Allahabad High Court's Comments on Live-in Relationships

Why in news?

In ***Kiran Rawat vs State of UP***, the Allahabad High Court rejected a petition filed by an interfaith live-in couple seeking protection against alleged harassment by the police.

What is the issue?

- A Muslim man and a Hindu woman who were in a live-in relationship, filed a petition seeking protection from police harassment.
- They alleged that the local police have been torturing them on the basis of a complaint made by a family member.
- The Allahabad High Court declined their plea implying constitutional morality in personal relation against the Supreme Court's repeated affirmations on constitutional morality in personal relations.

The legality of live-in relationship stems from Article 21 - Protection of right to life and personal liberty

What are the interpretations made by the Allahabad HC?

- The court tried to reiterate the traditional beliefs on marriage and morals, in the guise of constitutional adjudication in ***Kiran Rawat vs State of UP*** *case.*
- The High Court in its judgment implied that the live-in relationship is a ***'social problem'.***
- It 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'.
- The court referred to the concept of ***Zina*** (any sexual intercourse except that between husband and wife includes both extramarital sex and premarital sex) in Islam and said that extramarital and premarital sex are *not recognised under the Muslim law.*
- The court made a reference to *Section 125 of the Criminal Procedure Code (CrPC)* which denotes the meaning of the word 'wife'.
- The court added that partners in a live-in relationship *do not enjoy an automatic right of* ***inheritance to the property*** of their partner.
- The court ***dismissed the petition*** noting that the interfaith couple approached the court with mere *unsubstantiated allegations.*

Why are these interpretations criticized?

- Public's resentment against interfaith relationships has increased in recent times due

to the spread of narratives of '*love jihad*' in the aftermath of the ***Shraddha Walkar murder case***.

- In this context, the Allahabad HC's observation seems like an endorsement of the public's unreasonable and conservative views, thus flying in the face of modern Indian jurisprudence on the matter established by the Supreme Court itself.
- **Violation of Article 141** - The court also discarded several Supreme Court judgments, even after citing them, by giving invalid reasons.
- **Unacceptable in constitutional sense** - The court is apparently carried away by the notions of conventional social morality rather than the *constitutional principles on individual autonomy and personal liberty.*
- **Irrelevant personal laws** - The High Court relied on *personal laws on marriage* which were irrelevant.
- The court *presumed marriage is a condition precedent* for constitutional protection and the exercise of fundamental rights.
- It said the apex court is *not 'encouraging'* such relationships rather accepting them as part of a social reality.

Article 141 of the Constitution of India stipulates that the law declared by the Supreme Court shall be binding on all Courts within the territory of India.

What are the earlier Supreme Court Judgments in this regard?

- ***Thakur Gokalchand versus Parvin Kumari (1952) -*** The Supreme Court reiterated 1920's verdict that a presumption of marriage may be drawn in live-in relationships.
- ***Badri Prasad versus Director of Consolidation (1978) -*** The Supreme Court held that in a case of long cohabitation, a strong presumption of marriage is formed.
- ***Payal Sharma versus Nari Niketan (2001) –*** In this case, the Allahabad HC recognised the legality of live-in relationships and drew a distinction between law and morality.
- It held that even if it is considered immoral by society, *it is not illegal.*
- ***Lata Singh Vs State of UP case (2006) -*** The judgment upheld personal liberty and the act of two majors living together cannot be considered illegal.
- ***S. Khushboo Vs Kanniammal (2010) -*** The SC held that a live-in relationship between two consenting adults of heterogenic sex does not amount to any offense.
- ***D. Velusamy versus D. Patchaiammal (2010)*** - The Supreme Court considered lack of statutory recognition and regulation on this matter and laid the criteria as prerequisites for relationship in the nature of marriage:
    - The couple must hold themselves out to society as being akin to spouses
    - They must be of legal age to marry
    - They must be otherwise qualified to enter into a legal marriage, including being unmarried
    - They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.
- ***Shafin Jahan versus Ashokan K.M (Hadiya marriage case) 2018*** - The Supreme Court declared that the choice of a partner whether within or outside marriage lies within the exclusive domain of each individual.

- **Issue** - The Supreme Court has *limited the applicability* to Hindu heterosexual relationships mainly by remaining silent on the applicability of this on other communities outside the Hindu mainstream.

What lies ahead?

- In recent years, many states have taken invasive action through the provisions of *anti-conversion statutes* like the one passed in *Uttar Pradesh in 2020.*
- The *Maharashtra government* set up a panel to monitor interfaith marriages in the aftermath of the *Walkar murder case.*
- In this context, the judgment of the Allahabad high court represents the continued downward regression of social views towards live-in marriages.
- It must be reiterated that a person's reasoned choices *cannot be restricted due to societal pressure* and the judiciary must uphold the rights guaranteed by the Constitution, even if it goes against the conservative social *status quo*.

References

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3. The Leaflet | Allahabad HC's comments on interfaith live-in relationships
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