

AN UNACCEPTABLE VERDICT IN THE CONSTITUTIONAL SENSE

Relevant for: Indian Polity | Topic: Indian Constitution - Features & Significant Provisions related to Fundamental Rights, Directive Principles and Fundamental Duties

To enjoy additional benefits

CONNECT WITH US

July 14, 2023 12:16 am | Updated 08:49 am IST

COMMENTS

SHARE

READ LATER

'In the guise of constitutional adjudication, the court only tried to reiterate the traditional beliefs on marriage and morals' | Photo Credit: Getty Images

A judgment by the Allahabad High Court recently, declining the prayer by an inter-faith couple in a live-in relationship for protection from police harassment has caught national attention. The judgment in *Kiran Rawat vs State of UP* negates the very idea of constitutional morality in personal relations, which the Supreme Court of India has repeatedly affirmed. The High Court in its judgment implied that the live-in relationship is a "social problem".

The case of the petitioners, a Muslim man and a Hindu woman, was short and simple: They are around 30 years of age, living together and their relation is based on mutual love and affection. They alleged that the local police have been torturing them while living in a rented house, and sought protection from police harassment, allegedly done on the basis of a complaint made by a family member.

The judgment by the High Court is unacceptable in the constitutional sense. First, the court is ostensibly carried away by the notions of conventional social morality rather than the constitutional principles on individual autonomy and personal liberty. Second, in the process, the court also discarded several Supreme Court judgments, even after citing them, by giving untenable reasons. Third, the High Court travelled much beyond the brief and relied on personal laws on marriage which were irrelevant.

The Allahabad judgment said that Supreme Court verdicts on live-in relationships such as *D. Velusamy* (2010), *Indra Sarma* (2013) and *Dhanu Lal* (2015) were not intended "to promote such relationships" and that the law traditionally has been "biased in favour of marriage". Thereby, the High Court essentially rejected the precedential value of the top court verdicts. The High Court also made an unnecessary reference to Section 125 of the Criminal Procedure Code (Cr.PC) which talks about maintenance to wives (and not "other women"). The High Court also said that extramarital and premarital sex are not recognised under the Muslim law. Even the "sexual, lustful, affectionate acts such as kissing, touching, staring etc." prior to the marriage, are 'Haram' in Islam, says the judgment.

Though there were many deficits in the petition, the High Court could not have assumed that

marriage is a condition precedent for constitutional protection and the exercise of fundamental rights. In effect, it acted as a theological court, as if the very idea of individual liberty and autonomy are alien to the writ jurisdiction. The verdict shows a clear inclination towards social orthodoxy and religious revivalism. In the guise of constitutional adjudication, the court only tried to reiterate the traditional beliefs on marriage and morals.

The Supreme Court verdicts on fundamental rights are not mere adjudication of the inter-party disputes, as fallaciously conceived by the High Court. The law laid down by the Supreme Court is binding on all the courts in the country, as in Article 141 of the Constitution. In the process of constitutional adjudication, the top court is not 'encouraging' or discouraging any social practice or human conduct.

For example, in *Joseph Shine vs Union of India* (2018), the Court decriminalised adultery as defined under Section 497 of the Indian Penal Code (IPC). This was done since the state's police power cannot be used for punishing individual moral aberrations. In the words of Deborah L. Rhode, "Fidelity is a value, but not one that the state should police" (*Adultery: Infidelity and the Law*, Harvard University Press). In *Navtej Singh Johar* (2018), while substantially striking down Section 377 of the IPC dealing with same sex relations, the Supreme Court made a constitutional adjudication rather than mere moral judgment. The libertarian value of these judgments lies in their capacity in limiting the state's power in the realm of personal choices.

The Supreme Court judgments, cited in the Allahabad verdict, also upheld personal liberty and laid down the law in that regard. In *Lata Singh* (2006), the Court directed police authorities throughout the country to see to it that any adult undergoing inter caste or inter religious marriage is not harassed by anyone. In *S. Khushboo vs Kanniammal & Anr.* (2010), the Supreme Court held: "While it is true that the mainstream view in our society is that sexual contact should take place only between marital partners, there is no statutory offence that takes place when adults willingly engage in sexual relations outside the marital setting". It was only a restatement of law.

But the Allahabad High Court said that the observations of the Supreme Court in these judgments were made in the context of the facts of the respective cases. Facts of every case will vary from one another and there cannot be precedents on facts. But that does not mean that the High Court can disregard the proposition of law laid down by the Supreme Court on questions of fundamental rights.

The petitioners in the Allahabad case only asserted their right not to be tortured by the police and did not pray for a moral evaluation of their decision to live together. They relied on the law laid down by the top court. The High Court ought to have sought further particulars if required and endorsed the couple's fundamental right, without conducting an unwanted and irrelevant survey of the personal laws on marriage. The judgment is a classic case of judicial indiscipline which the Supreme Court will, hopefully, set right as early as possible. To imply that the moral lessons of personal laws will supersede the constitutional tenets is a serious adjudicatory mishap.

Kaleeswaram Raj is a lawyer at the Supreme Court of India

COMMENTS

SHARE

[constitution](#) / [judiciary \(system of justice\)](#) / [police](#) / [social issue](#)

BACK TO TOP

Comments have to be in English, and in full sentences. They cannot be abusive or personal. Please abide by our [community guidelines](#) for posting your comments.

We have migrated to a new commenting platform. If you are already a registered user of The Hindu and logged in, you may continue to engage with our articles. If you do not have an account please register and login to post comments. Users can access their older comments by logging into their accounts on Vuukle.

END

Downloaded from **crackIAS.com**

© **Zuccess App** by crackIAS.com

CrackIAS.com