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The Supreme Court validates live-in relations; grants individuals freedom to live as they think best. “... Simply raising the hammer may not be the best route to taming the bold and the brave. Awareness has to be created in these young minds...”

Cite as: (2010) PL May 8 In a much awaited observation on live-in relationships, the Supreme Court opined that a man and a woman living together without marriage cannot be construed as an offence. “When two people want to live together, what is the offence. Does it amount to offence? Living together is not an offence. It cannot be an offence”, a special three-Judge Bench of the Chief Justice of India (CJI) K.G. Balakrishnan and Justices Deepak Verma and B.S. Chauhan observed.

The Supreme Court said there was no law which prohibits live-in relationship or premarital sex. “Living together is a right to life”, the Supreme Court said apparently referring to Article 21, which guarantees the right to life and liberty as a fundamental right. The Supreme Court made the observation while reserving its judgment on a special leave petition filed by noted South Indian actress Khusboo, seeking to quash 22 criminal cases filed against her after she allegedly endorsed premarital sex in interviews to various magazines in 2005.

The Supreme Court’s controversial observation okaying live-in relationships and premarital sex has generated a fierce debate across the country. The historic observation has frowned many orthodox groups fearing that it will destroy the sanctity of marriage. A fragment of society including noted social activists and prominent dignitaries have stepped ahead and shared their precious views on the raging debate.

“We hope the Government shall take proper steps to safeguard Indian women’s rights and dignity and save the society from chaos”, said Maa Ghara Foundation trustee, Rutuparna Mohanty. “The Act will start unravelling the fabric of Indian family life”, she said.

Mohanty also viewed that it would give rise to child pregnancy and has far-reaching ramifications, adding despite its aim to restrict multiple partners, it would have an adverse impact on the youths and result in the spread of HIV/AIDS. “Children, born out of living together relationships, would not be properly brought up”, Mohanty rued.

Social scientists have already identified grave social problems like young age pregnancy of adolescent girls, drug abuse, violence and juvenile delinquencies and in the wake of the controversial ruling, the erstwhile objectionable social behaviour gets legalised, many felt.

On the other hand, the section advocating freedom for choosing live-in relationship has hailed it as a pragmatic move. The recent observation, as they see, should be welcomed because it lays emphasis on individual freedom. It opens frontiers to understand the personality traits of their partner well. Since there are no legal complications in a live-in relationship, walking out of a live-in relationship would be easier than walking out of a marriage. Metro life that throws floodgates of challenges also supports this kind of an arrangement. The individuals should be free to live as they think best, subject only to the limitation that their actions and choices should not cause harm to others.

As expected, women from various walks of life have welcomed progressive moves on live-in relationship. Jaishree Misra, a New Delhi-based author says “India has changed. If people think youngsters are losing their values, then I would say they are becoming more pragmatic. In today’s times, it’s better for them to know what they are getting into”.

This is not the first time when live-in relationship is in the ambit of debates and discussions. There has been a long-standing controversy whether a relationship between a man and a woman living together without marriage can be recognised by law. With changing social hypothesis entering society, in most places, it is legal for unmarried people to live together. Now even in a country like India bounded by innumerable cultural ethos and rites, the law finds legally nothing wrong in live-in relationship.

The Supreme Court, on an earlier occasion, while deciding a case involving the legitimacy of a woman born out of wedlock has ruled that if a man and woman are involved in a live-in relationship for a long period, they will be treated as a married couple and their child would be called legitimate. Also, the recent changes introduced in law through the Domestic Violence Act, 2005 give protection to women involved in such relationships for a “reasonable long period” and promises them the status of wives.

This however cannot be construed as law promotes such relationships. Law traditionally has been biased in favour of marriage. It reserves many rights and privileges to married persons to preserve and encourage the institution of marriage. Such stands, in particular cases of live-in relationship, it appears that, by and large, is based on the assumption that they are not between equals, and therefore women must be protected by the courts from the patriarchal power that defines marriage, which covers these relationships too.

An expression of opinion in favour of non-dogmatic and non-conventional morality, as in the present case, cannot be a

ground to penalise hence has to be tolerated. Cumulative impact of multiple factors have brought about such changes in society and law needs to be developed with the dynamics of social behaviour. Owing to surmounting number of such cases, the Supreme Court is simply acknowledging the social reality.

Moreover, law does not prescribe how we should live; it is ethics and social norms which explain the essence of living in welfare model. The Court itself notices that what law sees as no crime may still be immoral. It had said in a judgment of 2006, noticed by the Court now, that two consenting adults engaging in sex is not an offence in law – even though it may be perceived as immoral.

Of course, such protective sanctions may potentially lead to complications that could otherwise be avoided. But, simply raising the hammer may not be the best route to taming the bold and the brave.

Awareness has to be created in these young minds not just from the point of the emotional and societal pressures that such a relationship may create, but also from the fact that it could give rise to various legal hassles on issues like division of property, violence and cheating within live-in, rehabilitation in case of desertion by or death of a partner and handling of custody and other issues when it comes to children resulting from such relationship.

While the Supreme Court's opinion might not have the undesirable effect on more and more couples preferring live-in relationships rather than opting to wed, it could certainly embolden more young men and women as they would now be convinced that there is no breach of law in the live-in relationships. One can only hope that as mature adults such couples would weigh the pros and cons and take into account the impact of their decision on their family and most importantly on themselves.