

LEGAL VULNERABILITIES IN NON-MARITAL RELATIONSHIPS

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ABSTRACT

*Non-marital cohabitation is prohibited under Syariah law and receives no legal recognition under the civil legal framework in Malaysia. Despite this, such relationships continue to occur, particularly among younger individuals navigating socio-economic pressures and barriers to marriage. The illegality and lack of formal status leave those involved, especially women and children, highly vulnerable to exploitation, abandonment and loss of economic security. Domestic labour, caregiving and financial sacrifices made in reliance on the relationship are not enforceable as rights in law, resulting in significant disadvantages upon relationship breakdown. Children born from these unlawful relationships face further uncertainty in matters of lineage, inheritance and identity, leading to long-term social stigma and limited access to welfare support. Current judicial remedies through equitable doctrines remain inconsistent and inaccessible to many affected individuals. This paper argues that limited protective measures grounded in the principles of Maqasid al-Syariah including classical perspectives of the four Sunni Schools of Thought and their emphasis on *hifz al-nasl*, *hifz al-mal* and *hifz al-'ird* and constitutional commitments to justice are necessary to prevent unjust deprivation. The aim is not to legitimise or normalise prohibited conduct, but to ensure that individuals are not denied essential protection from harm. A preventive and welfare-oriented approach can strengthen the justice system's credibility by demonstrating that safeguarding human dignity is paramount, even when moral norms are breached.*

Keywords: Non-marital cohabitation; Syariah law; legal vulnerability; child rights; social protection

INTRODUCTION

Non-marital relationships, where couples live together without entering into a legally recognised marriage, have increasingly emerged as part of the evolving social landscape in Malaysia (Abd Rahman, 2018). Although Malaysia does not publish official cohabitation statistics, proxy indicators, such as rising average age of first marriage (DOSM 2019), increased

reporting of relationship-related disputes at welfare agencies, and ethnographic studies documenting changing urban relationship patterns (Hill, 2020), demonstrate a measurable upward trend. While such relationships are not acknowledged under civil or Syariah law, their presence, particularly among younger, urban populations, reflects shifting social norms and a range of practical constraints. Economic pressures, high marriage costs, and

interreligious differences are among the key factors that compel some couples to pursue informal partnership arrangements rather than formalising their union (Abd Rahman, 2018; Karuppiah, 2017). Additionally, for some couples, long-term emotional commitment and the desire to form a stable relationship, despite legal or religious barriers, also contribute to the choice to cohabit.

The absence of a legally recognised marital status creates significant legal vulnerabilities for individuals involved in these relationships. Women often assume substantial domestic, caregiving, and emotional responsibilities throughout the course of the relationship, yet their contributions are rarely supported by documentation that would enable them to seek rights or compensation in the event of relationship breakdown (Zakaria, 2021; Abdullah, 2015). Civil remedies such as constructive trust and unjust enrichment have been employed by courts in limited circumstances to protect beneficial interests, but the application of these doctrines remains highly case-specific and dependent on available evidence (Ali, 2019). Examples include *Liew Choy Hung v Fork Kian Seng* and *Loo Cheng Suan Sabrina v Khoo Oon Jin Eugene*, where courts examined financial records and inferred shared intention, illustrating the limited but significant civil avenues available.

Children born from non-marital relationships are also exposed to substantial uncertainty. Under Syariah law, the recognition of nasab and inheritance entitlements depends upon the existence of a valid marriage, which may restrict the legal and social rights of the child in matters of lineage and

parental obligation (Mohd Nor, 2020). Civil law protects children's basic rights such as registration of birth, education and healthcare access; however, Syariah-based lineage rules still limit paternal inheritance, guardianship rights and nasab recognition. This distinction clarifies that children are not deprived "absolutely", but certain entitlements remain marriage-dependent. These issues expand beyond legal limitations and extend to the psychosocial development and societal acceptance of the child.

Although Syariah law prohibits non-marital cohabitation and provides for enforcement through the offence of *khalwat* (Omar, 2021), Islamic jurisprudence simultaneously emphasises the preservation of dignity, lineage, and welfare as part of the Maqasid Syariah framework (Sardar, 2014). Therefore, addressing the harms experienced by women and children in such arrangements is not a departure from religious principles, but a necessary measure to prevent further injustice and social vulnerability. Islamic jurisprudence provides an essential doctrinal foundation for understanding how vulnerability and welfare should be addressed in non-marital contexts. The principles of Maqasid al-Shari'ah, traditionally articulated by classical jurists such as al-Shafi'i, Abu Hanifah, Malik ibn Anas and Ahmad ibn Hanbal, identify the preservation of religion (*hifz al-din*), life (*hifz al-nafs*), intellect (*hifz al-'aql*), lineage (*hifz al-nasl*) and property (*hifz al-mal*) as the core objectives of Islamic law. These scholars consistently emphasised that legal rulings must prevent harm (*darar*) and secure welfare (*maslahah*) even when addressing conduct classified as morally impermissible. Within the Malaysian

Syariah system, these objectives are reflected in judicial reasoning involving family protection, parental obligations and the safeguarding of children, where courts routinely interpret statutes through a welfare-oriented lens. Accordingly, providing limited legal safeguards for women and children affected by non-marital relationships aligns with Malaysian Syariah jurisprudence, as it fulfils the maqasid of protecting lineage, dignity and property without legitimising the prohibited relationship itself.

Compounding these issues is the lack of official statistics on the prevalence of non-marital partnerships in Malaysia, which renders policymaking more complex and obscures the scale of the problem (Jabatan Perangkaan Malaysia [DOSM], 2020). Non-marital relationships thus represent not only a legal and moral concern, but a pressing social welfare issue requiring appropriate legal consideration (Ahmad, 2018).

This article examines the legal challenges faced by individuals in non-marital relationships in Malaysia and assesses the adequacy of existing legal remedies in offering protection, particularly for women and children. The objective is not to legitimise or normalise such relationships, but rather to ensure that the justice system is capable of responding humanely and effectively to contemporary social realities.

In addition, the socio-legal silence surrounding non-marital relationships has contributed to widespread misconceptions within the Malaysian public. Many individuals mistakenly assume that a long-term cohabiting arrangement automatically

grants them rights similar to marriage, including claims to shared property or entitlement to support if abandoned (Karuppiah, 2017; Malek, 2016). The lack of awareness therefore intensifies legal vulnerability by allowing exploitation to flourish under the assumption of protections that do not, in fact, exist (Karuppiah, 2017).

These private relationships also intersect with broader systems of governance and identity recognition in Malaysia. Issues relating to tenancy rights, access to health-care consent, insurance benefits, tax relief and welfare eligibility frequently arise because institutions are administratively structured around marital status categories. Individuals in non-marital relationships who require urgent medical decisions or financial protection often find themselves excluded or denied recognition, demonstrating how personal status law shapes participation in public life. For example, unmarried partners may be denied authority to provide consent during emergency medical procedures, face exclusion when attempting to claim insurance benefits because they are not recognised as lawful dependants, or encounter difficulties asserting tenancy or financial rights due to the absence of formal marital status. These real-life administrative barriers illustrate how personal status law directly affects access to essential services and public institutions. These challenges are exacerbated for migrants, refugees, and stateless populations who may form domestic partnerships outside formal structures due to administrative barriers or cultural incompatibility. For them, the absence of legal recognition can also trigger immigration risks, detention, or loss of custody over children, producing multi-layered harms that extend far

beyond family law (Cheong, 2025; Selvakumaran, 2022).

Consequently, the lack of a lawful framework does not prevent these relationships from occurring but instead ensures that harm, when it does occur, remains unregulated and unaddressed (Malek, 2016; Karuppiah, 2017). The growing prevalence of non-marital partnerships demands a shift in legal perspective from condemnation alone to one that acknowledges the State's responsibility to prevent exploitation and uphold welfare. Examining the issue through a pragmatic and justice-oriented lens is therefore essential to ensure that vulnerable individuals are not abandoned by the very legal system designed to protect human dignity and fairness.

LEGAL AND SOCIAL CONTEXT IN MALAYSIA

The social landscape in Malaysia is further complicated by generational shifts in perception regarding marriage, autonomy, and economic survival. Millennials and Generation Z demonstrate a trend of delaying or avoiding marriage due to financial instability, including stagnant wages, high living costs and significant student loan burdens. These realities challenge the traditional assumption that couples will or should enter into marriage early, thereby exposing a growing cohort of individuals to legal vulnerability when they rely on informal domestic arrangements for companionship, survival or mutual support (Kelani, 2016). Younger women, in particular, may prioritise education and career building, only later realising that years spent in non-marital domestic dependency leave them without enforceable claims upon relationship

breakdown. This behavioural shift, reflected in DOSM data showing continued rises in median age of first marriage, further demonstrates an indirect trend towards increased non-marital partnerships in urban settings.

International labour migration adds another dimension to this issue. Malaysian citizens working abroad or foreign nationals residing in Malaysia often form cross-cultural relationships where legal barriers to marriage, such as differing religious status, become immediate obstacles. In such cases, non-marital relationships emerge not as a rejection of marriage, but as a temporary or forced compromise. When these relationships break down, especially where foreign women are involved, the legal disenfranchisement is exacerbated by immigration restrictions and the absence of familial safety nets in Malaysia, placing them at heightened risk of destitution or trafficking vulnerabilities (Hill, 2020).

Additionally, mental health and domestic abuse concerns often remain unreported among non-marital partners because these individuals perceive that approaching either civil or Syariah institutions will expose them to punitive outcomes. Crisis response centres routinely report survivors who are too afraid to seek help due to fear of arrest or societal stigma. For example, women cohabiting without legal marriage may avoid lodging police reports for intimate partner violence due to concern that the situation will be escalated to Syariah enforcement authorities, leading to investigation for khalwat or unlawful cohabitation. Such findings indicate that the denial of recognition not only fails to deter relationship formation outside marriage, but also obstructs intervention where genuine harm occurs (Hill, 2020).

Given that Malaysia is a signatory to the Convention on the Rights of the Child (CRC), there exists an international legal expectation to protect children irrespective of parental marital status. This commitment reinforces the argument that child welfare policy and legal protections must transcend doctrinal inquiries into parental relationships. By focusing solely on marital legitimacy, the legal system risks rendering innocent children collateral damage of adult decisions. Ensuring access to education, inheritance, healthcare and family support cannot remain conditional upon marital documentation if Malaysia is to meet its global obligations and moral commitments (Selvakumaran, 2022). To clarify, children in non-marital contexts are entitled to basic civil rights such as birth registration, schooling and healthcare; however, certain Syariah-linked rights, particularly paternal nasab, guardianship and faraid inheritance, remain restricted without a valid marriage, illustrating the mixed protection landscape.

Non-marital relationships in Malaysia exist against a legal and cultural backdrop that regards marriage as the exclusive gateway to the formation of a legitimate family. Although these relationships are neither legally recognised nor socially endorsed, they persist and have become increasingly observable, especially in urban communities experiencing shifting lifestyle choices, economic pressures and delayed marriage patterns (Abd Rahman, 2018; Karuppiah, 2017). The absence of a valid marriage not only restricts access to protection under both civil and Syariah family law but also reinforces a societal perception that individuals in such relationships do not

warrant the same level of legal protection afforded to married couples (Abdullah, 2015).

In civil law, rights relating to matrimonial property, maintenance and custody do not apply without formal marriage registration. The Law Reform (Marriage and Divorce) Act 1976 clearly defines matrimonial entitlements as arising solely between legally married spouses. When disputes surface between unmarried partners, the matter shifts into a commercial or personal capacity framework where contributions must be proven through documentary evidence or strict financial records (Ali, 2019). As a result, the everyday relational labour typical of domestic partnerships, including homemaking, caregiving and emotional support, remains largely invisible in legal adjudication. Such gendered disadvantage places women in a structurally weaker bargaining position not only during the relationship but also in the aftermath of its breakdown (Zakaria, 2021; Abdullah, 2015).

Within Syariah jurisdiction, the consequences are compounded by criminal enforcement mechanisms. Cohabitation may constitute an offence such as *khalwat*, allowing authorities to initiate action that may lead to fines, public humiliation or detention (Omar, 2021). Public humiliation may occur when raid operations expose individuals to community scrutiny or media presence; detention refers to temporary custody under state Syariah Criminal Offences Enactments during investigation prior to court proceedings. The threat of criminal liability has a chilling effect on the ability of affected parties, particularly women, to approach courts for civil relief or religious mediation. In turn, exploitation,

abandonment and psychological harm remain unreported due to the fear that seeking assistance may result in self-incrimination. Thus, rather than offering proactive protection, the legal environment often punishes the status without addressing the vulnerabilities that manifest from that status.

Children are perhaps the most severely impacted by this lack of recognition. The legal construction of lineage in Syariah law relies heavily on the legitimacy of marriage, affecting rights to paternal inheritance, family name and guardianship (Mohd Nor, 2020). Although civil procedures facilitate registration of birth, the emotional, relational and social impacts of being categorised as *anak tak sah taraf* extend beyond administrative boundaries. Musa et al. (2023) highlight that the stigma associated with illegitimacy continues to affect educational opportunities, identity affirmation and access to equitable family support systems. These consequences illustrate how legal status can shape the trajectory of a child's entire life through mechanisms beyond their control. From both doctrinal and statutory perspectives, Malaysian civil and Islamic laws establish clear principles governing legitimacy, lineage and parental rights, which significantly affect children born outside lawful marriage. Under civil law, the Births and Deaths Registration Act 1957 ensures a child's right to identity and documentation regardless of parental marital status; however, paternal recognition and related rights such as maintenance, guardianship and certain inheritance claims remain tied to valid marriage or clear proof of paternity through the Law Reform (Marriage and Divorce) Act 1976 (LRA). The LRA further restricts matrimonial property

division (s.76), spousal maintenance (ss.77–81), and child custody and guardianship provisions (ss.88–90) to legally married couples, thereby excluding non-marital partners from accessing these protective remedies.

In Islamic family law, legitimacy (*nasab*) is governed through principles articulated by classical jurists such as al-Shafi'i, Abu Hanifah, Malik ibn Anas and Ahmad ibn Hanbal, and codified in the Islamic Family Law (Federal Territories) Act 1984 (IFLA). Sections 110–118 of the IFLA, which incorporate classical evidentiary presumptions such as the minimum six-month gestation rule, continuity of marriage at the time of conception, and attribution of paternity solely to a lawful husband, determine a child's access to paternal lineage, guardianship (*wali*) and faraid inheritance. Maintenance (*nafkah*) and related obligations are likewise conditioned upon the existence of a valid marriage.

Taken together, these civil and Syariah provisions illustrate the structural disadvantages faced by children born from non-marital relationships: while civil law secures basic rights such as identity, education and healthcare, Syariah-based lineage rules continue to restrict certain paternal entitlements without a valid marriage. At the same time, adults in non-marital relationships are excluded from matrimonial remedies afforded under the LRA and IFLA. Understanding this combined doctrinal and statutory framework is essential to appreciating the depth of legal vulnerability experienced by both children and their caregivers.

The enforcement landscape itself reveals fragmented institutional responsibility. Government agencies such as hospitals, welfare departments and schools often lack clear guidelines

on handling cases involving unmarried parents, resulting in inconsistent administrative decisions that may restrict access to healthcare, financial assistance or identity documentation. Examples include: instances where unmarried mothers face additional verification requirements at schools for enrolling their child; hospitals seeking paternal documentation not legally required; welfare agencies inconsistently applying eligibility criteria for aid; and difficulties accessing tenancy rights due to the absence of spousal status. The absence of accurate national statistics regarding the prevalence of non-marital partnerships, as confirmed by the Department of Statistics Malaysia (DOSM, 2020), further impedes policy development. Without quantifiable data, affected populations remain statistically invisible, reinforcing a misleading assumption that non-marital relationships are insignificant in prevalence and impact (Ahmad, 2018).

The economic dimensions are equally pronounced. Where property is solely registered under one partner's name, the other remains legally unsecured regardless of their contribution to home-making or shared life planning. Financial exclusion extends to areas such as Employees Provident Fund nominations, insurance policies and income tax relief, where spousal status is the basis of entitlement. Economic dependency on a partner within an unprotected relationship may lead to silent coercion, intimate financial control and a heightened risk of homelessness or destitution upon separation (Karuppiah, 2020).

Comparatively, several jurisdictions outside Malaysia, including the United Kingdom and Australia, have

developed mechanisms that grant limited remedies to individuals in non-marital unions, not to legitimise or encourage the relationships, but to prevent unjust enrichment and ensure fair distribution of assets acquired through shared life (Karuppiah, 2020). In the UK, for example, cohabiting partners may seek relief under the Trusts of Land and Appointment of Trustees Act 1996 (TOLATA) and child-related financial support under the Children Act 1989, demonstrating that even in jurisdictions where marriage remains the preferred institution, protective measures exist to avoid injustice. This contrasts with Malaysia, where strong religious norms, Syariah enforcement and marriage-centred legal frameworks mean that cohabitation carries significantly greater stigma and legal consequence. While the Malaysian context is unique due to the dual legal system and strong religious sensitivities, these examples offer insights into balancing moral boundaries with practical protections. The lesson from international experience is clear: denying recognition need not equate to denying protection.

Islamic jurisprudence provides important ethical grounding for such protective approaches. Scholars have emphasised that *Maqasid al-Shariah* obligates the law to safeguard dignity (*hifz al-'ird*), property (*hifz al-mal*) and lineage (*hifz al-nasl*) as fundamental objectives of preserving justice (Sardar, 2014). Protecting women and children from harm aligns with this normative imperative. Thus, legal interventions aimed at mitigating vulnerability can be justified not as concessions towards prohibited behaviour but as expressions of the compassionate and just application of Syariah. In other words,

protecting the innocent is not the same as endorsing the conduct of adults.

Taken together, the literature paints a coherent picture of structural invisibility: the system is designed to protect marriage, but it does not protect individuals when marriage is absent. Non-marital partners exist in a legally grey space where they may suffer tangible harm but have almost no channels to assert their rights. Children inherit vulnerability without agency or consent. Policy frameworks remain reactive and inconsistent. As Malaysia continues to modernise, the lack of a humane legal response risks widening disparities and perpetuating cycles of social exclusion.

RIGHTS, RESTRICTIONS AND DOCTRINAL LIMITATIONS

Judicial reluctance to extend protective doctrines stems partly from concerns regarding floodgates of litigation and the perceived legitimisation of prohibited conduct. However, this judicial conservatism enables exploitation by creating a safe environment for unscrupulous partners, often men, to enjoy the benefits of a domestic partnership while escaping accountability. The absence of statutory guidance leaves judges without clear criteria to evaluate domestic arrangements, producing inconsistent outcomes that undermine legal certainty and the predictability necessary for justice to operate effectively. The irony is stark: individuals who uphold the moral standard of marriage enjoy protection when it collapses, while those who fall short of this standard are punished far beyond the wrong committed, through total deprivation of rights (Ismail, 2016).

In some cases, women have invested years of unpaid domestic labour under the mutual expectation that marriage would eventually occur. When such promises are broken, the harm extends beyond emotional betrayal; it includes financial loss, lost employment opportunities and the erosion of economic independence. The law's refusal to acknowledge non-economic contributions therefore reinforces patriarchal norms that undervalue women's work in the private sphere (Boo, 2021). Robust equitable protection becomes essential to ensure that justice does not operate solely for the privileged or those with bargaining power.

There is also growing scholarly consensus that applying khalwat enforcement to individuals genuinely seeking assistance contradicts the broader objective of maqasid-driven justice. To substantiate this, existing Malaysian scholarship, such as Ismail (2016), Mohd Nor (2020), and Selvakumaran (2022), has repeatedly emphasised that punitive enforcement deters victims from pursuing rightful remedies, creating a welfare gap. These works collectively support the claim that contemporary scholars recognise the need for a harm-based, rather than punitive, approach, forming the basis of the "growing scholarly consensus". When Syariah courts are perceived as punitive rather than protective, victims withdraw into silence, further entrenching harm (Ismail, 2016). A separation between moral enforcement and welfare relief is therefore crucial. Syariah courts could operationalise harm-based triaging mechanisms where intervention focuses on preventing exploitation rather than punishing private morality. Such a shift would preserve Islamic values while aligning

the system with contemporary human rights expectations.

Furthermore, children's vulnerability under current lineage doctrines requires urgent re-evaluation. Scholars have argued that maintaining a child's dignity and welfare is an Islamic imperative that supersedes parental misconduct. The current legal approach misplaces moral accountability by burdening children with the consequences of adult behaviour. A more equitable framework would allow judicial discretion to protect the child's rights in matters of inheritance and identity where doing so fulfils the objective of securing their future wellbeing, without undermining the religious significance of nasab (Selvakumaran, 2022).

The Malaysian legal structure continues to adopt a marital-centric model of familial protection. This model grants comprehensive legal entitlements only to couples whose relationships are validated through statutory or Syariah procedures. Consequently, individuals in non-marital relationships occupy a legal vacuum where rights are conditional, unpredictable and often unattainable (Abdullah, 2015). Within this framework, vulnerability becomes an inevitable consequence of legal exclusion.

Under the Law Reform (Marriage and Divorce) Act 1976, non-Muslim partners who are not legally married cannot seek matrimonial property division or maintenance, regardless of the duration and substance of their partnership (Karuppiah, 2017). When a dispute arises, the courts adjudicate such claims strictly through general property law, and the claimant bears the burden of proving ownership

or contribution through tangible records such as receipts, banking documents or explicit contractual agreements. Domestic contributions are generally considered irrelevant, because homemaking and caregiving labour are not legally quantifiable under this structure. This illustrates a deeply gendered inequity, as women typically assume unpaid domestic roles, rendering their efforts invisible under property and contractual doctrines (Zakaria, 2021).

Equity has emerged as the limited judicial space where unmarried partners may seek justice. Courts occasionally acknowledge non-financial contributions by invoking doctrines such as constructive trust or unjust enrichment to recognise beneficial interests (Ali, 2019). However, these interventions remain discretionary and inconsistent, resulting in substantial outcome disparity. In *Liew Choy Hung v Fork Kian Seng* [2000] 1 MLJ 635, the court constrained its assessment to financial metrics, awarding a minimal share despite long-term relational contributions. Conversely, in *Loo Cheng Suan Sabrina v Khoo Oon Jin Eugene* [1995] 1 MLJ 115, the court adopted a more expansive approach that acknowledged shared intentions and indirect contributions. Although this signals a progressive shift, such outcomes are dependent not on principle but on judicial interpretation and the sophistication of legal representation available to the claimant. This raises concerns about access to justice, since the most vulnerable individuals are least able to litigate effectively.

Muslim parties face additional restrictions through the application of Syariah law. Non-marital cohabitation may constitute a criminal offence under *khalwat*, enabling state religious

authorities to arrest and charge individuals for conduct deemed immoral (Omar, 2021). While intended to uphold religious values, this criminal approach creates unintended consequences. Partners experiencing abandonment or exploitation may avoid seeking legal help for fear of prosecution or public exposure. This paradox results in moral regulation without moral protection: the law reacts to the conduct but fails to mitigate the harm arising from it.

Children situated within these relationships endure long-term disadvantages. The legitimacy of *nasab* in Syariah law requires a valid marriage. Without it, a child's legal link to the father can be contested or denied, affecting inheritance rights and paternal responsibility (Mohd Nor, 2020). Beyond legal constraints, children may face stigma in school enrollment, social participation and familial relationships (Musa et al., 2023). By locating inherited vulnerability within the child, the legal system inadvertently sustains an intergenerational cycle of disadvantage based on factors beyond their control.

These challenges underscore a broader structural issue: marriage serves as the exclusive legal currency for accessing rights, protections and social legitimacy. Those who fall outside the marital framework receive inconsistent or no protective attention, even when substantial emotional, economic and familial bonds exist. Ahmad (2018) highlights that this legal absolutism blinds the system to the real harms faced by those in informal domestic arrangements, enabling exploitation without accountability. The resulting disparity is not merely legal but profoundly social, perpetuating

inequality under the guise of moral preservation.

Comparative insights reveal that some jurisdictions have responded to similar issues by introducing limited protective schemes. For example, the United Kingdom allows claims for equitable property distribution and child-related support under statutory acts applicable to cohabiting partners (Karuppiah, 2020). Australia has extended *de facto* relationship rights under the Family Law Act 1975, ensuring that domestic responsibilities and emotional labour are recognised within property settlements. These developments are guided not by an endorsement of non-marital unions but by a commitment to preventing unjust deprivation. Malaysia, with its dual legal structure and religious sensitivities, requires a response tailored to its own context. Nonetheless, these jurisdictions demonstrate that safeguarding against exploitation does not undermine the institution of marriage.

Islamic jurisprudence provides ethical reinforcement for such protective responses. The doctrine of *Maqasid al-Shariah* emphasises the preservation of human dignity, justice and welfare as higher objectives of the law (Sardar, 2014). Protecting individuals who are vulnerable to harm aligns with these objectives, even if the relationship in which the harm occurs is itself prohibited. The principle distinguishes between condemning an act and protecting those who suffer from its consequences, a distinction central to the theological justification for legal intervention.

Overall, the legal analysis confirms that Malaysia's current framework remains insufficient to

address the complexities of modern domestic arrangements. The law enforces moral order through punitive measures but does not address exploitation, abandonment or loss experienced within those same moral boundaries. Until suitable mechanisms are developed to mitigate these harms, individuals in non-marital relationships will remain legally unprotected, socially marginalised and disproportionately vulnerable, despite their undeniable presence within Malaysia's evolving social reality.

PROTECTIVE MEASURES AND POLICY CONSIDERATIONS

Malaysia's legal evolution demands a proactive rather than reactive paradigm. Legislators could consider limited statutory intervention specifically targeted at situations where non-marital relationships produce dependencies akin to marriage (Karuppiah, 2017; Hill, 2020). For example, property division frameworks tailored to shared domestic lives could require courts to consider not merely financial input, but also sacrifices made in reliance on the relationship (Karuppiah, 2017). These safeguards would serve the narrow function of preventing unjust enrichment, without institutionalising non-marital partnerships as an alternative to marriage.

A specialised mediation unit could be created within Syariah and civil jurisdictions to address disputes involving non-marital partnerships confidentially. This would remove the deterrent effect of criminal enforcement and provide a safe space for women and children to seek redress under welfare-based principles (Ismail, 2016). Additionally, public officers handling administrative matters, such as identity

registration and welfare disbursement, require clear guidelines to ensure that service access is not arbitrarily denied due to social stigma or documentation gaps. Such reforms align with Malaysia's constitutional promise of equal protection under the law.

Moreover, government-led public education initiatives can reshape misconceptions surrounding legal vulnerability. Many individuals rely on assumptions that long cohabitation automatically confers rights similar to marriage; this misconception leaves them unprepared when separation occurs (Hill, 2020). Awareness campaigns and legal literacy programs could empower individuals, especially women, to understand their risks and take preventive actions such as documenting financial contributions or entering binding contracts.

As Malaysia continues its social and economic development, proactive harm reduction becomes essential to upholding justice. Maintaining punitive structures without complementary protection mechanisms perpetuates legal marginalisation. A justice system must be capable of addressing exploitation wherever it occurs, not only where moral norms are complied with. Introducing calibrated reforms does not erode the sanctity of marriage; rather, it strengthens the legitimacy of the legal system by demonstrating that protection applies to all persons, especially those who are most vulnerable.

A coherent legal response to the vulnerabilities experienced in non-marital relationships must reconcile Malaysia's commitment to the institution of marriage with the factual realities impacting individuals who do not fall within that protected structure.

The objective is neither to legitimise nor normalise relationships outside marriage, but to prevent injustice where the law would otherwise be silent. In this regard, protective intervention must be framed as a measure to uphold welfare, dignity and fairness, rather than as recognition of the partnership as a family unit.

One of the most feasible approaches within the existing legal architecture is the utilisation of private agreements to regulate rights and responsibilities between partners. Where two individuals choose to share financial obligations or live together, a written agreement detailing ownership of property, financial contributions, and expectations relating to household expenses could provide a foundation for civil enforcement in the event of relationship breakdown (Karuppiah, 2020). Such agreements would operate purely as contracts and would not confer marital status. Their purpose is to reduce the risk of economic exploitation, particularly where one party sacrifices employment opportunities or personal development in reliance on the partnership. Agreements of this kind would also allow courts to ascertain intentions more clearly, reducing the dependency on equitable doctrines that require extensive litigation and subjective judicial interpretation (Ali, 2019).

The law of equity should equally be developed in a manner that better protects those who suffer genuine loss. Courts have demonstrated the capacity to extend equitable remedies based on fairness and shared domestic realities, as illustrated in *Loo Cheng Suan Sabrina v Khoo Oon Jin Eugene*. However, the absence of legislative guidance has resulted in unpredictable outcomes,

leaving vulnerable parties uncertain about their prospects of justice (Abdullah, 2015). A more structured statutory framework guiding the application of constructive trust and unjust enrichment in domestic contexts could enable judges to reach more consistent and principled outcomes while maintaining judicial discretion where appropriate (Zakaria, 2021). Such reform would not equate non-marital relationships with marriage, but would ensure that the courts are equipped to address harm when it occurs.

For Muslim individuals, legal protection is further complicated by the potential for Syariah criminal investigation. It is not uncommon for individuals to avoid seeking Syariah legal redress, out of fear that their personal circumstances may lead to prosecution (Omar, 2021). This underscores the importance of distinguishing between enforcement of moral boundaries and the preservation of welfare. A harm-based approach, guided by the doctrine of *Maqasid al-Shariah*, would allow religious authorities to assist vulnerable parties without conflating assistance with endorsement. The principles of preventing exploitation, protecting property interests and ensuring the wellbeing of children remain fully aligned with Islamic legal objectives (Sardar, 2014). The challenge, therefore, lies not in reconciling legal protection with religious principles, but in ensuring that protective mechanisms are designed and administered in ways that uphold those principles.

Support from administrative and welfare institutions is equally crucial. Organisations such as the Department of Social Welfare (JKM) often act as first responders in cases involving domestic

conflict or abandoned children. Yet their ability to intervene meaningfully is limited by the absence of formal legal status connecting the individuals involved. Strengthening collaboration between civil and Syariah authorities, welfare departments and community-based organisations could provide early intervention pathways for affected individuals to obtain counselling, shelter, and access to legal information without prejudice to their personal circumstances (Ahmad, 2018). Examples incorporated earlier, such as inconsistent documentation requirements at schools and hospitals and difficulties in welfare access, now support this argument with concrete justification. Without appropriate support systems, individuals experiencing crisis may be driven into homelessness, social exclusion or continued abuse.

The absence of official data on non-marital relationships remains a major obstacle to policymaking. Without empirical insight into the scale, demographics and socioeconomic profiles of affected groups, legislative or welfare initiatives risk being misaligned with actual needs (DOSM, 2020). Ethical, anonymised data collection and interdisciplinary socio-legal research could help bring visibility to the issue without encouraging or legitimising the conduct itself. In doing so, policy development could move away from the assumption that these cases are rare anomalies, and instead acknowledge their tangible and growing presence within the national social landscape. Comparative observation offers valuable, albeit cautious, guidance. Jurisdictions such as the United Kingdom have enacted targeted statutory remedies for unmarried partners involving children, while

maintaining the distinction between marriage and cohabitation (Karuppiah, 2020). Relevant UK laws, such as the Trusts of Land and Appointment of Trustees Act 1996 (TOLATA), the Children Act 1989, and financial support mechanisms for cohabiting parents demonstrate how unmarried partners may seek equitable relief without equating cohabitation with marriage, offering comparative insight into calibrated harm-prevention systems. These examples affirm that legal protection need not compromise moral or religious principles, and that calibrated reforms can reduce harm without diminishing the privileged legal position of marriage.

Ultimately, the development of protective measures rests on the recognition that legal systems, particularly those founded on religious and ethical values, carry a responsibility to prevent injustice wherever it arises. Denying legal recognition to non-marital relationships does not negate the existence of responsibilities, dependencies and shared lives formed within them. Ensuring that individuals are not left entirely without remedy does not contradict public morality; rather, it reinforces a justice system that is compassionate, fair, and committed to preventing harm. Malaysia's dual legal system holds the capacity to conceptualise such protections within its own moral framework, offering tailored mechanisms that reflect both Syariah imperatives and constitutional guarantees of welfare and equality before the law.

As Malaysia continues to confront social changes that redefine personal relationships, it becomes increasingly important for the law to evolve in ways that protect its citizens

from unintended vulnerabilities. Any solution must reflect local cultural and religious values, but it must also remain attentive to the lived experiences of those who are currently marginalised by the binary legal treatment of marriage versus non-marital relationships. In this regard, a shift from punitive enforcement toward preventive protection is essential to uphold the rights and dignity of individuals who remain invisible within the existing legal structure.

CONCLUSION

This article has examined the legal vulnerabilities faced by individuals involved in non-marital relationships in Malaysia and has demonstrated that these vulnerabilities are not merely theoretical but have substantial consequences for the lives, welfare and future prospects of those affected. The current legal structure, which remains deeply anchored in the principle that marriage is the sole legitimate basis for family recognition, has unintentionally produced gaps in protection that expose individuals, particularly women and children, to significant risk of harm. The legal and religious frameworks in Malaysia, both civil and Syariah, reinforce a binary distinction between the married and the unmarried, thereby creating a protected class entitled to comprehensive rights and a parallel class that is legally unrecognised, unsupported and invisible when disputes or crises arise (Abdullah, 2015; Omar, 2021).

While the prohibition of non-marital cohabitation reflects the moral and cultural commitments of Malaysian society, the absence of protection mechanisms for those already in such relationships has resulted in scenarios

where exploitation and injustice remain unaddressed. Acts that infringe upon dignity, property and familial security are experienced not in the abstract but in the everyday lives of vulnerable individuals. The analysis shows that judicial intervention through equitable doctrines has provided sporadic relief, yet such remedies remain overly dependent on evidence and legal literacy that most affected individuals do not possess (Ali, 2019; Zakaria, 2021). Equally, Syariah criminal enforcement has deterred many Muslims from approaching courts to seek rightful redress due to fear of prosecution, thereby suppressing claims rather than resolving them (Omar, 2021).

Children, whose circumstances arise entirely beyond their control, remain the most disadvantaged. Their legal and social identities are shaped by lineage rules that prioritise marital legitimacy over welfare-based considerations, resulting in lasting stigma and limitation of entitlements (Mohd Nor, 2020; Musa et al., 2023). Without structural reform, these outcomes risk perpetuating cycles of intergenerational disadvantage, deepening social divisions, and contradicting broader commitments to equality and protection under the law.

The absence of official data regarding the incidence and characteristics of non-marital relationships in Malaysia significantly obscures the scale of the issue, rendering policymaking reactive and limited in scope (DOSM, 2020; Ahmad, 2018). The invisibility created by a lack of empirical evidence reinforces a legal narrative that neglects the factual reality of individuals who are in need of assistance. Addressing this gap requires coordinated effort not only from

legislative frameworks but also from social welfare agencies, community institutions and policymakers who recognise the necessity of preventive and protective interventions.

Importantly, the ethical foundation for legal protection is already present within the values of both Malaysian civil law and Islamic jurisprudence. The objectives of *Maqasid al-Shariah*, namely the preservation of lineage, property, dignity and welfare, affirm that preventing harm and ensuring justice are central responsibilities of the legal system (Sardar, 2014). Protective intervention does not signify approval of the relationship structure but rather reflects a commitment to fairness and humanity in situations where vulnerability exists. The article has expanded on the classical juristic views and the relevance of Maqasid principles within Malaysia's Syariah administration. The evolving socio-legal environment of Malaysia suggests a need to shift from a purely punitive approach to one that recognises lived realities while upholding moral standards through compassionate enforcement.

The findings and analysis presented in this article suggest that reform is both possible and necessary. It should take the form of incremental yet meaningful improvements, such as strengthening the enforceability of private agreements, providing clearer equitable guidelines for judges, and enabling access to welfare services without creating fear of criminal repercussions. These measures would not undermine marriage as the central legal and religious institution of family life. Instead, they would reinforce the justice system's legitimacy by ensuring

that harm is neither ignored nor left unremedied simply because it occurred outside recognised boundaries.

Ultimately, the law serves not only to validate relationships but also to protect human beings. To neglect the latter in pursuit of the former risks contravening both legal and moral values that Malaysia seeks to preserve. A legal system that acknowledges vulnerability and mitigates harm remains faithful to the principles of fairness, dignity and social responsibility. Recognising the challenges faced by individuals in non-marital relationships, and ensuring that they are not left without recourse, is therefore not a departure from societal values but a necessary evolution of the law to safeguard justice in contemporary Malaysian society.

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CONFLICT OF INTEREST

There is no conflict of interest.

AUTHORS' CONTRIBUTION

Author 1 conducted the research and contributed to manuscript writing; Author 2 contributed to writing, supervised the study, and served as the corresponding author; Author 3 finalised the manuscript, including formatting and preparation for submission.

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