of calculating alimony. Under the first method, which is also the classical method of calculation of alimony, courts determine the award of alimony on the basis of the sacrifice made by one spouse or the benefit gained by one partner due to the contributions of the other partner (Baker, 2020, p. 207). However, this form of calculation presumes that partners on a marriage are not equal and one (usually the wife) is dependent upon the other due to the gendered division of labour in the family. The other method of calculation, which is more modern and gender neutral is dependent on the length of marriage and post marriage income differential. This method also allows courts to ignore factors like identifying what is the contribution made by each partner or what kind of economic opportunities were forgone by a partner during the relationship leading to a sacrifice or a consequential gain for the other partner (Baker, 2020, p. 209). Alimony can either be long term or permanent, or it could be short term settlement.

6. Maintenance of female cohabitating partner

Intimate relationships are both emotional as well as economic partnerships. As a result, upon dissolution of such relationships, whenever the issue of maintenance arises, it raises intensely human problems. Under the Indian legal framework, the right of maintenance gets vested in the wife by virtue of the marital relationship. Both under the religious law, as well as the codified law, it is an obligation of the husband to maintain his wife by providing for her food, shelter and clothing. The statutory provision incorporating the right of maintenance of the wife is Section 125 of the Code of Criminal Procedure. As envisioned by the architect of the Code, Sir James Fitzgerald, it aims to prevent vagrancy

and destitution (Diwan, 1985). Therefore, any person who has sufficient means, but neglects or refuses to maintain his wife, who is unable to maintain herself, maybe ordered by the Magistrate to make a monthly allowance for her.

Under the provision, 'wife' includes a woman who has been divorced by, or has obtained divorce from her husband, and has not remarried. As this is the oldest codified law on maintenance, courts have often been in a quagmire while deciding the whether an unmarried female cohabitant is entitled to maintenance. The earliest jurisprudence evolved by the Supreme Court of India to determine the maintenance right of the petitioner was seen in the case of *Smt. Yamunabai Annatrao Adhav v. Anantrao Shivram Adhav*. The court held that living with an already married man was not recognised by the law and it focused on the literal interpretation of the term 'wife'. Though the case pertained to the maintenance of a woman living with an already married man, the court held that the status of wife can be given to a woman only when the essential conditions of marriage and the ceremonies of marriage have been duly performed. Therefore, a woman who was living with a man without fulfilling these essential requirements would automatically be disentitled from claiming maintenance from him. This was the tone that was set for decisions of unmarried cohabitation for many years.

However, it is important to understand that families divide roles according to gender. In this gendered division of labour, women often become economically dependent on their husbands. This is as true for unmarried cohabitation as well. A woman may give up her career opportunities for the companionship and responsibility of caring for the home and family; or, a woman may have taken up domestic responsibilities from the beginning of the relationship, and therefore at the time of dissolution, her employment aspects may be poor as she is not equipped for the job market. It is not uncommon to hear of such experiences of women. Though a case of the USA, *Marvin v Marvin* is a leading example. The parties started living together with the understanding that they would combine their efforts and earnings, shortly after which the female partner gave up her lucrative career as a singer and entertainer in order to devote her complete time to her partner as his homemaker and companion.

This is a story of many unmarried couples who live together. Therefore, within the context of such a social reality, courts in India as well, started giving a broad interpretation to Section 125 of the Code of Criminal Procedure. The provision aims to further social justice and has social functions to fulfil. Therefore, the courts have now

broadened the scope of application of this provision and if the woman succeeds in proving that she and the man have lived together as husband and wife, the court will presume that they are a legally wedded couple and make an order for maintenance in her favour. This approach was adopted in *Dwarka Prasad Satpathy v Bidyut Dixit*.

Unmarried cohabitations have been held to be as good as marriages. Therefore, it is also essential to provide for maintenance to female partners living in unmarried cohabitation as otherwise, men may enjoy the advantages of a de facto marriage, without undertaking the duties and obligations that arise out of such commitments, as was observed in *Chanmuniya v. Virendra Singh Khushwaha*. Not providing maintenance to the female partner would lead to taking away her individual dignity and discarding the principle of social justice enshrined in the Constitution. The test of broad interpretation of the term 'wife' to include even those cases where a man and woman have lived together as husband and wife for a reasonably long period of time without requiring a strict proof of marriage is therefore a positive step towards ensuring socio-economic equality in the country.

The judiciary has also further expanded the maintenance jurisprudence by harmonizing rival claims and thus, furthering justice. Though strictly not unmarried cohabitation, but a set of cases observed in India are where an unmarried woman cohabits with a married man, with or without the knowledge of his marriage. Such relationships are known as When a woman starts living with a man without the knowledge of his marriage, she is already at an inferior position. In a state that recognizes monogamy, her relationship is not recognized under the law. Moreover, if she is economically dependent on her partner, her position is worsened. Therefore, the courts in such cases must do a social context adjudication as opposed to adopting a merely adversarial approach. Judges have been sensitive to the position of the woman and have used this provision to empower the female partner, as was observed in the leading case of *Badshah v Urmila Badshah & Anr.* and have time and again used the tool of social context judging. As Menon (2013) describes social context judging is essentially the application of equality jurisprudence as evolved by Parliament. It aims at reading the law so as to achieve justice. Section 125 of the Code of Criminal Procedure is available to wives who are unable to maintain themselves and their husbands who have sufficient means neglect or refuse to maintain them. Therefore, when a woman who is economically dependent on her partner enters into a marriage like relationship without knowledge of his prior marriage, depriving her of maintenance due to a formal reading of the law will not lead to justice, though it may lead to certainty and

predictability. In unequal relationships that come up for adjudication before the court, judges must analyse the social context in which issues need to be considered; policy goals underlying the laws and the social impact of alternative choices available to the courts (Menon, 2013, p. 57). A-contextual judging will lead to social disadvantages and prejudice or social ostracism through denial of benefits. Fairness, equality, legislative history, shifts in public policies are tools that can be used to justify contextual judging. Social context judging also helps to break down prejudices and ensure justice where unequal parties are pitted in adversarial proceedings against each other. However, this approach will only be adopted by the courts when the female partner enters the relationship without knowledge of the marriage. Her knowledge of the first marriage will act as an embargo.

The right of a woman to maintenance needs to be located within the constitutional paradigm of ensuring social justice and substantive equality. It reflects a social obligation upon the economically stronger partner (Agnes, 2009). In 2008, the High Court of Delhi in the case of *Aruna Pramod Shah v Union of India* had interpreted the term 'relationship in nature of marriage' used in the PWDVA, 2005 to mean a woman living in a common law marriage as well as a mistress. However, the policy of the State is to promote monogamy. Therefore, though such women who enter into cohabitation with a man with the knowledge that he is married may be financially dependent on their partner, within the realm of family law, that relationship may not get a valid recognition as doing so otherwise may amount to fostering concubinage. Besides social context judging, the courts have also statutorily offered maintenance to the female cohabiting partner if the legally wedded wife dies during the subsistence of such relationship, even though the former was aware of the marriage. This approach has been recently adopted by some courts in India in matters of disbursement of social benefits such as pension of the male partner on his death. As was held in the case of *Malarkodi Malar v Chief Internal Audit Officer* a woman who lives with a married man as his wife, though his first legally wedded wife is alive, will be given the status of deemed wife on the death of the first wife and entitled to the benefit.

7. Discussion and conclusion

Unmarried cohabitation is slowly becoming a social reality in India. It is therefore, important to recognise not just the emotional and social paradigms of such relationships, but also their economic consequences. An analysis of the litigation on unmarried

cohabitation in India shows that although there has not been much demand for settlement of property between cohabitants, whether bought before or during the relationship, there has been demand for maintenance by the female partner as her economic right. Maintenance under the PWDVA, is in addition to the maintenance under Section 125 Code of Criminal Procedure and the courts also have the power to set off claims when made under both laws. Though the PWDVA, 2005 recognises this right for a woman when she has suffered domestic violence from her intimate partner, there is also a need to amend Section 125 Code of Criminal Procedure so as to make the remedy statutory and definite, instead of leaving it on the discretion of judges.

The Malimath Committee, which had been set up in 2003 to look into criminal reforms in the country, had recommended the need for amendment of Section 125 Code of Criminal Procedure to address the economic needs of those women who had been duped into staying as de facto wives of men who were already married. In this context, it was suggested to give the term 'wife' the broadest possible interpretation. However, the provision must incorporate unmarried cohabitation by itself as a class of social relationships that are entitled to maintenance.

Since it is important to analyse the impact of giving legal equality to women of different social status, such an amendment will not give absolute right of maintenance to female unmarried cohabitant partners. In order to efficiently apply the law, and prevent its misuse, the fact of unmarried cohabitation as understood by the law will have to be strictly established. Moreover, the earning capacity of the woman as well as her partner will have to be assessed. The remedy should be provided if the female partner is not economically stronger in the relationship and she is unable to maintain that standard of living upon separation which she was used to during the relationship. Evidence with respect to income, expenditure and standard of living will help in determining the quantum of maintenance. Maintenance orders under Section 125 Code of Criminal procedure as presently applicable are subject to change upon the change in financial status of the wife. Even in cases of unmarried cohabitation, the court will have the power to alter or rescind the amount of maintenance when new information pertaining to the female partner's earnings or financial support come to light.

The purpose of maintenance laws is to ensure the dignity of women. This is a fundamental constitutional tenet. Providing maintenance to female partners in unmarried cohabitation with adequate safeguards will facilitate in achieving this mandate.

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