

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 7 | Issue 6

2024

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Beyond Marriage: Uttarakhand UCC and the New Dynamics of Live-In Relationships

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ABSTRACT

The Uttarakhand Uniform Civil Code (UCC) proposes to equate live-in relationships with marriage, marking a significant development in India's legal landscape. In a country where marriage is traditionally revered as a sacred institution, this proposal introduces a complex and controversial shift. This paper critically examines the social, legal, and cultural ramifications of equating live-in relationships with marriage, arguing that such a move oversimplifies these distinct unions and poses potential legal challenges.

Historically, marriage in India has been deeply rooted in religious, cultural, and familial traditions, transcending a mere legal contract to represent a societal cornerstone. Live-in relationships, although gaining acceptance in urban areas due to modernization and judicial recognition, still face social stigma in much of India. The Supreme Court has acknowledged live-in relationships under specific conditions, emphasizing their legal distinction from marriage. However, Uttarakhand's UCC proposal mandates the registration of all live-in relationships, a legal step that risks blurring the lines between these two forms of union.

One of the key concerns is the infringement on personal autonomy, as the mandatory registration of live-in relationships may violate the right to privacy, previously upheld by the Supreme Court. By imposing state oversight, this law could undermine the freedom of individuals to define their own relationships. Moreover, the provision allowing only women to claim maintenance in live-in relationships raises issues of gender inequality, potentially reinforcing outdated gender roles and contravening constitutional guarantees of equality.

Equating live-in relationships with marriage also risks extending controversial marital privileges and exceptions, such as the marital rape exemption, to live-in partners, which could have detrimental legal and ethical consequences. This conflation disregards the distinct nature of live-in relationships, which are often chosen to avoid the formalities of marriage.

Keywords: UCC, Uniform Civil Code, Personal Laws, Uttarakhand, Live-in Relationship.

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I. INTRODUCTION

In recent years, the dynamics of personal relationships have undergone a significant transformation globally, with a notable shift in the perception and acceptance of live-in relationships. This change has been particularly pronounced in India, a country deeply rooted in traditional values where marriage is not merely a legal contract but a sacrosanct institution. The introduction of the Uniform Civil Code in Uttarakhand⁴, proposing to legally equate live-in relationships with marriage, represents a groundbreaking yet controversial shift in the Indian legal landscape. This paper aims to critically examine the ramifications of this paradigm shift. It delves into the complexities and legal nuances of equating these two distinct forms of union, arguing that such an equation oversimplifies the intricate socio-legal fabric of Indian society. By scrutinizing the legal, social, and cultural dimensions, this paper seeks to unravel why equating live-in relationships with marriage is not only legally challenging but also potentially detrimental to the very fabric of societal norms and individual rights in India.

II. HISTORICAL AND CULTURAL CONTEXT OF RELATIONSHIPS IN INDIA

(A) Traditional Indian Marriage:

In India, marriage is historically revered as a sacred institution, deeply interwoven with religious and cultural practices. The Dharmashastra texts, dating back centuries, designate marriage as one of the crucial *samskaras* (sacraments) for Hindus⁵, a view elaborated in P.V. Kane's "History of Dharmashastra" (1941). This perspective positions marriage not merely as a legal union but as a spiritual and moral contract.

Beyond the union of two individuals, marriage in India traditionally represents an alliance between families. Patricia Uberoi, in "Family, Kinship, and Marriage in India", explores how Indian marriages transcend individual choice, embedding themselves as a central element of the broader social fabric⁶. This collective dimension underscores the significance of marriage as more than a personal commitment, but as a societal cornerstone.

Reflecting India's cultural diversity, marriage customs vary substantially across different regions, castes, and communities. This diversity is vividly captured in "Marriage and Culture:

⁴Ishita Mishra, *Uttarakhand Tables Uniform Civil Code Bill amid Opposition Protest*, The Hindu, Feb. 6, 2024, <https://www.thehindu.com/news/national/other-states/uniform-civil-code-bill-tabled-in-uttarakhand-assembly/article67816803.ece> (last visited Feb 11, 2024).

⁵PV Kane, *Dharmashastracha Itihas Purvardha*, <http://archive.org/details/dharmashastra-itihas-vol-1> (last visited Feb 11, 2024).

⁶Pauline Kolenda, *Family, Kinship and Marriage in India*. Edited by Patricia Uberoi. *Oxford in India Readings in Sociology and Social Anthropology*. Delhi: Oxford University Press, 1993. x, 502 Pp. \$39.95., 53 J of Asian Stud 980 (1994), <https://read.dukeupress.edu/journal-of-asian-studies/article/53/3/980/338813> (last visited Feb 11, 2024).

Reflections from Tribal Societies of Arunachal Pradesh"⁷, highlighting the rich tapestry of marital traditions across the country.

(B) Evolution of Live-in Relationships:

The concept of live-in relationships, though relatively new in the Indian context, has gained visibility with increased urbanization and Western influence. Modern influences have gradually led to a broader acceptance of alternative forms of relationships, marking a shift from traditional norms.

The judiciary's recognition of live-in relationships is a critical development. Notably, the Supreme Court, in cases such as *Indra Sarma vs. V.K.V. Sarma*⁸ (2013), has recognized these relationships while also emphasizing their legal distinction from marriage, indicating an evolving legal perspective on personal relationships.

(C) Contrast with Western Norms:

Western societies typically approach relationships from an individualistic perspective, as discussed in "Individualism & Collectivism: Theory, Method, and Applications". In contrast, Indian society tends to emphasize collectivism, where family and societal approval play a significant role in shaping personal relationships.

Adapting Western legal concepts regarding personal relationships to the Indian context presents challenges. "Law and Social Transformation in India" delves into these complexities, highlighting the difficulties in integrating Western legal principles within a society that has distinct social and moral values.

(D) Societal Perception of Live-in Relationships:

The acceptance of live-in relationships varies significantly across India. While urban areas show a growing openness, rural and traditional communities often attach a significant stigma to such arrangements. "Living Together Unmarried in India" provides an in-depth look at the societal challenges and stigmas faced by couples in live-in relationships.

The portrayal of live-in relationships in Indian media and cinema significantly influences societal attitudes. "Bollywood and Globalization: Indian Popular Cinema, Nation, and Diaspora" examines how these portrayals reflect and shape public perceptions of such relationships.

⁷ Tamo Mibang & M. C. Behera, *Marriage and Culture: Reflections from Tribal Societies of Arunachal Pradesh* (2006).

⁸ AIR 2014 SC 309

III. ISSUES WITH MANDATORY REGISTRATION

In *Indra Sarma vs. V.K.V. Sarma*⁹ (2013), the Supreme Court acknowledged that not all live-in relationships are tantamount to marriages and recognized them under the Protection of Women from Domestic Violence Act, 2005¹⁰. However, the Court was careful to delineate that only relationships that bear a close resemblance to marriages, typically in terms of duration and societal recognition, fall within its ambit. The mandated registration of all live-in relationships under the new law fails to appreciate this subtle distinction, potentially leading to a legal conflation that undermines the Court's differentiated approach.

The criteria set by the Supreme Court in *D. Velusamy vs. D. Patchaiammal*¹¹ (2010) for a live-in relationship to be recognized under the law are not necessarily met simply through registration. The Court's ruling suggests that legal recognition comes with certain conditions reflective of the societal context of a marital relationship. Mandatory registration could therefore impose a marriage-like structure on relationships that do not meet these criteria, leading to a legal mischaracterization of the relationship's nature.

Upholding the freedom of choice, the Supreme Court in *S. Khushboo vs. Kanniammal & Anr*¹² (2010) ruled that adults have the right to live together without marriage, a right encompassed within the ambit of the right to life under Article 21 of the Constitution. Mandatory registration of live-in relationships could be seen as infringing upon this freedom by introducing state oversight where the Supreme Court has recognized autonomy.

The aforementioned cases collectively underscore a principle of non-interference in personal relationships that is at odds with mandatory registration. Such registration could be perceived as an encroachment upon the privacy of individuals, forcing them to officially record a private decision with the state, contrary to the spirit of the Supreme Court's recognition of personal liberties.

The Uttarakhand law's penal provisions for couples who do not register their live-in relationship could be seen as punitive measures that contravene the essence of the Supreme Court's rulings. These judgments have not imposed such legal obligations on couples, and the introduction of penalties could have a chilling effect on the exercise of personal freedoms.

The Supreme Court's judgments indicate a reluctance to unduly regulate personal relationships,

⁹ *Indra Sarma vs. V.K.V. Sarma* 2013 AIR SCW 6783

¹⁰ The Protection Of Women From Domestic Violence Act, 2005

¹¹ *D. Velusamy v. D. Patchaiammal*, (2010)10 SCC 469

¹² *S. Khushboo vs. Kanniammal & Anr* 2010 (5) SCC 600

a stance that the mandatory registration law does not seem to align with. The new law's requirement for the state to step into the realm of intimate relationships goes beyond the judiciary's careful and contextual recognition of live-in relationships.

The implementation of mandatory registration raises questions about the practicality of enforcing such personal laws and the state's capacity to adjudicate private relationships. The Supreme Court has not provided a mechanism for such enforcement in its judgments, suggesting a recognition of the difficulties involved.

In light of these Supreme Court rulings, the move to mandate registration of live-in relationships raises concerns about the potential overreach of legal norms into the private sphere. It reflects a tension between the autonomy of individuals to define their own relationships and the state's interest in regulating familial structures. The law in Uttarakhand, by not reflecting the nuanced understanding of the Supreme Court, may face significant legal challenges and criticisms for not upholding the principles of privacy, autonomy, and personal freedom as recognized by the judiciary.

IV. ISSUES WITH GENDER-SPECIFIC MAINTENANCE PROVISIONS

The provision that allows only women to claim maintenance in live-in relationships raises several legal questions, particularly concerning equality and gender bias.

The Constitution of India guarantees the right to equality under Article 14 and non-discrimination under Article 15. By allowing only women to claim maintenance, the law could be perceived as reinforcing traditional gender roles, which could be argued as discriminatory against men who may be in a vulnerable position. The Supreme Court in *Vishaka & Ors vs State of Rajasthan & Ors*¹³ (1997) emphasized the importance of gender equality in all spheres of life.

The concept of maintenance, historically understood within the context of marriage, has evolved. The Supreme Court in *Badshah vs Sou. Urmila Badshah Godse & Anr*¹⁴ (2014) recognized that the purpose of maintenance laws is to prevent destitution and vagrancy irrespective of gender. By extending this principle, maintenance in the context of live-in relationships could also be seen as a gender-neutral necessity.

Although the Domestic Violence Act provides protection and maintenance rights to women in live-in relationships, it has been argued that this could potentially create an imbalance if not

¹³ AIR 1997 SC 3011

¹⁴ 2014 (1) SCC 188

extended to men when needed. The act's provisions, while intended to protect women, could be seen as based on stereotypical gender roles, which contemporary legal interpretation seeks to move beyond.

Judicial interpretations of maintenance rights have been evolving. In *Chanmuniya vs Chanmuniya Virendra Kumar Singh Kushwaha & Anr*¹⁵ (2011), the Supreme Court broadened the interpretation of maintenance rights under Section 125 of the CrPC to include partners in a live-in relationship. Such interpretations could inform a more gender-neutral approach to maintenance rights.

The legislative intent behind maintenance laws has been to provide support for the economically weaker partner. However, as societal norms change and the concept of gender roles evolves, the law may need to reflect these changes to remain just and equitable, as discussed in "Rethinking Gender Equality in Indian Marital Laws"¹⁶.

Comparative law analysis shows that many jurisdictions provide maintenance rights without regard to gender. For example, in the UK, the Civil Partnership Act 2004¹⁷ and subsequent legislation have moved towards gender-neutral maintenance provisions. Such comparisons could be used to argue for a re-evaluation of the gender-specific maintenance provision in the Uttarakhand legislation.

The Supreme Court has consistently upheld the constitutional mandate for gender justice in various rulings. The gender-specific maintenance provision might be seen as a retrograde step when viewed against the progressive interpretation of gender justice by the judiciary.

V. IMPLICATIONS OF EQUATING LIVE-IN RELATIONSHIPS WITH MARRIAGE

Equating live-in relationships with marriage under the new legislation has significant legal implications, particularly concerning the contentious issue of the marital rape exception.

By equating live-in relationships with marriage, the law could inadvertently extend not only the privileges but also the exceptions of marriage to these relationships. This includes the marital rape exception, currently codified under Section 375 of the Indian Penal Code, which does not recognize forced intercourse within marriage as rape¹⁸.

The application of the marital rape exception to live-in relationships raises serious ethical and

¹⁵ 2011 (1) SCC 141

¹⁶ Archana Parashar, *Gender Inequality and Religious Personal Laws in India*, 14 *The Brown Journal of World Affairs* 103 (2008), <https://www.jstor.org/stable/24590717> (last visited Feb 11, 2024).

¹⁷ Civil Partnership Act 2004 c. 33

¹⁸ Section 375 (2), Indian Penal Code, 1860

legal concerns. It conflicts with the principles of individual autonomy and consent. Recognizing marital rape as a crime is crucial to upholding the rights to bodily integrity and personal autonomy, as argued various scholar and lawyers like Indira Jaising¹⁹.

The Indian judiciary has been moving towards a more progressive interpretation of laws related to personal relationships. In *Independent Thought vs Union of India*²⁰ (2017), the Supreme Court read down exception 2 to Section 375 of the IPC, holding that sexual intercourse with a girl below 18 years of age is rape, regardless of marital status. Extending the marital rape exception to live-in relationships could be a step back from this progressive trajectory.

Recognizing marital rape as a criminal offense is seen as essential for achieving gender justice. Extending the marital rape exception to live-in relationships perpetuates the notion of implied consent and undermines efforts to establish equality within intimate relationships, as discussed in "Gender Justice and Legal Pluralities" edited by Rachel Sieder²¹.

The marital rape exception has been critiqued for leaving women vulnerable to sexual abuse by their husbands. Applying this exception to live-in relationships could similarly expose women to such abuse, negating the protective intent of laws like the Protection of Women from Domestic Violence Act, 2005.

The extension of marital rape exceptions to live-in relationships must be examined for consistency with constitutional mandates, particularly the right to equality (Article 14) and the right to life and personal liberty (Article 21). This extension could be challenged for failing to uphold these fundamental rights.

The complexity of intimate relationships demands a nuanced legal understanding that respects individual rights and autonomy. The blanket application of marital laws, including exceptions, to live-in relationships overlooks this complexity and the distinct nature of these relationships.

VI. COLLAPSING THE “SECTION 69: FALSE PROMISE OF MARRIAGE”

The introduction of the *Bhartiya Nyaya Sahinta* by the central government, particularly Section 69²² which criminalizes sexual intercourse under a false promise of marriage, presents a complex legal scenario when considered in conjunction with the notion of equating live-in

¹⁹Shagun Suryam, *Marital Rape Judgment Highly Misogynistic, Problematic: Senior Advocate Indira Jaising*, Bar and Bench - Indian Legal news (2022), <https://www.barandbench.com/news/marital-rape-judgment-highly-misogynistic-problematic-indira-jaising> (last visited Feb 11, 2024).

²⁰ AIR 2017 SC 4904

²¹Gender Justice and Legal Pluralities: Latin American and African Perspectives, Routledge & CRC Press, <https://www.routledge.com/Gender-Justice-and-Legal-Pluralities-Latin-American-and-African-Perspectives/Sieder-McNeish/p/book/9781138934856> (last visited Feb 11, 2024).

²² Section 69, *Bhartiya Nyaya Sahinta* 2023

relationships with marriage.

If live-in relationships are legally equated with marriage, the provision in the *Bhartiya Nyaya Sahinta* that criminalizes sexual intercourse under a false promise of marriage may become redundant. In a legal framework where live-in relationships hold the same status as marriage, the premise of a "promise of marriage" loses its significance, as the relationship itself is already deemed equivalent to a marital union.

Indian courts have dealt with numerous cases involving sexual relationships under the promise of marriage. In cases like *Uday vs State of Karnataka*²³ (2003), the Supreme Court of India held that consent given under a false promise of marriage constitutes rape. However, if live-in relationships are treated as marriages, the differentiation between a promise of marriage and the actual cohabitation becomes blurred, potentially nullifying the need for such a provision.

The criminalization of sexual intercourse under a false promise of marriage is grounded in the notion of consent. By equating live-in relationships with marriage, the legal system would be recognizing a form of implied marital consent within these relationships, which could conflict with the principles underlying the criminalization of false promises of marriage.

The coexistence of a law that equates live-in relationships with marriage and a law that criminalizes sexual intercourse under a false promise of marriage could create a legal paradox. This could lead to confusion in the judicial system when adjudicating cases involving live-in relationships and promises of marriage.

The judiciary's role in interpreting these conflicting laws would be crucial. Courts would have to navigate the legislative intent behind both the *Bhartiya Nyaya Sahinta* and the laws equating live-in relationships with marriage to ensure that justice is served without contradicting legal principles.

The social and cultural context in India, where marriage is a deeply rooted institution, adds complexity to this issue. Equating live-in relationships with marriage while criminalizing sexual relationships under a false promise of marriage reflects the tension between traditional values and modern legal interpretations of intimate relationships.

To address these complexities, there is a need for clarity and consistency in the legal framework governing intimate relationships. Laws must be carefully drafted to reflect the realities of contemporary relationships while upholding principles of consent, autonomy, and justice.

²³ 2003 AIR SCW 1035

VII. SUGGESTION

To align with contemporary understandings of gender roles and equality, the law could benefit from adopting gender-neutral terminology such as "dependent" for maintenance claims. This shift would recognize that either partner, regardless of gender, could be in a position of economic dependence. The Supreme Court of India, in the spirit of progressive legal reform, has often endorsed such gender-neutral language to promote equality. For example, in the case of *National Legal Services Authority vs Union of India* (2014), the Court recognized the rights of transgender persons, underscoring the need for laws to adapt to a broader understanding of gender identity and roles.

By using terms like "dependent" instead of "woman" for maintenance entitlements, the law would acknowledge that anyone could require financial assistance due to the dynamics of their relationship. Such an approach would not only reflect the principles of equality and non-discrimination enshrined in Articles 14 and 15 of the Indian Constitution but also adhere to international human rights standards. It would also be consistent with the egalitarian ethos of the Indian judiciary, as reflected in progressive judgments that transcend traditional gender binaries. Adopting gender-neutral language would ensure the law is inclusive, fair, and representative of all individuals in a live-in relationship, thereby strengthening the legal framework's alignment with contemporary societal values and constitutional morality.
