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## **UCC AND RELATIONS BEYOND MARRIAGE: Exploring the Legal challenges of Live-In Relationships in India**

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|   |     |
|---|-----|
| 9. EXAMINING THE DICHOTOMOUS RELATIONSHIP BETWEEN UNIVERSALS AND PARTICULARS<br><i>Aditi Sharma</i>   | 205 |
| 10. FROM PIXELS TO PROSECUTION: Tackling Crime in the Immersive Realms of Metaverse<br><i>Moulika Sharma &amp; Sanvi Mathur</i>                                     | 220 |
| 11. REDEFINING HUMAN RIGHTS IN 21 <sup>ST</sup> CENTURY: A Search for New Universal Values<br><i>Vinay Kumar Kashyap &amp; Ajay Kumar Singh</i>                     | 253 |
| 12. CULTIVATING INEQUALITY: Judicial Approach in Defining Agricultural Income Under Income Tax<br><i>Girjesh Shukla &amp; Alok Kumar</i>                            | 274 |
| 13. ACCESSIBLE EDUCATION FOR PERSONS WITH DISABILITY: A Critical Appraisal in Light of the New Education Policy, 2020<br><i>Sachin Sharma &amp; Saheb Chowdhary</i> | 292 |
| 14. UCC AND RELATIONS BEYOND MARRIAGE: Exploring the Legal challenges of Live-In Relationships in India<br><i>Nalin Agnihotri &amp; Shyam Gandhi</i>                | 313 |

# UCC AND RELATIONS BEYOND MARRIAGE: Exploring the Legal Challenges of Live-In Relationships in India

*Nalin Agnihotri\* & Shyam Gandhi\*\**

[Abstract: The recent promulgation of the Uniform Civil Code (UCC) by the legislature of Uttarakhand posits, for the first time in India, a comprehensive legislation for regulating all social relationships, especially the regulation of live-in relationships. This paper, with the intent of analyzing the regulatory provisions of the UCC, attempts to explore the sociological connotations of live-in relationships and the judicial trajectory of recognition and meaning accorded to such relationships in the Indian community in contrast to the traditional institution of marriage. Initially, the paper delves into the sociological emergence and current proliferation of live-in relationships, recognizing the cultural shifts and the larger call for individualism within Indian society. Further, the paper analyzes the judicial trajectory on the understanding of live-in relationships, ranging from its inception in pleas for maintenance to the judiciary adjusting to societal changes and attitudes over time. The authors aim at contrasting the judicial findings and the connotation of live in relationships with the wider approach given by sociologist. Further, a comprehensive critique of the UCC's provisions regulating live-in relationships, conjointly assessing their congruence and deviations from both judicial interpretations and the sociological perspective is aimed by the authors. Ultimately, a sociological-legal perspective is taken by the authors, in the assessment of the potential legal ambiguities surrounding the enforcement of the Code's provisions, particularly regarding the mandatory registration requirements and the wide discretion granted to state authorities in overseeing live-in relationships, ultimately impacting individual autonomy, societal stigma, gender dynamics, and potentially leading to inconsistent and arbitrary application by the authorities.]

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# I

## Introduction

One of the foundational pillars of the Indian society is the institution of marriage.<sup>1</sup> This institution and its sacrosanct characterisation in India has been termed close-knitted and conservative on account of the external fascination of other cultures of the world. However, either due to an influx of western ideas<sup>2</sup> or owing to an unearthed notion of individualism<sup>3</sup> the practice of live-in relationships gaining sudden traction, stands as a testament to the country's evolving social landscape. Amid the shifting societal norms, the generational divergence in perceptions towards cohabitation outside the sanctity of marriage, scrutinizing the legal ramifications and societal implications tied to such relationships are greatly accelerating. This paper embarks on an exploration of live-in relationships from both sociological and judicial lenses, contrasting these modern unions with the age-old institution of marriage, as traditionally sanctified by cultural, religious, and legal sanctions. Shifting towards the judicial discussion on live-in-relationships, the authors find that it emanates from pleas of maintenance under the Nagarik Suraksha Sanhita, 2023 and the Hindu personal laws unfolding and leading to the 2005 Protection of Women from Domestic Violence Act.<sup>4</sup> The narrative unfolds the gradual shift towards legal recognition which culminates into differing stances indicated by a tussle between societal attitudes and the judicial hesitation to venture into the ambit of the legislature, especially on account of the latter's inaction.

The culmination of such a jurisprudence has recently led to a significant legislative milestone, being the enactment of the Uniform Civil Code of Uttarakhand, 2024 ('UCC').<sup>5</sup> The UCC introduced by Chief Minister Pushkar Singh Dhami received the nod from the Legislative Assembly of the State of Uttarakhand on February 7, 2024 and subsequently received the assent of President Droupadi Murmu. Marking Uttarakhand as the pioneer in formulating and implementing a uniform civil code, within the Indian state framework, the Code finds its roots from draft prepared by

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<sup>1</sup> Navneet Saini, *Marriage in the Modern Indian Society* 10(2) INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS (2022).

<sup>2</sup> Vinita Ghosh, *Perception of Youth towards Live-in-Relationships in India* 9(2) THE INTERNATIONAL JOURNAL OF INDIAN PSYCHOLOGY (2021).

<sup>3</sup> Jai B.P. Sinha, T.N. Sinha, Jyoti Verma, and R.B.N. Sinha, *Collectivism coexisting with individualism: an Indian scenario* 4(2) ASIAN JOURNAL OF SOCIAL PSYCHOLOGY (2004).

<sup>4</sup> Protection of Women from Domestic Violence Act, 2005.

<sup>5</sup> Uniform Civil Code of Uttarakhand, 2024

the Committee comprising and presided by Justice Ranjana Prakash Desai<sup>6</sup>, encompasses 392 sections and 7 schedules, endeavours to regulate aspects of marriage, divorce, succession, and live-in relationships, extending its applicability beyond the state's residents.

This paper initially tries to explore the sociological underpinnings of the notion of live in relationships, and further retraces the steps of the Indian judicial recognition of such a relationship and their differing opinions, and finally assesses the provisions of the UCC in context to the sociological and judicial discussion.

## II

### **Navigating Live-In Relationships in the Landscape of Family and Marriage**

Indian society, traditionally built on tenets of arranged marriages and joint family structures, has witnessed a sporadic change over a significant period of time, resulting into not only a modification of the nature of marriages and families but also of newer forms of relationships, which were traditionally either clandestine or inconspicuous. A prominent reason behind such a phenomenon has been the transmission of values from the Western social culture, leading to introduction of key concepts such as privacy, freedom and profession, reinforced with a Westernized format of learning in the educational system.<sup>7</sup> Gradually, the hitherto prime objects of marriage being sexual intimacy, companionship and procreation,<sup>8</sup> when viewed in perspective of freedom and independence resulted in the dilution of the necessity of marriage. This ultimately led to the emergence of varied forms of cohabitation which did not necessarily culminate into marriage, but wherein the partners could in essence exercise a similar relationship. However, this does not

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<sup>6</sup> Justice Ranjana Prakash Desai, *Uttarakhand forms panel headed by retired judge Justice Ranjana Prakash Desai to implement Uniform Civil Code*, BAR & BENCH (28 May, 2022) available at: <https://www.barandbench.com/news/uttarakhand-forms-panel-headed-retired-judge-justice-ranjana-prakash-desai-implement-uniform-civil-code> (last visited, May 10, 2024).

<sup>7</sup> C.L. Narayan, M. Narayan, M. Deepanshu, *Live-In Relationships in India—Legal and Psychological Implications*, 3(1) JOURNAL OF PSYCHOSEXUAL HEALTH 18 (2021).

<sup>8</sup> N.A. Wimalasena, *An Analytical Study of Definitions of the Term 'Marriage'*, 6(1) INTERNATIONAL JOURNAL OF HUMANITIES AND SOCIAL SCIENCE 166 (2016).

mean that cohabitation is a recent phenomenon,<sup>9</sup> since it was prevalent earlier, but evolved through societal attitudes based on economic conditions, cultural beliefs, religious doctrines and the legal framework.<sup>10</sup> Even in Europe, the practice of cohabitation was shunned by the Catholic Church<sup>11</sup> and was initially practiced by the commoners on account of lacking the means to conduct marital ceremonies.<sup>12</sup> However, through the eventuation of the Industrial Revolution, urbanization, feminist movements and the Protestant Reformation, cohabitation was increasingly accepted as a tenable alternative to marriage in the West.<sup>13</sup>

In current times, a form of cohabitation which has accrued to acceptance in the Western lifestyle is that of live-in-relationships, however there are varied opinions with regard to its core elements between sociologists and anthropologists. For example, it is termed to mean 'an arrangement whereby two people decide to live together on a long-term or permanent basis in an emotionally or sexually intimate relationship,'<sup>14</sup> or 'an arrangement of living under which the couples who are unmarried live together to conduct a long-term relationships similarly as in marriage'<sup>15</sup> or as an American anthropologist stated it to be, 'living together at least five days a week for at least three months, not legally or religiously married, yet sexually intimate, with or without the goal of marriage in the future.'<sup>16</sup> Therefore, according a single theoretical construct to such a concept is difficult, since cohabitation itself would be dependent on the interpretation derived from a particular society, the purpose, and importantly the meaning for the two individuals consenting to it.

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<sup>9</sup> J. Holland & J. Triseliotis, *Social Policy and Cohabitation: Changing Attitudes and Practices*, 18(1) JOURNAL OF SOCIAL POLICY 19 (1989).

<sup>10</sup> Laslett P. Frontmatter, IN: FAMILY LIFE AND ILLICIT LOVE IN EARLIER GENERATIONS: ESSAYS IN HISTORICAL SOCIOLOGY i-vi (Cambridge University Press, 1977).

<sup>11</sup> *Id.*

<sup>12</sup> J.L. Flandrin, *FAMILIES IN FORMER TIMES: KINSHIP, HOUSEHOLD, AND SEXUALITY* (Cambridge University Press, 1979).

<sup>13</sup> Cherlin, A. J., 'The Deinstitutionalization of American Marriage' *Journal of Marriage and Family*, [2004] 66(4), 848–861.

<sup>14</sup> Savita and Dr. A. G. Khan. 'Studies on Sociological Impact of Live-In Relationship: A Critical Review', *IOSR Journal Of Humanities And Social Science*, [2020] 25(2).

<sup>15</sup> Dushad Ram, *et al.*, *Live in Relationship (Cohabitation): More Challenging than marriage?* *IJPP* (2011).

<sup>16</sup> G. Amruta Malatesh and K. Dhanasree, *Perceptions of Youth towards Live in Relationship*, *JOURNAL 7 KRISHI VIGYAN* 120 (2018).

In the Indian context, inspite of considerable structural characteristic changes in family and marriage in the modern times, they persistently continue to occupy quintessential elements in the socio-cultural sphere. Family, according to Murdock, is known to be a social group inclusive of adults of both sexes 'at least two of whom maintain a socially approved sexual relationship, and one or more children of the sexually cohabiting adults' and is characterized by reproduction, common residence and economic co-operation.<sup>17</sup> Another definition provided by Desai, indicates that it is a unit of two or more individuals united by blood, adoption, a consensual union or by marriage, constituting a single household and interacting with each other.<sup>18</sup> On analysing one of the over-arching institutions in the texture of Indian society<sup>19</sup>, the requirement of a 'socially approved sexual relationship' or of individuals being united by blood would invariably flow from the bond of heterosexual matrimony, which is recognized by culture, religion, and law. Sanctioning the union of male and female for procreating, providing care for children and establishing a household,<sup>20</sup> marriage acts as a source of socialization and forming a link between change and continuity.<sup>21</sup> Moreover, according to the Hindu Vedic philosophy it is considered to be a sacrament, to bring about the union of souls, thus a junction of the spiritual, religious and social duties.<sup>22</sup> Through the allocation of personal and possessive rights and obligations for both partners,<sup>23</sup> a legal, social or religion sanction is present, providing a guarantee and also a sense of security to any woman entering into such nuptial bondage.<sup>24</sup>

From an individualistic perspective rather than a societal one, Carolyn views it as 'a public statement regarding one's identity', but when individuals are unmarried,

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<sup>17</sup> Diana Gittins, *THE FAMILY IN QUESTION, CHANGING HOUSEHOLDS AND FAMILIAR IDEOLOGIES* (Red Globe Press London, 1985, 1993).

<sup>18</sup> Reeta Sonawat, *Understanding Families in India: A Reflection of Societal Changes*, 17(2) *PSICOLOGIA: TEORIA E PESQUISA* (2001).

<sup>19</sup> *Id.*

<sup>20</sup> P. Majumder, *Matrimonial Migration: a review with special reference to India*, 9 *JOURNAL OF BIOSOCIAL SCIENCE* 381 (1977); Gaganpreet Kaur and Sukhdev Singh, *Changing Patterns of marriage in Indian Society* 9(3) *INDIAN JOURNAL OF ECONOMICS AND DEVELOPMENT* 261 (2013).

<sup>21</sup> M. Desai, *Towards family policy research* 56 *JOURNAL OF SOCIAL WORK* 225 (1995); Gaganpreet Kaur and Sukhdev Singh, *Changing Patterns of marriage in Indian Society* 9(3) *INDIAN JOURNAL OF ECONOMICS AND DEVELOPMENT* 261 (2013).

<sup>22</sup> *Koppiseti Subbharao v. State of A.P.*, (2009) 2 DMC 184.

<sup>23</sup> David L. Sills, *INTERNATIONAL ENCYCLOPAEDIA OF THE SOCIAL SCIENCES*, VOL. 9, (New York: The Macmillan Company and the Free Press, 1972); H.M. Stone & A. Stone, *MARRIAGE MANUAL* (London, 1939).

<sup>24</sup> *Malti v. State of Uttar Pradesh*, (2000) CrLJ 4170.



they are defined more by their own virtue and personality traits.<sup>25</sup> Such a view was reinforced by Justice Kate O'Regan, stating that marriage have prominent significance because of human being's social nature, whose humanity is expressed through their relationship to others.<sup>26</sup> This individualistic perspective serves as one of the founding grounds for the increasing occurrence of live-in-relationships<sup>27</sup>, which on one hand prevents a conclusive 'public statement' of one's identity for an individual, but on the other proves to undermine the moral superiority of the institution of marriage in the Indian society, specifically of unconfined and uncontrolled sexuality, threatening the symbolic value of a marriage and a family.<sup>28</sup> This leads to vulnerability for the relationship stemming from insecurity of the relationship in conjunction with separation from family and societal stigma.<sup>29</sup>

However, individuals entering into a live-in-relationship are not adopting a uniform manner of relationship<sup>30</sup>, but rather on application of the diffusion theory<sup>31</sup> and the social exchange theory there may be different types of cohabitation which may be chosen. Broadly, there could be three forms of cohabitation: (1) Limited Cohabitation - wherein the individuals sharing a common household, spend nights with a certain frequency, which gradually passively converts it into a cohabitating relationship without any prior promise or discussion. (2) Premarital Cohabitation – where the individuals explicitly acknowledge the arrangement for a practical utility before entering into marriage (3) Substitute Marriage – an arrangement to permanently cohabit where the individuals agree to not officially marrying each other.<sup>32</sup> The vital component in a live-in-relationship, cohabitation, helps a partner acclimatize through understanding the mutual adaptations needed,<sup>33</sup> thereby utilising a functional and utility-based perspective viewing cohabitation either as a means towards testing the strength and continuing of the relationship

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<sup>25</sup> Carolyn E. Cutrona, *A Psychological Perspective: Marriage and the Social Provisions of Relationships*, 66(4) JOURNAL OF MARRIAGE AND FAMILY 992 (2004).

<sup>26</sup> *Rahim Dawood v. Minister of Home Affairs*, 2000 (3) SA 936.

<sup>27</sup> Anthony Giddens, *THE TRANSFORMATION OF INTIMACY* (Cambridge Polity Press, 1992).

<sup>28</sup> Fritzi-Marie Titzmann, *Contesting the Norm? Live in relationships in Indian Media Discourses*, SOUTH ASIA MULTIDISCIPLINARY ACADEMIC JOURNAL 16 (2017).

<sup>29</sup> Vinita Ghosh, *Perception of Youth towards Live-in-Relationships in India* 9(2) THE INTERNATIONAL JOURNAL OF INDIAN PSYCHOLOGY (2021).

<sup>30</sup> T. Nazio, *COHABITATION FAMILY AND SOCIETY* (Routledge, 2008).

<sup>31</sup> N. Braun & H. Engelhardt, *Diffusion Processes and Event History Analysis* 2(2) VIENNA YEARBOOK OF POPULATION RESEARCH 111 (2004).

<sup>32</sup> S.A. Rathus, & J.S. Nevid, *PSYCHOLOGY AND THE CHALLENGES OF LIFE: ADJUSTMENTS IN THE NEW MILLENNIUM* (John Wiley & Sons, 2002).

<sup>33</sup> V. Oppenheimer, *A theory of marriage timing: Assortative mating under varying degrees of uncertainty* 94(3) AMERICAN JOURNAL OF SOCIOLOGY 563 (1988).

with an objective of divorce-proofing their potential marriages,<sup>34</sup> or relinquishing the need of a permanent societal label of a marriage and continuing with the mutual form of cohabitation. According to Justice Dhingra the nature of contractual obligations act as a premise for the live-in-relation, where by virtue of the relationship not having any legal bond or any string attached, the relationship can be terminated even without attaining the consent of the other.<sup>35</sup> Thus, it may provide difficulty in establishing gender roles and the division of labour, or provide flexibility and even more egalitarian status of living,<sup>36</sup> Ultimately, not only has premarital cohabitation become a behavioural norm,<sup>37</sup> but additionally they have become popular alternatives to the institute of marriage.<sup>38</sup>

### III

#### Judicial Precedents Unveiled: Interpreting Live-In Relationships Through the Legal Prism

##### *Early Roots of Conceptualizing Live-in Relationships*

The judicial recognition of such a behavioral norm occurred through several cumulative processes, which sought to encapsulate elements considered essential for a live in relationship. The first case which touched upon a larger issue of the legal presumption of marriage, was *Thakur Gokalchand v. Parvin Kumari*,<sup>39</sup> wherein it was held that cohabitation for a number of years may raise the presumption of marriage witnessed through conduct of parties, but was a rebuttable presumption. The same principle was further affirmed by *SP Balasubramanyam v. Suruttayan*,<sup>40</sup> *Tulsa v. Durghatiya*,<sup>41</sup> and *Badri Prasad v. Director of Consolidation*,<sup>42</sup> where Justice Krishna

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<sup>34</sup> Wendy D. Manning & Jessica A. Cohen, *Premarital Cohabitation and Marital Dissolution: An Examination of Recent Marriages*, 74(2) JOURNAL OF MARRIAGE AND FAMILY 377 (2012).

<sup>35</sup> *Alok Kumar v. State* 2010 SCC OnLine Del 2645.

<sup>36</sup> A.J. Cherlin, *The Deinstitutionalization of American Marriage* 66(4) JOURNAL OF MARRIAGE AND FAMILY 848 (2004).

<sup>37</sup> Judith A. Seltzer, *Cohabitation in the United States and Britain: Demography, Kinship and the Future* 66(4) JOURNAL OF MARRIAGE AND FAMILY 921 (2004).

<sup>38</sup> V. Ghosh, *Perception of Youth towards Live-In Relationships in India* 9(2) INTERNATIONAL JOURNAL OF INDIAN PSYCHOLOGY 2117 (2021).

<sup>39</sup> *Thakur Gokalchand v. Parvin Kumari* 1952 AIR 231.

<sup>40</sup> *S.P.S. Balasubramanyam v. Suruttayan* 1994 AIR 133.

<sup>41</sup> *Tulsa v. Durghatiya* AIR 2008 SC 1193.

<sup>42</sup> *Badri Prasad v. Dy. Director of Consolidation* 1978 AIR 1557.

Iyer held that the law makes a strong presumption for partners living together for a significant period of time as wife and husband, opining that the law 'leans in favour of legitimacy and frowns upon bastardy.' This is indicative of the need of legitimacy in society at that time, which was invariably resorted through the label of marriage between the individuals, as no other ways of intimate cohabitation were presumed to exist, or at least socially permitted.

A scenario arose before the court, of a woman and a man indulging in sexual conduct without having a mutual marital status in *Malti v. State of UP*, wherein the court had denied an automatic title of them being married.<sup>43</sup> The underlying emotive disparage to such conduct was reflective in the words used by the court, which arguably were based on the specific factual scenario, where the man was an employer and the woman served as a cook in his house, both of whom over a period of time developed intimacy. The court remarked that, although the law places no fetters on living together to satisfy their 'animal' needs, but such a union may not be classified as a marriage on account of the sacrosanct honour of the title of 'wife'. Both law and society would treat such a woman as either a concubine or a mistress of such a person, and such a life would be one of adultery. Therefore, on the claim of maintenance under Section 144 of Bharatiya Nagarik Suraksha Sanhita (BNSS),<sup>44</sup> a wife would connote a 'legally wedded wife' according to the religion or customs prevalent.

It was in the year 2005, when the Supreme Court, while deciding a petition on maintenance under Section 125 of CrPC had, in the choice of balancing legislative intent and the plight of the appellant, chose to swallow the pill in ensuring the primacy of legislative intent.<sup>45</sup> In this case the appellant, a woman had been married to the respondent in accordance with customary rituals and borne a child. Subsequently, it was unearthed that the respondent had previously been married to another woman and that marriage had not been annulled. The question arose as to whether a woman bearing a child would have the right to maintenance under Section 125 of CrPC. Although the court recognised the underlying purpose of social justice for Section 125's enactment, however on the ground of legislative intent specifying the necessity of a 'legally wedded wife' and the inability to exclude the applicability of personal laws applicable to the parties became the limitation on the court's power, leading to a denial of the petition. First, the legislative intent was interpreted through the legislature including an illegitimate child within the ambit

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<sup>43</sup> *Malti v. State of Uttar Pradesh* 2000 CRILJ 4170.

<sup>44</sup> The Code of Criminal Procedure, 1974 Section 125 (repealed); The Bharatiya Nagarik Suraksha Sanhita, 2023, Section 144.

<sup>45</sup> *Savitaben Somabhai Bhatiya v. State of Gujarat*, AIR 2005 SC 1809.

of Section 144 BNSS<sup>46</sup> but not a woman unlawfully married. Second, as Section 5 of the Hindu Marriage Act, 1955 did not permit the prior existence of a marital status of either spouse, the same would form one of the grounds for not satisfying the threshold of a 'legally wedded wife' in this case. Therefore, the court found itself at fetters on being unable to tend to the plight of the woman by not being able to introduce an artificial expansion for the interpretation of the term 'wife.'

### ***The Delhi HC's Decision – Barking up the Wrong Tree***

Subsequently, decisions were rendered on permitting inter-caste marriages within Hinduism,<sup>47</sup> and deciding on the extent of inheritance of illegitimate children,<sup>48</sup> but judicial innovation in interpretation was reached by the Delhi HC by cutting the Gordian knot to the Supreme Court's decision in 2005. In the case of *Narinder Pal Kaur Chawla v. Manjeet Singh Chawla*,<sup>49</sup> the appellant had married the respondent and lived as wife and husband respectively for a period of 14 years, however eventually she was denied entry in the house and deserted. Therefore, she filed a petition for maintenance under Section 18 and 20 of the Hindu Adoption and Maintenance Act. While appreciating the decision reached in *Savitaben Somabhai Bhatiya*,<sup>50</sup> it distinguished the same stating that that case dealt with a petition for maintenance under Section 125 of CrPC and not Section 18 of the Hindu Adoption and Maintenance Act, and the Supreme Court itself had held that both the legislations had no inconsistency. Thus, the High Court interpreted Section 18(2) would entitle such a claim against a husband even if he has another wife living, and even drew a distinction between the term 'concubine' and 'second wife' saying that the expressions utilised in Section 18, 'wife', 'Hindu wife' are on a higher pedestal than 'concubine.' They reinforced such an interpretation from the Protection of Women from Domestic Violence Act.

However, in further substantiating such interpretation the court made glaring errors. Although not primarily relying on the case, they chose to refer to the judgement of *Reema Aggarwal v. Anupam*,<sup>51</sup> wherein prosecution for dowry death under Section 498A and Section 304-B was being maintained by the second wife of the husband. In that case the court through application of the mischief rule and purposive interpretation held that for the purposes of Section 498A and Section 304-B, although a person who enters into a second marriage, would not be legally recognised as a husband, however that individual would still be treated as

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<sup>46</sup> The Code of Criminal Procedure, 1974 Section 125 (repealed); The Bharatiya Nagarik Suraksha Sanhita, 2023, Section 144.

<sup>47</sup> *Lata Singh v. State of Uttar Pradesh* 2006 (5) SCC 475.

<sup>48</sup> *Neelamma v. Sarojamma*, ILR 2005 KAR 3293.

<sup>49</sup> *Narinder Pal Kaur Chawla v. Manjeet Singh Chawla*, AIR 2004 SC 3453.

<sup>50</sup> *Savitaben Somabhai Bhatiya v. State of Gujarat*, AIR 2005 SC 1809.

<sup>51</sup> *Reema Aggarwal v. Anupam* (2004) 3 SCC 199

'husband' and prosecuted. Now the analogy which the Delhi High Court chose to draw was that if a male who entered into a second matrimonial alliance could be deemed to be a husband, similarly for the purpose of granting maintenance a woman under Section 18 could be treated as a Hindu wife. However, they failed to pay heed to the distinct nature of applicable laws, with the prior being a criminal law and the latter being a personal law. Additionally, the purposes of the two separate provisions are different in degrees, with one aimed at preventing demand of dowry and the other being towards a civil obligation of mandatory payment of sustenance subsequent to divorce. This had been affirmed by the Supreme Court<sup>52</sup> wherein the concept of marriage may require strict interpretation in cases of civil claims, however a liberal approach may be permitted in order to curb a social evil. This could have been an underlying reason for the legislature restricting the ambit of the meaning of a 'wife' under Section 144 of BNSS,<sup>53</sup> whereas providing a comparatively wider gamut under Section 18 of the Hindu Maintenance Act. The question lies as to whether a claim for maintenance be considered a civil right in order to ensure sustenance of a woman in reasonable circumstances or an extreme interpretation would be taken for its absence to constitute a 'social evil?' Would then nature of claim of maintenance differ from a claim made under the provisions of the personal laws in contrast to the claim made under Section 144 of BNSS? Moreover, could the Delhi HC's observation stand, when the Supreme Court had stated that only for the limited purposes of Section 498A and Section 304B, would the 'absence of a definition of 'husband' to specifically include such persons who contract marriages ostensibly and cohabit with such woman, be a ground to exclude them from the purview of these sections'?

The High Court stated that 'the measures for maintenance themselves are secular and social in character,' however although the purpose for maintenance would be uniform across religions and laws, ultimately the nature of measures which are available as a legal right under the differing personal laws would be distinct, and thus dependent on the religious beliefs and customs which cannot be deemed to be secular. Ultimately the HC made a reference to the inherent powers of the court to make orders in matters of maintenance towards the end of justice. However, in this case the textual interpretation which the court had provided would have sufficed as the basis for granting maintenance under Section 18, rather than providing legally unsound grounds for supporting such reasoning.

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<sup>52</sup> *Koppiseti Subbharao Subramaniam v. State of A.P.* (2009) 2 DMC 184.

<sup>53</sup> The Code of Criminal Procedure, 1974 Section 125 (Repealed); The Bharatiya Nagarik Suraksha Sanhita, 2023, Section 144.

***Finding Relief in the Protection of Women from Domestic Violence Act, 2005***

Almost a year later, the reference made by the Delhi HC to the Protection of Women from Domestic Violence, 2005, was taken ahead when provisions were cited from the Act to lay a claim for maintaining the respondent. The court in *M. Palani v. Meenakshi*<sup>54</sup> noted that under the act a claim could arise in case a woman was in a 'domestic relationship' with a man, which was defined in the legislation as, 'a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family.' The court interpreted that the provision does not require the individuals to live together for a particular period. Now, the petitioner stated that consensual sex had occurred between both of them, without any promise of marriage, and the petitioner averred in the counter affidavit that they did not live together or have any conjugal relationship as partners or a married couple. Strikingly, the court 'inferred' that both of them 'seem' to have shared household and lived together at least at the time having sex by them. Such a fallacious and technical interpretation of two individuals 'living in a shared household' seems to assume that the sanctity of having a shared household would be merely fulfilled with the physical presence of the individuals *at least* at the instance of intercourse. Arguably, such an interpretation would be in tandem with the objective of the legislation, but the requisite standard has been lowered to even include two individuals engaging in sexual conduct indicative of a relationship within the ambit of the legislation. This shows that the court had strained interpretative tools to reach the ultimate conclusion of granting relief to the respondent.

Pursuant to such decisions, 2010 was a critical turning point in the judicial analysis of 'live in relationships.' Dealing with a defamation case, the Supreme Court in *S. Khushboo v. Kanniammal*,<sup>55</sup> on account of the nature of dispute involving a survey conducted on sexual habits of individuals residing in cities in India, made a reference to *Lata Singh v. State of Uttar Pradesh*,<sup>56</sup> stating that the Supreme Court already has stated that a live in relationship between two consenting adults of heterogenic sex does not amount to any offence, even though it may be immoral. Ironically, the court in *Lata Singh* had never mentioned the term 'live in relationship' however such was the interpretation by the court in *S. Khushboo*. However, the initial misinterpretation of mentioning live in relationship was further concretized a month later in the decision on *Bharatha Matha v. R. Vijaya Renganathan*,

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<sup>54</sup> *M. Palani v. Meenakshi* 2008 AIR MAAD 162.

<sup>55</sup> *S. Khushboo v. Kanniammal* 2010 (5) SCC 600.

<sup>56</sup> *Lata Singh v. State of Uttar Pradesh* 2006 AIR SCW 3499.

which stated that *S Khushboo*, had held live in relationships to be permissible only in unmarried major persons of heterogenous sex.<sup>57</sup>

### ***The First Attempt at Defining a Live-In Relationship***

The first case where a judicial body dealt with the meaning of a live in relationship was the Delhi HC judgement in the case *Alok Kumar v. State*,<sup>58</sup> which came 3 months subsequent to the decision of the *Bharatha Matha*. In the FIR, the respondent stated that she was in a live in relationship with the petitioner, upon which Justice Dhingra remarked that a live in relationship does not create any legal bond, and is a 'walk in and walk out relationship.' Having no strings attached, such a contract of living is renewed every day and can be terminated by either of the parties at will. A paternalistic comment further stated that such people cannot complain of infidelity or immorality since such relationships are often found between individuals of whom one is married. Herein, the court translated a live in relationship to a mere brittle social relationship. Interestingly, four days later, the Supreme Court in *Madan Mohan Singh v Rajni Kant*, while deciding on a question of law on appreciation of evidence, indirectly hinted at the Delhi HC judgement, remarking that if a live-in relationship is continued for a long time, it cannot be termed as a 'walk in and walk out relationship.'<sup>59</sup>

Therefore, till now the connotation of a live in relationship was deemed to be one of a social nature, but dependent on the quantum for which the relationship is continued, as a consequence of which legal rights and obligations would arise.

Dealing with another plea of maintenance under Section 125 of the CrPC, the court in *Chanmunniya v. Virendra Kumar Singh Kushwaha*, analysing past decisions, held that under the Prevention of Women from Domestic Violence Act, a wide interpretation is definitely present for a 'domestic relationship' including 'live in relationships in the nature of marriage', and therefore women in such relationships would be entitled to all the reliefs.<sup>60</sup> The court had very interestingly added yet another qualifier which understood the concept of a live in relationship. By adding the qualifier of 'nature of marriage' the court indirectly stated that all live in relationships cannot be blanketly equated as a domestic relationship, rather only those which are in the nature of marriage, understanding the innate flexibility in the structure of a live in relationship, however failed to elucidate the meaning of a relationship in the 'nature of marriage'.

With regard to the claim under Section 125 of CrPC, the court could not render a decisive conclusion, because of previous two-bench decisions providing for a

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<sup>57</sup> *Bharatha Matha v. R. Vijaya Renganathan*, AIR 2010 SC 2685.

<sup>58</sup> *Alok Kumar v. State* 2010 SCC OnLine Del 2645.

<sup>59</sup> *Madan Mohan Singh v. Rajni Kant*, AIR 2010 SC 2933.

<sup>60</sup> *Chanmunniya v. Virendra Kumar Singh Kushwaha* 2010 AIR SCW 6497.

supposedly 'restrictive understanding of a wife' under Section 125 of CrPC, but suggested that a man who lived with a woman for a reasonably long period of time, inspite of legally fulfilling the requirements of a valid marriage, should be made to pay maintenance, advocating for a wide interpretation, one which had also been provided by the Committee on Reforms of Criminal Justice System headed by Dr. Justice V.S. Malimath.<sup>61</sup> Subsequently, they referred the decision to a larger bench. Therefore, for the first time, realizing the changing societal paradigms of the Indian society, a neutral stance was taken by the court.

### ***Addressing the Elephant in the Room – 'In the Nature of Marriage'***

The missing explanation of a relationship 'in the nature of a marriage' was provided by the court in *D. Velusamy v. D. Patchaiammal*.<sup>62</sup> Tracing the roots of such a relationship to the concepts of alimony and palimony in the courts of USA, it equated a 'relationship in the nature of marriage' to a common law marriage, which is an informal marriage bearing no legal recognition. Drawing authority from a legally authoritative source, Wikipedia, the court provided four mandatory requirements for a 'relationship in the nature of marriage' including:

1. The couple must hold themselves out to society as being akin to spouses
2. They must be of legal age to marry
3. They must be otherwise qualified to enter into a legal marriage, including being unmarried
4. They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time

Additionally, they clarified that the meaning of 'living together in a shared household' cannot be satisfied with rare occasions of physical presence, such as a one-night stand or spending weekends together. The meaning and parameters of a live in relationship were not provided for, but rather the court restricted itself to interpreting terms which had been utilised by the legislature, being a relationship in the nature of marriage, and ultimately affirmed the statement, that not all live in relationships would be tantamount to a relationship in the nature of marriage.

With fragmented and contrasting remarks of various decisions, three years later the court in the case of *Indra Sarma v. VKV Sarma*,<sup>63</sup> clarified the position of law with regard to issues of maintenance in addition to the meaning of live in relationships. Interpreting Section 2(f) of the DV Act, an exhaustive list of relations could be included within the ambit of a 'relationship between two persons' one of which constituted a 'relationship in the nature of marriage.' Such a relationship would have some inherent or essential characteristics of a marriage however would not be

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<sup>61</sup> *Chanmunniya v. Virendra Kumar Singh Kushwaha* 2010 AIR SCW 6497.

<sup>62</sup> *D. Velusamy v. D. Patchaiammal*, AIR 2011 SC 479.

<sup>63</sup> *Indra Sarma v. V.K.V. Sarma* 2013 AIR SCW 6783.



legally recognised, but the court drew a further distinction between a relationship in the nature of marriage and of a marital relationship, wherein in the prior the marriage is continuing inspite of marital unrest, however a live in relationship is only an arrangement, which can be discarded once a determination is made to such an end. Thus, the arrangement is dependent on the common intention of the parties by virtue of which the nature and context of the arrangement is quintessential for observing as to whether those essential or inherent characteristics of marriage are present. After reviewing characteristics of such relationship in other commonwealth countries, the court provided 8 guiding parameters upon which the nature of relationship should be assessed:<sup>64</sup>

1. Duration of a period of relationship
2. Shared household
3. Pooling of resources and financial arrangements
4. Domestic arrangements
5. Sexual relationship
6. Children
7. Socialization in Public Holding
8. Intention and conduct of the parties

The judgement forms the last prominent discussion by the apex court on the determination of certain rights and obligations and the legal recognition of live in relationships in India, which provided clarity to the extent of not overreaching its powers to legislate. Subsequently, the jurisprudence developed with reference to the guidelines provided, such as in *Ajay Bhardwaj v. Jyotsna*,<sup>65</sup> *Lalita Toppo v. State of Jharkhand*.<sup>66</sup> However, stemming majorly from instances of pleas of maintenance, gives the judiciary a narrow space for discussion of a relationship which demands a wider ambit of determination. This is augmented with the recent expanse in types of live in relationships which may soon transgress the ideal conceptualization of such relationships. Ultimately, the guidelines formulated by the Apex Court may lose relevance unless backed by legislative action. A recent legislation by the State Legislature of Uttarakhand towards the end motive of formulating a Uniform Civil Code, encapsulated the regulation of live in relationships as well, may be an attempt at doing so.

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<sup>64</sup> *Indra Sarma v. V.K.V. Sarma* 2013 AIR SCW 6783, para 55.

<sup>65</sup> *Ajay Bhardwaj v. Jyotsna*, Criminal Revision No. (F) 166 of 2015, Punjab & Haryana High Court.

<sup>66</sup> *Lalita Toppo v. State of Jharkhand* (2019) 13 SCC 796.

## IV

### **The Uniform Civil Code of Uttarakhand, 2024: A Preliminary Analysis**

The UCC attempting to bring all societal relationships within an umbrella framework, categorises the provisions into four Parts. Part I regulates Marriage and Divorce, Part II deals with Succession, Part III seeks to comprehensively deal with rights and duties for Live-in-Relationships, and Part IV pertains to Miscellaneous provisions. Section 378 to 389 come under the ambit of Part III, and provide rights, procedures, and duties with respect to entering and maintaining live in relationships. Before delving with the manner of regulations we must first ascertain the legal connotation of a live in relationship prescribed by the state legislature.

Section 4(b) defines it to be a 'relationship between a man and a woman who cohabit in a shared household through a relationship in the nature of marriage, provided that such relationship is not prohibited under part 3 of the Code.'<sup>67</sup> Intriguingly, the legislature avoided at providing a fixed definition, rather preferred to continue the phrasing by the judiciary on interpretation of the Protection of Women from Domestic Violence Act. Additionally, a shared household is taken to be, 'a household where a man and a woman, not being minors, live under one roof in a rented accommodation or in a house owned jointly or by any one of them or any accommodation,'<sup>68</sup> which is indicative of the fact that a minimum period or so is not prescribed cohabitation. As two sides of a coin, the same does indeed bring flexibility in relationships, but so does it invite uncertainty and vagueness.

The most provocative element of these provisions is its necessity to register such live in relationships with the Registrar, a State appointee, via a 'statement of live in relationship' for those maintaining the relationship in the territory of the state, irrespective of their status as residents of Uttarakhand.<sup>69</sup> And for residents of the State maintaining the relationship outside the submission of the statement is not a mandate, however a choice which maybe exercised.<sup>70</sup> After submission of such statement, the Registrar shall in considering the statement, conduct a summary inquiry ensuring that the restrictions entailed in Section 380 are not present, and if satisfied within 30 days shall issue a registration certificate.

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<sup>67</sup> The Uniform Civil Code of Uttarakhand, 2024, Section 4(b).

<sup>68</sup> The Uniform Civil Code of Uttarakhand, 2024, Section 4(c).

<sup>69</sup> The Uniform Civil Code of Uttarakhand, 2024, Section 378(1).

<sup>70</sup> The Uniform Civil Code of Uttarakhand, 2024, Section 378(2).

Within the process outlined in the Code, the manner and mode of regulation of such relationships are inherently bound with many incongruities which on analysis may be indicative of an indirect attempt to suppress the occurrence of such relationships.

### ***Mandatory Registration – an Administrative Solution or a State Tool for Harassment?***

The code makes it mandatory for individuals to register their relationship by providing a statement of live-in relationships, which on failure,<sup>71</sup> accords a punishment not exceeding three months of imprisonment or a fine not exceeding rupees ten thousand or both.<sup>72</sup> Additionally, in case of making a false statement or having even a reason to believe that the statement being made is false, imprisonment extending to three months or with a fine till rupees twenty-five thousand or both is present.<sup>73</sup>

On one hand the registration of such relationships would prove to be of administrative convenience in ensuring that resultant rights and obligations are recognised by the state and informed to individuals which could alleviate disputes being brought towards the judiciary. Such a step would also ensure a societal certainty and recognition, prima facie advancing toward acceptance.

However, on the other hand the decision of criminalizing the non-compliance of such issues is of concern. Although this may be done with the intent of ensuring compliance with the regulations, since civil liability as opposed to criminal sanction has proven to be less effective. However, the prominent motive seems to be actively discouraging the presence of such relationships, at least in the territory of Uttarakhand. This is visible from making registration mandatory on every individual in the relationship in the territory of the Uttarakhand, but on the other hand makes the registration an optional exercise even for residents staying in live in relationships outside the territory of the state. This will indirectly promote, such couples to not reside in Uttarakhand, else face regulatory compliance burden in addition to a possibility of criminal sanction.

Another matter at question is that the act makes registration mandatory only for those live in relationships which are 'in the nature of marriage,' casting a burden on the couple for submitting the statement, after self-determination of the nature of the relationship. Since the court itself has stated that a blanket rule cannot be followed, but it is rather based on determination in the specific scenario, this suggests that practically every couple choosing to live in a live in relationship had to submit their statement to the Registrar, who would then determine whether such relationship is in the nature of marriage. Evidently, criminalization of non-compliance is

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<sup>71</sup> The Uniform Civil Code of Uttarakhand, Section 387.

<sup>72</sup> The Uniform Civil Code of Uttarakhand, 2024, Section 387(1).

<sup>73</sup> The Uniform Civil Code of Uttarakhand, 2024, Section 387(2).

impractical considering varying types of live in relationship, which may or may not amount to the nature of marriage.

### ***Prohibition of Registration of Live-in-Relationships***

Section 380 provides for scenarios where registration between two persons shall not be registered, including minor status of at least one of the individuals, forced consent, at least one of the individuals being married or already being in a live in relationship.<sup>74</sup> Apart from these grounds, another ground is provided, wherein the individuals are within the degrees of prohibited relationship. Such relationships as defined are listed in List 1 and List 2 of Schedule I. Such prohibition is indeed not problematic since it seeks to ensure that societal expectations of the Indian community are conjunct with registration of such relationships. However, a Proviso clause states that, such prohibitions would not be applicable in case the customs and usage permit such relationship, if it were a marriage.<sup>75</sup> Section 3(1)(c) defines such customs and usages to be those rules which have been continuously and uniformly observed for a long time and has obtained the force of law among persons in any local area, tribe or community.<sup>76</sup> Although the term community has not been defined in the legislation, however this would invariably bring into play religious practices as well.

### ***Vagueness in the Inquiry Procedure***

Under Section 381,<sup>77</sup> the Registrar is required to examine the content of the statement of live in relationship and in doing so, a summary inquiry would be conducted. Subsequently, a registration certificate may be issued or there may be a refusal to do so. However, no guidelines or rules have been specified as to the nature of this summary inquiry, absence of which, arbitrary mechanisms adopted by the Registrar may ensue. Moreover, the summary inquiry is to ensure that such relationship is not prohibited by Section 380,<sup>78</sup> however the parameters of labelling any live in relationship as one 'in the nature of marriage' has not been enlisted, especially the guidelines provided by *Indra Sharma*, which is of utmost concern. No reference has been made to those guidelines, which are essential for the determination of such relationships, especially without any appellate mechanism against the order of the Registrar.

In addition to this, Section 381(3)<sup>79</sup> provides the Registrar power to summon any other person for verification of this relationship. This indeed maybe a necessary

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<sup>74</sup> The Uniform Civil Code of Uttarakhand, 2024, Section 380.

<sup>75</sup> The Uniform Civil Code of Uttarakhand, 2024, Section 380(1).

<sup>76</sup> The Uniform Civil Code of Uttarakhand, 2024, Section 3(1)(c).

<sup>77</sup> The Uniform Civil Code of Uttarakhand, Section 381.

<sup>78</sup> The Uniform Civil Code of Uttarakhand, Section 380.

<sup>79</sup> The Uniform Civil Code of Uttarakhand, Section 381(3).

power in order to ascertain whether consent would be free from both individuals to the relationship, however the ability to summon any person may be exercised on persons such as the parents of the individuals, which may act as a tool to limit the spread of such relationships.

Although Section 382<sup>80</sup> states that the purpose behind registration of live in relationships shall be only for maintain a record, however according to Section 385(1), the Registrar must forward any statement of live in relationship to the officer in charge of the local police station for the purposes of 'record.' Why is there a need for the police officer to maintain such record? The problem is enhanced when Section 385(2) states that in case the Registrar feels that the contents of the statement provided are incorrect or 'suspicious,' then he/she shall inform the officer-in-charge for 'appropriate action.' What action is being required to be taken by the police officer, merely on the pretext of the contents being suspicious or incorrect. Such a provision alarmingly provides unrestricted power to the police for taking any action in the garb of enforcement of prohibiting the two individuals of maintain the live in relationship is included within the ambit of the police officer taking appropriate action or ascertainment of the veracity of the statement provided by the individuals.

### *Disjunct Age of Consent*

Section 385(1)<sup>81</sup> requires the Registrar to inform the parents or guardians of individuals choosing to live in such relationship, in case the partner is less than 21 years of age. The age of majority in law is of 18 years for both male and female, and eligibility for marriage, even under the Special Marriage Act the age is 18 years for the girl child and 21 years for the male child. Although the code allows for adults who have attained the age of 18 to enter into such relationship, by the act of informing the parents of individuals below 21 years of age, it seeks to ensure societal aspersion on the individuals to not engage in this activity, ultimately interfering and influencing the individual autonomy of two consenting adults. Therefore, in some instances treatment equivalent to the status of a marriage is accorded, however in other it seeks to ensure societal pressure to disengage in such activity.

### *Sufficiency of the One Month Timeline?*

Section 387(1)<sup>82</sup> provides for punishment for individuals failing to submit the statement of such relationship within a month from entering such relationship. The pertinent and larger question which the judiciary has been unable to satisfactory lay a threshold to, is when do two individuals can be labelled to enter a live in relationship. Is it starting from the date of cohabitation? Even if the same can be considered to be the basis, the critical question lies in addressing as to when can a

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<sup>80</sup> The Uniform Civil Code of Uttarakhand, Section 382.

<sup>81</sup> The Uniform Civil Code of Uttarakhand, Section 385(1).

<sup>82</sup> The Uniform Civil Code of Uttarakhand, Section 387(1).

live in relationship be deemed to be one in the nature of marriage. With several parameters highlighted by the Supreme Court, although the presence of certain factors may be highly indicative of such a relationship, however the context must be observed. For example, bearing children are a prominent reason for such relation to be categorised as one of marriage, however a possibility arises where through a contractual standard or an implicit understanding between parties, that the relationship would not be one in the nature of marriage. According to the legislation, the determination of a relationship in the nature of marriage must be either self-determined by the individuals, or a statement must mandatorily be submitted by the individuals upon notice being issued by the Registrar, who would himself/herself determine the same. Moreover, can a month be an apt requirement for mandatorily submitting such statement? Instances may arise where for few months the relationship is purely of a live in relationship, however only after a considerable period of time the relation transforms into the nature of marriage, with a reversal being possible. Therefore, the Registrar is equipped with great powers of judicial determination as to the nature of marriage, which considering the types of live in relationships, may be mercurial in nature and indeed dependent on freedom of self-determination of the partners.

## V

### Conclusion

The societal stigma devaluing individuals engaged in intimate relations outside of wedlock when clashed with the changing nature of individual autonomy inspired with ever dynamic concept of privacy, is leading to a recognition of live in relationships in Indian society, albeit being slow in its traction. As noted by the Supreme Court<sup>83</sup>, privacy being an essential facet of dignity of human being, is at the core of preservation of personal intimacies, marriage and procreation, which resultantly safeguards individual autonomy giving way to personal choices adding to heterogeneity and diversity of the culture. The concept of privacy when clashed with the importance of marriage as a social institution or a social statement, results in an innovative emergence and adoption of live in relationships which in one way ensures individuality. With time, the institution of marriage is failing by the wayside in comparison to the flexible nature of live in relationships. Now, couples in live-in-relationship, are cohabiting together, even without having a marriage. They share a common residence, engage in economic and financial dependence, have a sexual relationship, in addition to raising children together. Thus, the live-

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<sup>83</sup> *K.S. Puttuswamy v. Union of India* (2017) 10 SCC 1.

in-relationship has all the aspects of an institution family, except the label and sanctity of the institution of marriage.

The judiciary in navigating changing societal standards and acceptance, have often been caught in a bind, especially with legislative inaction, exercising the tools vested in it by the Constitution at finding the happy medium. The guidelines provided by the Supreme Court at ascertaining live in relationships in the nature of marriage are a suitable stopgap measure, till the legislature actively recognises and provides concrete regulations.

The recent enactment of Uniform Civil code of the Uttarakhand, although being a transcendental step towards regulation, has hidden motives seeking discouragement of the occurrence of such relationships. With arbitrary mechanisms, vagueness and uncertainty with regulation of live in relationships, there must be a revisit to the relevant provisions encompassed in the Code, to balance the scales for all stakeholders, including the conservative sect of Indian society and the modern generational gap's conceptualization of lifestyle.