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COHABITATION IN INDIA: DO THEY INVOKE THE RIGHT TO PRIVACY?

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ABSTRACT:

Cohabitation without marriage was disapproved by the society earlier now it started to gain positive views with the development of society towards westernization with the aid of recent judgments. This major shift considered as a broader acknowledgement of independent decision of an individual and their right to make personal choices without undue interference. The current paper seeks to examine whether cohabitation without marriage lie within the limit of the right to privacy as assured under Art 21 of the Constitution of India, that involves the right to life and personal liberty. Following a socio-legal point of view, the study examines how independence, dignity, and freedom of choice intervene with societal norms and legal frameworks. The right to privacy, as explained by the judiciary, is not just limited to physical privacy but extends to independent choice matters when it comes to intimate relationships. Cohabitation, being a manifestation of such personal choices, rise significant questions about the range to which individuals can exercise their liberties in a conserved society. The paper additionally inspects key judicial precedents where courts have recognized and supported the legality of cohabitation, highlighting that consenting adults have the right to coexist without hindrance. Such verdict emphasize the judiciary's role in balancing constitutional rules with

current societal norms. At the same time, the study also talks about the UCC of Uttarkhand Act, 2024 about compulsory registration of live in relationship the extent to which state or societal interference in such relationships, may amount to a violation of fundamental rights, particularly the right to privacy and dignity. Eventually, the paper argues that cohabitation without marriage are an essential aspect of decisional privacy and must be afforded protection under Art 21 of the Indian constitution.

(Keywords: Privacy, Right, Judicial, Cohabit & Morality)

INTRODUCTION:

Marriage has always been considered as the only acceptable way for personal connections, when it comes to India, which deeply intertwined with the cultural, religious and ethical norms. It has been viewed as a society norms which is important to maintain order and stability instead of personal choice of an individual. Nevertheless, with rapid urbanization, globalization, enhanced access to education and modifying socio-economic conditions, customary vision of relationship are going through some serious transformation. Amidst, these developing shift is the advent of live in relationship, where two adults choose to coexist without getting recognition through marriage. In spite of this developing circumstances, live in relationship constantly facing social hindrance and ethical value. People who are in Live in relationship are often subjected to discrimination, criticism even harassment. This creates a tension between independent choice and society expectation. The acceptance of the right to privacy as a fundamental rights under Art 21 of the Constitution of Indian becomes specifically important. The first case which recognised live in relationship in India, the Supreme court held if a couple lived together for a long time then it will be assumed to be legally married and that law leans favour in legitimacy if any one who denies such relationship then burden will be placed on them¹. Another Landmark Judgment the court marked a constitutional turning point by asserting that privacy is inbuilt to life and personal liberty². This judgement basically extended the scope of Art 21 to include choice of an individual in the matters regarding personal relationship. Subsequently, it arises an legal question whether live in relationships is safeguarded under the right to privacy ? This paper seeks to address this question by adopting a socio-legal approach, examining by both legal and societal norms.

¹Badri Prasad v. Dy. Director of Consolidation (1978) 3 S.C.C 527 (India).

² Justice K.S. Puttaswamy v. Union of India (2018) AIR 2017 S.C 4161 (India).

CONCEPT OF COHABITATION WITHOUT MARRIAGE IN INDIA:

A live-in relationship refers to an arrangement by two individuals entering into relationship without legal recognition, where they live together in a domestic setting. Western jurisdictions have statutory recognition for such relationships, but India lacks a legal framework which governs cohabitation, therefore Judiciary plays an important role in defining their legal status the supreme court observed that live in relationships may be considered immoral by some section of society but it is not illegal³. The court also highlighted that the law cannot interfere in personal relationship between adult acting with consent. This case acted as an important step, recognizing legitimacy of such relationship within the legal framework. In addition, the court analysed the nature of live in relationship and extended certain protection to it under the PWDVA, 2005⁴.

It as well recognised that any relationship in the nature of marriage may get legal protection particularly if abuse or exploitation case is involved. This judicial pronouncement shows evolution towards recognizing live in relationships, even though the recognition remains partial and inconsistent.

RIGHT TO PRIVACY UNDER ART 21

The Constitution in Art 21⁵ assures the right to life and personal liberty. Over a period of time, judicial interpretation expanded its scope and included various aspects of human dignity and freedom. The right to privacy is not explicitly mentioned in the Constitution, but it is acknowledged as an inbuilt part of Art 21. In the case, a nine-judge bench of the SC unanimously declared that privacy is a fundamental right, and the court held that the right to privacy includes right to make personal decisions without any interference from the state or from society⁶. The judgement identified several aspects of privacy which includes i.e., we can claim privacy when it comes to body, data and decision.

COHABITATION AS AN EXPRESSION OF PRIVACY

Cohabitation without legal recognition of marriage come under the domain of decisional privacy. So the choice to live with a partner without marriage is a personal decision that reflects the individual freedom and their autonomy. The SC recognized the right of the adults to select

³ S. Khushboo v. Kanniammal (2010) 5 S.C.C 600(India).

⁴ Indra Sarma v. V.K.V. Sarma (2013) 15 SCC 755 (India).

⁵ INDIA CONST. art 21.

⁶Justice K.S. Puttaswamy & Anr v. Union of India & Ors., (2018) AIR 2017 SC 4161(India).

their partner and states that such decisions are part of their personal liberty⁷. Even though the case dealt with inter-caste marriage, the principle applies to all forms of consensual relationships, including unmarried cohabitation. In the another case, the court reiterated that the right to choose a partner is a fundamental aspect of personal liberty and it cannot be interfered by state or society⁸.

From a social-legal perspective, the cohabitation are against traditional norms, and it questions the social dominance over defining on legitimate relationship. So by choosing to live together without getting married. Individuals confirm their autonomy and oppose the compelled moral standards. Any interference by the state or by the society with such choices may amount to violation of right to privacy.

SOCIETAL MORALITY VS CONSTITUTIONAL MORALITY

One of the notable issue in recognition of cohabitation is the conflict between constitutional morality and social norms because of religion, tradition and cultural norms influence community ethics but the Constitutional principles is based on the values like liberty, equality, privacy, dignity. The judiciary repeatedly highlighted that constitutional morality must prevail over these societal morality. The Supreme Court decriminalised the homosexuality and held that societal disapproval cannot act as a ground to restrict the fundamental rights guaranteed under the Constitution⁹. If this principle is applied in live-in relationship, it becomes noticeable that personal choice cannot be restricted simply because they deviates from societal norms. The Constitution protects individual freedom and decision-making, even if it is in conflict with the majority opinion, but the social stigma continues to create difficulties for the individuals in the cohabitation. Character assassination, lack of social acceptance are particularly faced by women from which the difference between legal recognition and social reality is highlighted.

THE UCC UTTARKHAND ACT, 2024: ABOUT LIVE-IN RELATIONSHIP

Recognizing live- in relationship explicitly in the legal framework protects the individual rights without imposing any unnecessary regulation, and it is also essential to make people knowledgeable about the legal remedies which are available to them. Bridging the gap between the law and the society not only requires change in law, but also needs a change in social attitude. Previously this area is governed largely by judicial interpretations. Under section 3(4)

⁷ Lata Singh v. State of Uttar Pradesh (2006) 5 S.C.C 475(India)

⁸ Shafin Jahan v. Ashokan K. M Aironline 2018 S.C 1136 (India).

⁹ Navtej Singh Johar v. Union of India, AIR 2018 S.C 4321(India).

(b)¹⁰, A legal relationship is defined as a relationship between a woman and a man who live together in a shared household in the nature of marriage. This definition shows the principle laid down, where the Supreme Court of India highlighted that to determine the existence of such a relationship, elements such as duration of their cohabitation, shared household, and a social recognition is essential¹¹.

Introduction of compulsory registration of live-in relationship is one of the notable feature of the Act. Section 378¹² of the Act requires partners to submit a statement to the registrar of the relationship within one month of entering into such relationship. Section 381¹³ provide the procedure for such registration, while section 380¹⁴ specifies under which circumstances the registration is prohibited such as minority of the party, already married or within prohibited degree of relationship. The act also imposes penalty including fine, imprisonment for non-registration of such relationship. Thereby, bringing in a degree of state regulation over private relationships. Partners are also required to inform the authorities about the termination of relationship, which reinforces the regulatory control. This Act as a progressive step towards protecting the women in cohabitation provides for maintenance right. A woman who is deserted by her husband is entitled to claim maintenance, similarly to a legally wedded wife. The provision is in accordance with the section 125¹⁵ of the Cr.P.C which is replaced by section 144 of BNSS and the PWDVA, 2005. Both of these frameworks recognize the relationships in the "nature of marriage" which aims to prevent economic exploitation of women, the act further by recognizing the legitimacy safeguard the right of the children born out of such relationship, aligned with the principles under HMA, 1955.

LEGAL AND PRACTICAL CHALLENGES:

Even with judicial recognition, cohabitation faces several legal and practical challenges in India

1. Absence of comprehensive legislation

No particular law which regulates live in relationships. This create ambiguity regarding the rights an obligation of a partner specifically in cases of property, maintenance and inheritance.

¹⁰ The UCC of Uttarakhand Act, 2024, No.3 of 2024, Section 3(4)(b)

¹¹ Indra Sarma v. V.K.V. Sarma (2013) 15 S.C.C 755 (India).

¹² The UCC of Uttarakhand Act, 2024, No.3 of 2024, Section 378.

¹³ The UCC of Uttarakhand Act, 2024, No.3 of 2024, Section 381.

¹⁴ The UCC of Uttarakhand Act, 2024, No.3 of 2024, Section 380.

¹⁵ The Cr.P.C, 1973 Section 125 now it has been replaced by BNSS,2023 Section 144

2. Limited protection for women

The PWDVA, 2005 provides some safeguard to women, but its application is limited to the relationships in the "nature of marriage " decided in the case it is upheld some important factors that are considered while deciding the nature of the marriage. i.e.,

Long duration

Shared household

Holding out as spouses¹⁶

3. Social stigma and Underreporting

Individuals are discouraged from acknowledging live in relationships openly due to social disapproval and condemnation which causes underreporting of issues like abuse and exploitation.

4. Privacy v. public scrutiny

Individuals in cohabitation often faces imposition of moral standard by families, communities and even authorities. So such interference affect their right to privacy and personal liberty. The court held that a woman and man can live together without getting marry if they desired to and such a relationship is part of fundamental right to life and liberty¹⁷.

NEED FOR A SOCIO-LEGAL APPROACH:

A purely legal analysis is inadequate to address these intricacies surrounding the live in relationship, so a social-legal approach is required to understand the interplay between law and the society.

From a sociological perspective, the rise in the live in relationships shows the changing attitude in the direction of marriage, gender role, and individual freedom. It shows a shift from collectivist values to individual centric decision making.

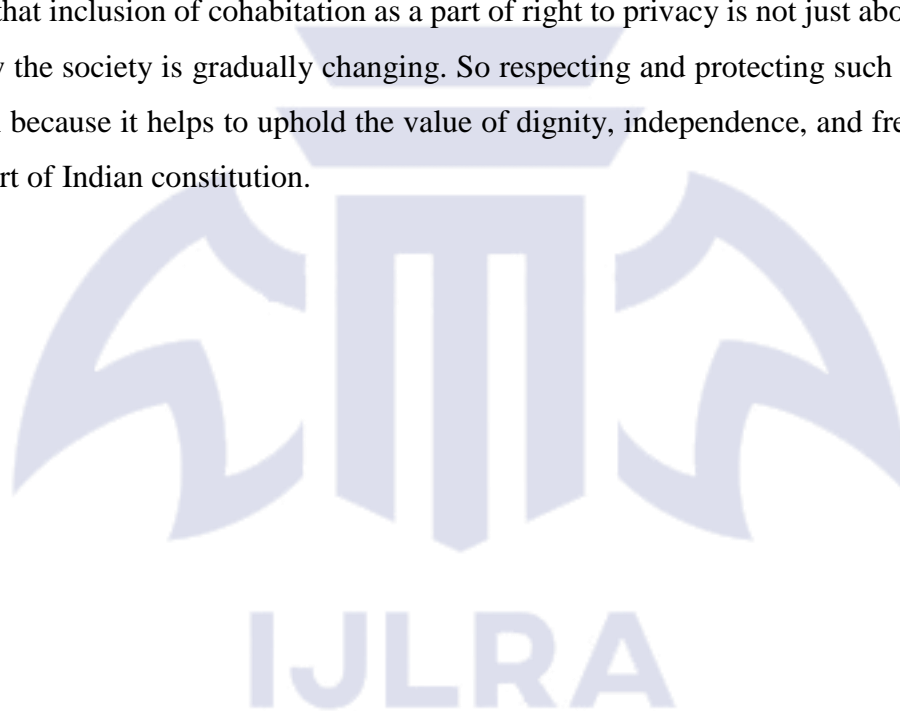
From a legal perspective, there is a need to recognize live- in relationship explicitly in the legal framework to protects the individual rights without imposing any unnecessary regulation, and it is vital to make sure that people are aware of the legal remedies which are available to them. Bridging the gap between the law and the society not only requires change in law, but also needs a change in social attitude.

¹⁶ D. Velusamy v. D. Patchaiammal (2010) 10 S.C.C 469 (India).

¹⁷ Payal Sharma v. Nari Niketan (2001) AIR 2001 All 254 (India).

CONCLUSION

Cohabitation symbolize a major shift in the way of personal relationships which are observed in India. As they persist to face social struggle, judgment from high court and supreme courts have progressively acknowledged their legality and extended certain safeguards. The right to privacy, as preserved under Art 21¹⁸, gives a strong constitutional foundation for shielding cohabitation. Personal liberty includes choosing their partner and life style in their own choice. Any interference with such choices by the government or by the society will affect the fundamental rights But the lack of comprehensive legislation and social bias shows the need for wider approach. For individual to enjoy they right without the fear of being judged by the society, a social legal framework which includes legal validation with social acceptance is important that inclusion of cohabitation as a part of right to privacy is not just about the law. It shows how the society is gradually changing. So respecting and protecting such relationships is essential because it helps to uphold the value of dignity, independence, and freedom which are the heart of Indian constitution.



¹⁸ INDIA CONST. art 21