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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **LIVE-IN RELATIONSHIPS: A NEW TREND OF LOVE OR THE FOUNDATION OF A CRUMBLING SOCIETY?**

**AUTHORED BY - LIPSITA BASTIA**

## **ABSTRACT**

Love has always won in historical crises, and only when enamoured souls were losing hope under the burdens of societal and familial obligations, live-in relationships, or non-marital cohabitation has come to rescue. As usual, this new form of love is hearing a lot “nays” from the society. Communities all around the world, especially in India, where marriage is not a choice but an essential mandate of life, are frowning upon this new “trend”. But it also has supporters, some countries have supported through legislations and judgments, provided protection, rights and privileges to live in couples. This essay starts with the basic understanding of live in relationships, followed by why different generations are seeing it differently, the associated problems, society’s resistance, stance of the Indian judiciary and why is Indian legislation cautious of not disturbing the status quo in this matter, discusses on the inclusion of live-in relationships in Uttarakhand’s Uniform Civil Code, the paper concludes with an answer to the most pertinent question- is it so unacceptable to accept this new “trend”?

**KEYWORDS** - Live-in relationships, maintenance, cohabitation, marriage, legitimacy.

## **1. WHAT IS LIVE-IN RELATIONSHIP?**

Live in relationship or cohabitation without marriage is the new arrangement, often seen as alternative to traditional marriage, where two major consenting adults live together under one roof, sharing burdens and happiness with each other and living as a husband and wife, except that they are not. The couples living in such an arrangement are not married, therefore their relationship is not registered under any law in force. In short, nature of live in relationship is akin to nature of marriage,<sup>1</sup> just

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<sup>1</sup> *D. Velusamy v. D. Patchaiammal*, (2010) 10 SCC 469

without the rituals, registration, obligations, and provides a very quick way to escape or separation. To earn the badge of non-marital cohabitation, a relationship has to be-

- i. Both the individuals involved in the relationship have to be major and the relationship should be consensual.
- ii. Either of them should not have any pre-existing marital obligations.
- iii. They should have been staying together for a substantial period (it shall not be a walk in, walk out relationship<sup>2</sup> neither shall it be an one-night stand). They should be staying in a shared household sharing emotional and financial support. There must be sexual and intimate relationship as well.
- iv. They should have represented themselves as couple, akin to spouses as general public.
- v. The conduct of the parties and having children proves to be a strong evidence of commitment to each other in live in relationship even though there is absence of marriage which is the traditional confirmation of commitment.

## **1. WHY LIVE IN RELATIONSHIP ARE CHOSEN OFTEN?**

Live in relationship or non-marital cohabitation allows two individuals to stay together in shared household and allows to establish a relationship, where there are no archaic limitations or impositions. The individuals share their lives, financial burdens, emotional support, and they also fulfil their sexual desires. Many people see live in relationships as a better alternative to marriage, because individuals have liberty and equality, which is missing in traditional marriage system. This is an improvement for female partners, when compared to the traditional view of family that our society describes. One perspective shows live in relationships as a trial before one commits to another person his/her own life, love and trust. This must be the most wonderful to answer for many questions of “how would one have known that this would happen in future?” In a relationship, what matters most is compatibility and understanding between partners, and if they live under one roof, they will answer these questions better, and it has become essential to check these before a life time commitment of marriage considering the rising cases of divorce, the chaos that follows divorce, which in itself is a cumbersome legal process. Divorces may go smooth but hardly anything happens in the ideal way, so one party may contest another for child’s custody, alimony, maintenance or simply for the reason they do not want a separation. The proceedings of a nasty divorce also leave a serious impact not only

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<sup>2</sup> *Madan Mohan Singh v. Rajni Kant*, (2010) 9 SCC 209



on the individuals but also on the children.

These are just some of the reasons that make one believe that live in relationship is better than marriage. To support there are some more reasons, like in today's world of fast life, individuals don't want to be struck in rituals and obligations, this is no more an era where female serves the the male in a marriage. Education, economic security and independent decision making have change the world for better. Female are working to, they are more in need of a supportive partner, and essentially don't want a household where they are burdened with obligations and burdens of taking care of family only and serving their in-laws. Females also fear domestic violence and apprehend demand for dowries in a traditional marriage. Males too have their reasons not to opt for traditional marriage, like the pressure to financially support their family is no more bearable in this inflated economy, the society (emphasis on the fact that it doesn't indicate females, but the older generation or the parents) expects the male to bear the burden, even if the world now is edging towards gender equality. Male individuals are also left wanting as courts more often give custody of the child to mothers, who are believed to provide better emotional support. For instance, in a US census report, 2020, it was found that 65% of custody goes to mothers.<sup>3</sup> More often, women are incapable of bearing the financial burden, which is to be borne by the male partner, but they have restrictions on meeting their children. In another report by IZA World Labour, an inverse proportionate relationship was established between the granting of custodial rights and suicide rates of male individuals.<sup>4</sup> In India, the situations can't be very different when reasoning remains the same.

It also adds that marriage and divorce is more of an individual choice than of family's. Diverting from the conservatives' perspective, new generation is more conforming to the practice of sex outside marriage. Many individuals are finding marital discord appalling and prefer to marry late or not at all. Live in relationships are also a saviour to LGBT couples, when society is yet to embrace such relationships entirely and when legislation is yet to recognize their marriage, they can live their unique love in a live in arrangement. It is fair to note, considering the objections are made on religious basis, that Buddhism and Jainism do not object to couple staying under one roof without marriage as long it is done with good intent. For all the above plus points that live in relationship provides, such relationships are on roll in India.

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<sup>3</sup> US Census Bureau, "Custodial Mothers and Fathers and Their Child Support: 2017" (2020)

<sup>4</sup> Martin Halla, "Do Joint Custody Laws Improve Family Well Being?" IZA World of Labour (2015).

## 2. BUT THE SOCIETY OBJECTS, WHY?

Marriage has been and is considered the order of society, for control and peaceful existence. It's essential for genetic purity, social order, personal morality, it's what lays the foundations of families and clans. Two persons bonded in marriage are expected to commit their whole life to each other and the family they create from their bond, couples have an obligation to the families, to the elders and children, but this lacks in a live in relationship, when a couple escapes such obligations. In Hindu philosophy, life has been divided in four stages, the second stage particularly talks about marriage. Stage Grihastha<sup>5</sup> or the householder stage where people have gained knowledge and they start family, maintain a home. To start a family, marriage is highly prioritised. Scriptures further direct ways to make a marriage successful for a happy and peaceful life. Marriage holds a lot of importance, not only in Hinduism but also in other religions, which might not be so easy to quit.

Furthermore, the society looks down upon sex outside marriage, which shows "loose character", and more often the fire falls on female than it does on males. Males, in history, have been allowed to have harems or concubines, but it would be wrong to give the same status to non-marital cohabitation, because in live in relationships there is trust and fidelity, even though the easy escape shows the chances of fidelity are less. In India, cohabitation without marriage is often perceived as a western idea which aims to shake the very core of Indian society, morality and create chaos. Live in relationship, as per Indian society perception is nothing more than a stroll in and stroll out relationship where sexual desires are prioritised over love and affection, adhering to the fast life.

It's hard not to object when in absence of marriage, there will be issues regarding legitimacy of the child born in such a relationship, as it will be born out of wedlock. Also what will be the duties of partners to each other and the child, what will be the redefined duties, when parents are separated. Let's say a couple enter into a live in relationship, they have a child but after some years they separate and some more years hence they date other people and then marry and have children in their respective marriage, now there will be issues regarding custody of the child, who is to be considered legitimate, irrespective of the custody, what properties of the parents will go to the child, considering the children from their subsequent marriage will also be recipients. So, parents of this generation are apprehensive

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<sup>5</sup> What are the four stages of Hindu Life?. Hindu American Foundation. available at: <https://www.hinduamerican.org/blog/what-are-the-four-stages-of-hindu-life/> (Last visited on February 25, 2024)

of this new way of living, and they have narrowed it to sexual desires, and shared household without marriage, which is immoral.

Immorality concept creeps in not only in Hinduism but also in Christianity and Islam religion. Christian believes that live in relationship breaches ethical conditions and social morality. Substituting marriage which is a union of two soulmates, the relationships between human beings is nothing more but a system where functionality is embraced, sexual desires are fulfilled and sexual infidelity is encouraged. Jenkins<sup>6</sup> has noted that “*Sex without life long commitment violates inner reality of the act, it is wrong because unmarried people thereby engage in life uniting acts without life uniting intent.*” But, it’s ironical that Adam and Eve never married because there was no concept then, so they were the first live in couple. Similarly, in Islam, sex before marriage is condemned, its best depicted in the way the Sunni Muslims think Muta, which is a sexual agreement or pleasure marriage, as prostitution. Still they consider it as superior to live in relationships.

Another reason why marriage cannot be substituted with live in because human beings, especially females, which according to their natural behaviour, yearn for mutual commitment, emotional attachment, which often lacks in non-marital cohabitation. As there is a lack of commitment, often partners do not put enough effort, they escape the relationship on the first obstacle they face. Therefore, it was found out that couples in live in relationship reports higher level of satisfaction and happiness than married couples because of the freedom to choose the commitment level rather than letting the society and its pressure to decide important aspects of their life.<sup>7</sup> But regarding the longevity of the relationships, a study in the Journal of Marriage and Family, 2013<sup>8</sup> it was found out that the couples who cohabited together before marriage faced a higher chance of risk of divorce than those who did not live together under the same roof. So, it can be stated that while live in relationships ensures satisfaction and happiness, it doesn’t ensure better compatibility and longevity.

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<sup>6</sup> Gary Jenkins, *Cohabitation: A Biblical Perspective* (Grove Books Ltd., UK, 2002).

<sup>7</sup> Scott M. Stanley, Galena Kline Rhodes, et.al., “Sliding versus Deciding: Inertia and the Premarital Cohabitation Effect” 55 *Family Relations* 499-509 (2006)

<sup>8</sup> Wendy D. Manning and Jessica A. Cohen, “Premarital Cohabitation and Marital Dissolution: An Examination of Recent Marriages” 74 *Journal of Marriage and Family* 377-387 (2012).

### 3. WHAT DOES OUR LEGISLATION AND JUDICIARY SAY?

Some countries like Australia, Philippines, Chile, Ireland and Canada have embraced live-in relationships, and in these countries it needs to be registered just like traditional marriages. Australia defines de facto relationships as couples living together on a genuine domestic basis. Canada legally recognizes live-in relationships and allows cohabiters to enter into agreements regarding their rights and obligations. In Scotland, Scotland's Family Law Act 2006<sup>9</sup> legalized non-marital cohabitation for over 150,000 cohabiting couples. In the United States, cohabiters have similar rights and obligations as married couples, but they are not recognized as legal parents. In the United Kingdom, live-in partners have limited legal rights and are not considered "common law spouses." France has the Civil Solidarity Pact, which governs live-in relationships and allows adults to organize their common life. Live in relationship is outright illegal in countries where Sharia Law is in practice. In India, personal laws prevail in matters regarding marriage, divorce, succession, etc., so practices of other countries held no value other than persuasive value, which too is less, for Indian Legislation. Still, the judiciary in India has supported live in relationship and recognized the rights and stated the duties of parties involved in a cohabitation relationship. Till 2015 landmark case, live in relationship was not legally recognized. In *Lata Singh vs. State of UP, 2006*,<sup>10</sup> autonomy of individuals who are of major age, in living with another person of their own choice was recognized. Fast forward to 2010, in *Khushboo vs. Kanniammal*<sup>11</sup>, matter of individual choice and privacy was reinstated and ruled that any third party interference in such relationship violates personal liberty and right to life provide in article 21 of the Constitution of India. In *D. Velusamy vs. D. Patchaiammal*<sup>12</sup>, issue of maintenance live in relationship was raised, and the court laid the criteria (discussed before), like staying like husband and wife, adhering to which a relationship will be considered as a valid live in relationship and maintenance rights were granted to valid live in relationships. In 2013, *Indra Sarma vs. V.K.V Sarma*<sup>13</sup>, the honourable Supreme Court of India emphasised on the significant degree of commitment is to be considered while answering the question whether the particular live in relationship is akin to marriage, an important question as it will open the gates for maintenance. Spending time with one another, spending weekends or having intimate sexual relationship doesn't make a relationship akin to marriage.

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<sup>9</sup> Family Law (Scotland) Act, 2006, s. 25

<sup>10</sup> (2006) 5 SCC 475

<sup>11</sup> (2010) 5 SCC 600

<sup>12</sup> (2010) 10 SCC 469

<sup>13</sup> (2013) 15 SCC 755

In 2015, vulnerable position of women involved in relationships of cohabitation was realized, rights to maintenance, even if the couple is not married, was granted. Women could claim maintenance under Protection of Women from Domestic Violence Act, 2005. The Court recognised the principle of equitable distribution of property after separation. As the funds in such situations are usually result of efforts and compromises of both the individuals, and it will be unfair to vest all the interests in only one individual. Children born in such relationship are to be considered legitimate. In 2016, *Prakash & Ors. Vs. Phulavati & Ors.*<sup>14</sup>, question of property inheritance was raised and it was clarified that children born out of live in relationships are entitled to inherit property but only if it can be proved that the relationship was in nature of marriage, but otherwise the parents are free to give their properties to the child via other means but inheritance per se will not be allowed. In 2018 judgement of *Revanasiddappa vs. Mallikarjun*<sup>15</sup>, further solidified the legitimacy of the child born in live in relationships, a diversion from s. 112 of Indian Evidence Act, where marriage is the conclusive evidence to prove the legitimacy of the child.

As Judiciary has had a clear stance in support of live in relationship couples and the child born, except for certain limitations imposed on property rights, it can be rightfully said that live in relationship is often considered as immoral as per view of the society or a part thereof, but it's not a crime or a sin. Still why legislation is yet to see its support? Legislature being the democratic representative is reflecting the view of the Indian Society. The legislature cannot enforce something which people feel is outrageous. On analysis of members of current Lok Sabha<sup>16</sup> where members are elected directly, average of members is 57.5 years and the average age of Indian is 27.8 years so there is a disparity between the represented and the representatives. Therefore, it will be long till the new generation convinces the representative that live in relationship is not a taboo or goes against morality. It may also happen that with time when the present generation comes legislates or forms a major part of the society, there won't be a need of enactment of legislation. Frankly, there seems no need for a legislation now, as there is no legislation stating that live in relationship is prohibited. The help that is needed from legislation is to clarify certain issued that have been already raised by the judiciary like matter of custody, matter of maintenance, following the lines of amendment that increased the

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<sup>14</sup> (2016) 2 SCC 36

<sup>15</sup> 2023 SCC OnLine SC 1087

<sup>16</sup> Ages of lok Sabha members and the general population. The Ballot - Ages of Lok Sabha members and the general population, available at: <https://theballot.in/lok-sabha-ages/> (Last visited on 25<sup>th</sup> February 25, 2024)

scope of Code of Criminal Procedure, more specifically under section 125<sup>17</sup>, extending it to female live in partners. Then again, there are contracts that fulfil such needs. Like an agreement made between the live in partners which clarifies or answers of events that are to happened in future, for example, in case of separation, distribution of property, maintenance of female partner and child, if born in the relationship.

## **4. UTTARAKHAND'S UCC AND LIVE-IN RELATIONSHIPS**

In an interesting turn of events, Uttarakhand has managed to overcome all these shortcomings and come up with an Uniform Civil Code which addresses all the above mentioned questions. But many are not happy with the answers the Uttarakhand Government has provided.

### **5.1 Provisions**

In the Uniform Civil Code<sup>18</sup>, presented on 7<sup>th</sup> February, 2024 by the hon'ble Chief Minister of Uttarakhand, Shri Ranjan Prakash Desai, a whole part (Part-3) has been dedicated to live-in relationships. The code speaks of compulsory registration for live-in partners residing within the state or if they are residents of state but are living outside the territory of Uttarakhand under section 378. Live-in couples residing in Uttarakhand will have to submit a statement in a prescribed manner and format to a government appointed registrar, under section 381, sub-section (1), within whose jurisdiction they are residing. For those who are resident of Uttarakhand but are currently living outside the territory of Uttarakhand have to provide their statement to the registrar within whose jurisdiction the resident ordinarily resides. The registrar shall examine the statement, conduct a summary inquiry and may summon the partners for verification, especially when one of the partners is below 21 years of age, and additional information or evidence. The Registrar shall, then, within 30 days of receipt of statement may either refuse to register with stated reasons or issue a registration certificate, enter the registration in the prescribed registrar and inform the partners. During termination of live-in relationship, both or either of the partners may initiate the procedure by submitting a statement of termination in prescribed manner to the Registrar.

Grounds for refusal of registration has been stated in section 380- when partners are within the degrees

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<sup>17</sup> The Code of Criminal Procedure, s. 125

<sup>18</sup> The Uniform Civil Code, Uttarakhand, part. 3

of prohibited relationship as mentioned in section 3 (1)(d) except when permitted by customs and usages, only if those customs and usages are not against public policy and morality. Prohibited relations are laid down in a 37-element list for males under head “List-1”<sup>19</sup> and a 12-element list for females under “List-2”. Other grounds being if one of the person is married or in another live-in relationship, or if one of them is a minor or if consent is obtained by fraud, misrepresentation, undue influence, or coercion.

## 5.2. Protection

Two concerns have been answered in section 379 and 388 of the code. Section 379 states that any child of a live-in relationship shall be legitimate and s. 388 provides for maintenance of female live-in partner who has been “deserted” by her live-in partner. For any dispute related to maintenance she may approach the competent court with the jurisdiction over the place where they have last resided as a live-in couple and Chapter 5, Part-1 under the title of “Incidental Proceedings” dealing with maintenance will be applied with certain changes fit for live-in relationships. There are other safeguards incorporated, in s. 385-duties of Registrar, the registrar has the duty to inform police and the other partner if there is any suspicion of the live-in relationship comes under s. 380 or if the statement submitted is false. In case, either of the partners is below 18, the registrar has an additional duty to inform the parents of that person.

## 5.3. Punishments

The code has also prescribed certain punishments for non-compliance with s. 378 and 381 (dealing with registration). First, under s. 386, if the live-in couple has failed to submit the statement and the registrar either suo motu or on receiving a “**complaint or information**” shall issue to notice to comply within 30 days of receiving the notice. Section 387 prescribes punishments for live-in couples who have cohabited together for more than one month without registering, shall be convicted by a Judicial Magistrate and the punishment may be imprisonment extending upto 3 months and fine not exceeding ₹10,000/- or both. The punishment for stating false statements under section 381 believing it to be false, or withholding material information shall be punishable with imprisonment upto three months and/or fine not exceeding ₹25,000/-, and in case of non-compliance to the notice issued under section. 386 the live-in partners shall be punished with imprisonment not exceeding 6 months and/or fine not

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<sup>19</sup> The Uniform Civil Code, Uttarakhand, schedule 1

exceeding ₹25,000/-.

#### 5.4. Criticism

The code shall be applauded for protecting minors and women's interest, those who are entering a live-in relationship, by giving them tangible proof through registration. It has also pacified many parents' concerns. But the procedures and punishments prescribed are too pessimistic in nature, assuming that live-in relations are unable to work without the stringent measures and punishments. The mandatory registration has deprived the most valued feature of live-in relationships- autonomy. Registration will form the base of future transactions of the couple- from living as a tenant to having a child together. The punishments prescribed and the use of words “**complaint or information**” in section 386, the Uttarakhand government has made not registering a criminal offense. The procedure prescribed has been mostly criticised for breaching the privacy of the couples, forcing them to make their relationship public and formal. Unfortunately, the measures are making live-in relationships a new form of marriage.

The code has failed to provide protection to live-in couples, but has added gateways where they could be unnecessarily harassed<sup>20</sup>. The state has failed to foresee that these safeguards may very well be a way of moral policing or as “witch hunt” as has been described by *The Times of India*<sup>21</sup>. Furthermore, the provision providing maintenance to “deserted” female partners is ambiguous as there has been no discussion as to what is to be considered as “desertion” and the maintenance provided depicts our parochial society and its parochial approach of dealing with free adults, again bridging the difference between live-in relationships and marriage,<sup>22</sup> and burdening the male partners financially. Judging from the criticisms, this was not the approval the live-in couples required from the society.

### 5. Will it be too bad if we accept?

The truth is the parents of the current young generation, belongs to the generation which values families, life time commitment. They want to see their children well settled, for which the standard is

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<sup>20</sup> Varsha Sriram, “Against Right to Privacy, Tool to Harass’:Experts on UCC Regulating Live-Ins,” *The Quint*, Feb. 13, 2024

<sup>21</sup> Tanmayee Tyagi, “Uniform Civil Code (UCC): New reality, uncertain future for live in couples in Uttarakhand”, *The Times of India*, Feb. 7, 2024

<sup>22</sup> Apurva Vishwanath, “Uttarakhand Uniform Civil Code: Registration of live-ins, jail term raise questions of privacy & liberty,” *The India Express*, Feb. 8, 2024



a good job and house with white fence, children playing in the yard. The value of virginity has decreased over time, at least in the urban areas, bowing to the new ways of dating and courting. Individuals are staying together before marriage, and they do have sexual relations, sometimes their relationship ends up in marriage, sometimes in separation or sometimes they continue living in relations, as already discussed no third party has the right to interfere in affairs of such couples. To strengthen the point, right to privacy has been added to article 21<sup>23</sup> by *K.S Puttuswamy vs Union of India*<sup>24</sup>, autonomy and choice has always been there as fundamental rights provided to an individual. It's true that morality and societal norms came in the way but as per my view and statistics which show growing number of live in relationships, society has started accepting live in relationships. The concern has shifted from morality to safety, and it's natural concerning the lack of clarity in legislations regarding rights and privileges of individuals involved in such relationship. Furthermore, there has been incidents of crime like the infamous *Shraddha Murder Case*, has raised some more concerns. But let's face the truth, these problems are not unique or distinguishably attributed to live in relationships, the matters of divorce and custody are cumbersome legal procedure and unpredictable. Couples who are committed for life also have disputes and end up killing each other. Conclusion, that can be made is that couples have started opting for live in relationships, society in some regions is more accepting than in other regions, and it's always depended on the understanding of the person judging, it's true that in many areas people are still hesitant as shown in the movie "Luka Chuppi", but it's also my view that the revolution of acceptance will be gradual and natural and time will come when the live in relationships will have same number of supporters as that of traditional or even more than that of the later and it will not need protection from moral police. But after the latest introduction of UCC by Uttarakhand government, one more issue has been added to the list, that is what will be the most appropriate way of approval from legislation, balancing interests and safety of the parties on one side and respecting the privacy and autonomy of couples.

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<sup>23</sup> The Constitution of India, art. 21

<sup>24</sup> (2017) 10 SCC 1