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# AN EXAMINATION OF THE LEGAL POSITION OF COHABITATION UNDER THE UTTARAKHAND UNIFORM CIVIL CODE: A CRITIQUE CONSIDERING CULTURAL ETHOS AND TRADITIONAL ROOTS

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Adv. Mayank Raj Vijay Kumar Sharma, Maharashtra & Goa Bar Council

## Introduction

Marriage in India has never really been anything but a private relationship between two people. Marriage has been regarded formally as a sacred institution because of the influences of religion, tradition, culture, and even mere social expectations surrounding marriage. While it can also be considered as just an obligation (hence a *sanskara*), and fundamentally to create family and social order, in the western world marriage is often thought of as simply a contract subject to fairly simple form of dissolution. Surely, for many marrying is a social expectation, however, as we noted in this discussion it is more than that, it is also about carrying traditions and societal recognition of family, a continuity of societal obligations relating to tradition, maintaining continuity in our communities. In this context, Uttarakhand Uniform Civil Code, 2024 (UCC), which formally recognizing and regulates 'live-in' relationships would seem to pose some serious legal and moral dilemmas.<sup>1</sup> While the Code purports to uphold the rights and interests of women and children and implements protection from exploitation; formalizing and recognizing live-in relationship as an institution in a matter of protection would produce a significant rupture in marriage and family which Indians have traditionally related to family. While it may appear progressive on the surface, the law undermines the continuity of what binds the connective tissue of Indian society, on a structural level that goes far beyond legality. The present essay will discuss in depth the legal recognition of live-in relationships in the Uttarakhand UCC by exploring why it should either not be given legal status or regulated at all in the cultural framework of Indian society.

It is argued that legal recognition of live-ins creates ambiguity regarding the core notion of

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<sup>1</sup> The Uttarakhand Uniform Civil Code, 2024 (Draft Bill), Uttarakhand Legislative Assembly, s 3.

marriage, is detrimental to cultural values and is an imposition of Western individualistic notions on a collectivist society with historical ties to responsibilities to family.

### **Cultural/historical context: The sacredness of marriage in India**

In Hindu Philosophy, marriage is more than just the union of two people, it is a union of two families, binding them through not only legal marriage but also through religious rights. The Dharmashastras, Rig Veda and Manusmriti all indicate that marriage is a dharma towards society and the ancestors, because it ensures continuity of lineage and sacred rites.<sup>2 3</sup> According to J Duncan M Derrett, Religion, Law and the State in India, <sup>4</sup>there are several essential elements of marriage, including marriage is performed through the saptapadi's seven steps, recognized as an irrevocable contract, and intended to bind the partners spiritually and socially for life. In Islam, the gendered terminology may infer separateness; nonetheless, marriage (nikah) implies a contract that embodies both moral responsibility and spiritual/religious responsibilities.<sup>5</sup> The marriage contract represents an important reality which also signifies social stability in many nations. Marriage, in the same way, forms part of the sacrament among Christians. Marriage in all Indian communities is not just a preference or choice, it is also a social duty explicit in potentially long-term obligations. Conversely, live-ins have no ritual, no social sanction and no permanence instead they are driven by personal impulses rather than parental, family or wider community obligations. State legitimization of live-ins, in Uttarakhand for example, was not just moving away from Indian traditions; it was the culturalisation of a Western model, which elevates autonomy above obligation to the community. Autonomy must prevail to destroy civilisational continuity, weakening moral foundations of Indian family systems.

### **The Changing Nature of Live-In Relationships in Indian Judicial Discourse**

Judicial tolerance vs judicial recognition Historically, Indian courts have accepted live-in relationships while simultaneously refusing to understand these relationships are a form of marriage.

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<sup>2</sup> The Laws of Manu (trans G Bühler, The Laws of Manu (Sacred Books of the East, Vol 25, 1886) ch 9, v 101.

<sup>3</sup> Rig Veda, Bk 10, Hymn 85.

<sup>4</sup> J Duncan M Derrett, Religion, Law and the State in India (OUP 1968) 25-30

<sup>5</sup> Werner F Menski, Hindu Law: Beyond Tradition and Modernity (OUP 2003) 145., Asaf AA Fyzee, Outlines of Muhammadan Law (OUP 2008) ch 3.

Just an example:

1. Badri Prasad v. Dy. Director of Consolidation (1978):<sup>6</sup> The supreme court presumed marriage as a result of cohabiting for 50 years. Important here is the fact that the court preferred to presume marriage, not to cavalierly describe the parties as living just an arrangement.
2. Payal Katara v. Superintendent Nari Niketan (2002): <sup>7</sup>The Court approved the idea that adults can "live together", but it stopped short of acknowledging the relationship as a social validity.
3. Indra Sarma v. V.K.V. Sarma (2013): <sup>8</sup>The Court expressed sympathy for women in live-ins but cautioned not to conflate such relationships with marriages, and that they cannot be equated with them.

### **Domestic Violence Act and Expansion**

The Protection of Women from Domestic Violence Act, 2005 has given legal meaning and status to relationships “in the nature of marriage”. <sup>9</sup>Courts began to recognize the fact that this new section of law entitled maintenance and protection to live-in relationships. As with all protective legislation, it brought primarily protections, but not a completely new status to live-in relationships even when it brought protective status to those live-in relationships.

Therefore, live-in relationships in India were regarded in “the grey zone” for the most part of its jurisprudential existence, as something allowed by the law but disapproved by the social order. Thus, when we note that the Uttarakhand UCC has shifted from judicial caution towards legislative recognition, and is suggesting incorporation into the social order as recognized, in a completely radical way, practitioners will undoubtedly note that, appropriately or not, it is a legal construct whose moral foundation, rooted in Indian traditions and modes of moral reasoning, will disrupt and upset twenty-first century traditions and institutions of marriage.

### **The Uttarakhand Uniform Civil Code: Provisions on Live-In Relationships**

The UCC part about live-in relationships is sufficiently radical by recognizing live-in

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<sup>6</sup> Badri Prasad v Dy Director of Consolidation (1978) 3 SCC 527.

<sup>7</sup> Payal Katara v Superintendent, Nari Niketan, Agra 2002 SCC OnLine All 498

<sup>8</sup> Indra Sarma v VKV Sarma (2013) 15 SCC 755

<sup>9</sup> The Protection of Women from Domestic Violence Act 2005, s 2(f)

relationships as relationships involving cohabitation for any duration of time.<sup>10</sup> The provisions were as follows:

1. **Mandatory Registration:** Couples must register the live-in relationship within a period of one month or are subject to fines or imprisonment.
2. **Verification by Authorities:** Verification shall be made by local officials with the police authorized to verify them.
3. **Rights of Women and Children:** woman may claim maintenance; children are considered legitimate with inheritance etc.
4. **Procedure for Termination:** If a live-in relationship is to be terminated, notice is required to be tendered to authorities.

These apologies serve to demonstrate an institutional strategy of securing vulnerable women and vulnerable children, whilst not necessarily endorsing their similarity with or recognition of marriage. In all events, the primary consistent message was to avoid accepting anything that might erode the sanctity of marriage, which the Courts repeatedly noted.

While these measures are intended to safeguard partners, they in effect institutionalize live-in relationships, placing them on par with marriage. Critics argue that this blurs the line between the sanctity of marriage and the informality of live-ins. What was once a social aberration is now given state sanction, creating a competing model of family formation. In practice, this undermines the very idea of marriage as a lifelong, sacred commitment, reducing it to one among many lifestyle options.

## **Cultural and Moral Objections to Legalization of Live-In Relationships**

### **1. Erosion of the Sanctity of Marriage**

In India, marriage is a matter of duty for society, as well as an individual choice. Acknowledging live ins as legally valid creates a precedent that encourages living together instead of marrying. If cohabitation leads to equal rights without the duties of marriage, then marriage could lose value. The younger generation among us might choose living together

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<sup>10</sup> The Uttarakhand Uniform Civil Code, 2024 (Draft Bill), Uttarakhand Legislative Assembly, ss 3-10

because it is easier and may naturally control a potentially unhappy marriage, eroding a cultural concept that has argued for thousands of years that marriage is a sacred promise made in meaningful exchange.

## **2. Disruption of Family Cohesion + Community Cohesion**

Indian families rely, and have long relied and thrived, on joint family systems, kinship, and their responsibilities between generations. Live ins, by their nature, are about personal autonomy, rather than family obligations. If the state endorses this concept of autonomous living together while sharing, it weakens the bond of family cohesion, community cohesion, and creates a society of transitory experience rather than collectively anchored experience. We would naturally see all of this in diminished family unity, ill effectually lazy social bonds, and isolated older family members.

## **3. Model of Imitation**

Legal ramifications of cohabitating partners qualified for support by the state stem from western societies under attack by a modern era of divorce, pre-marital living together, or somewhat just immorality over personal happiness. In India, there respectively remains hope in still defined family. The situation in Uttarakhand, as in the last objection outlined, presents an extensive copying of a separate culture without the conscious embedding or tacit recognition of cultural ethos. While two values may have some nominal similarities, cohabitative custom is no substitute for marriage. What may be termed wise project of societal advancement might, in fact, advance dis-engagement and disfunction rather than an advancement of family cohabitation and/or communion.

## **4. Potential for Exploitation and Misuse**

Although mandatory registration may involve inconveniences through bureaucracy, many couples may still avoid registration altogether, leaving local government and law enforcement with significant discretion in enforcement of registration laws, creating avoidable opportunities for exploitation. Additionally, rather than empowering women, live-ins may pose a higher risk for abandonment and a lack of certainty; they are not accompanied by the formal quality associated with a marriage. Indeed, in a rural area, being socially identified as a "live-in" can leave women doubly marginalized, with some legal rights and reduced to social scapegoating.

## **Constitutional and Legal Critique.**

Proponents argue that reliance in the UCC supports Articles 14 and 21 to advance equality and dignity, criticisms point out the following<sup>11</sup>:

Article 21 (Right to Life and Personal Liberty): While live-ins may be construed as privacy, taking undergirding legal interpretations to be equal to marriage, actually diminishes the concept of marriage as a serious culture-oriented concept in a historical society of social morality (within the limits of possibility of an individual's self focus). Most critical, rights of individuals can never be absolute, the rights of an orderly society are paramount .

Article 25 (Freedom of Religion): The UCC disregards the religious teachings as expressed in the legal complexities of family and marriage by reverting to a notion of culture, homogenizing all citizens within a cultural group, and by ignoring plural tradition that forms the basis of the protections provided to an individual under Indian secularism. For instance, in Hindu law vivaha is a sacrament; in

In *Puttaswamy v. Union of India* (2017), the Court emphasized autonomy, but autonomy is not absolute. <sup>12</sup>It must be weighed against societal values and the collective good. Legalizing live-ins elevates individual autonomy above social morality, contrary to Indian constitutional philosophy which balances both. The UCC, therefore, risks being struck down as disproportionate state action that misunderstands the Indian ethos of family life.

## **Social Context of Live-Ins – Legal Implications in Uttarakhand**

1. Moral Imperatives: To legitimise by the state necessarily implies moral endorsement. Young people may adolescent begin to see the institution as unnecessary and at the same morally degrading to their sense of social reliability. This type of social disruption and instability pulls on not just the individuals but the children and elder dependents who relied on marriage as a stabilising institution.

2. Gender Disparities: Although framed as protection for women live-ins are often more disadvantageous for women than men in a patriarchal society. Abandoned women have legal recourse; society does not provide women with legal recourse. The possibility of legal recourse

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<sup>11</sup> Constitution of India, arts 14, 21

<sup>12</sup> *Justice KS Puttaswamy (Retd) v Union of India* (2017) 10 SCC 1

for an abandoned member may be amended by their social stigma when attempting to amount a legal claim.

3. Rural/Urban Divide: In urban environments a culture of live-ins may be tolerated, this may be unthinkable in rural Uttarakhand. Rural live-ins may result in ostracism, conflict based on honour, demeaning social and indigenous sentiments. The law creates a tension between modern legal constructs and rural realities. The law generates a tension between modern legal artefacts and relative rural reality.

4. Intergenerational Impact: Children born of live-ins may have legal rights, but they may still face societal stigma, contradicting the claim that recognition removes discrimination. This shows the gap between legal formalism and social reality.

### **Critical Appraisal**

The UCC's recognition of live-in relationships represents a well-intentioned but misguided reform. Protecting women and children from exploitation is essential, but this does not require elevating live-ins to the status of marriage.

A more appropriate model would have been to provide protective remedies (maintenance, child legitimacy) without mandatory registration and institutional recognition instead, the UCC has given live-ins unwarranted acceptance, and as a repercussion hurt the cultural basis of Indian family law. It could have used existing legislation like the Domestic Violence Act or Maintenance statutes, without trampling marriage by establishing a competing institution.<sup>13</sup>

### **Conclusion**

Uttarakhand UCC is trailblazing, but not in a good way. By accepting live-in relationships, it reduces the value of marriage, dismisses India's cultural base, and brings in Western models that do not fit India's society. The intent to protect women and children is admirable but the way this interference makes normative traditional family systems and focuses on transient, individualistic arrangements, may not be beneficial. The intent to protect women and children is admirable but the way this interference makes normative traditional family systems and

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<sup>13</sup> The Protection of Women from Domestic Violence Act 2005., The Code of Criminal Procedure 1973, s 125

focuses on transient, individualistic arrangements, may not be beneficial.

India has strength through family, custom, and morals. Any legal reform should strike a balance to protect the vulnerable, while also protecting the same family foundations. In a best case scenario, live-in relationships deserve the minimum of amendments for protection, but to include them legitimatizes them and that is not fit for India, culturally or from within India's social practices.

Thus, Uttarakhand's decision to move to institutionalize live-in relationships should be seriously reconsidered. The state must understand that.