The order of the Rajasthan State Human Rights Commission on live-in relationships is problematic

While referring to women in live-in relationships, a Bench of the State Human Rights Commission of Rajasthan said on September 5 that the “concubine” life of a woman cannot be termed a dignified life. In the absence of any specific reference in the order to the complaints that triggered these provocative comments, it is difficult to say what the honourable justices sought to achieve by making them. The kindest interpretation would be that they were overcome by benevolent patriarchy, the kind which prompts universities to have more conservative curfews for female students. However, this seemingly innocuous need to ‘protect’ women is a symptom of a more pernicious disease: the need to ensure that women don’t challenge the patriarchal structures and institutions meant to keep them in their place.

The rights of parties who cohabit

In demanding a law that would provide avenues to formally recognise live-in relationships, the Bench touched upon an important legal issue. The Protection of Women from Domestic Violence Act, 2005, extends remedies in the legislation to ‘relationships in the nature of marriage’, and courts have repeatedly held that long, continuous cohabitation raises a presumption in favour of marriage. Notwithstanding this, there is a legal vacuum as regards the rights of parties who cohabit. The Supreme Court has passed several landmark judgments on intimate relationships. In *Shafin Jahan v. Asokan* (2018), it held that the right to choose one’s life partner is an important facet of the right to life, and social approval of intimate personal decisions should not be the basis for recognising them. In *Navtej Johar v. Union of India* (2018), it read down Section 377 of the IPC which criminalised consensual homosexual relationships. In light of this, it is important to note that being in a live-in relationship is a valid choice which deserves the recognition and protection of law. That said, there may also be those who cohabit informally because they cannot formalise their relationships, such as inter-caste/religion opposite-sex couples who are barred from
marrying by social norms, or same-sex couples, who are barred from marrying by law. Informal cohabitation, like marriage, creates vulnerabilities due to divisions of labour that leave one party, usually the woman and her child, in greater need of financial support when the relationship ends. The law provides ways to address these vulnerabilities in marriages through the provision of rights to maintenance or inheritance, but the needs of informal cohabitants are left up to the discretion of judges, without any legal framework to guide them. However, it is not for these reasons that the SHRC has demanded the law. The real apprehension of the Bench is the alleged proliferation of live-in relationships, a social institution through which sexual freedom can be exercised outside marriage.

**Problematic proclamations**

The SHRC’s order is problematic on many levels. One, Article 19 of the Constitution, which protects the right to freedom of speech and expression, includes the freedom to express one’s identity, sexual preferences, and love. The right to life and personal liberty under Article 21 includes the right to privacy. The right to choose how to organise one’s personal intimacies is an important facet of the right to privacy and, therefore, outside the purview of the state. Demanding that the government seek to prohibit live-in relationships is therefore brazen contempt of the decisions of the apex court.

Two, the language of the SHRC promotes sexist and heteronormative stereotypes, and ignores social reality. At one level, in stating that women in live-in relationships are ‘kept’ as concubines, it ignores the possibility that such relationships could be a viable alternative in cases where marriage is legally or socially prohibited. It also assumes that marriage is, or ought to be, the only relationship through which women sexually associate with men. At another level, by equating women who cohabit with concubines, it entrenches the patriarchal Madonna-whore dichotomy: women can either be good women who abide by the societal boundaries set for them or bad women who dare transgress these boundaries. The fact that this language was used by a body tasked with protecting and upholding human rights makes the proclamations doubly egregious.

Finally, the language in the order will likely create a chilling effect, preventing vulnerable citizens, in need of legal protection, from seeking redress.

The SHRC also demanded that governments run awareness campaigns against live-in relationships. It is worth considering whether that time and money might be better spent in campaigns to sensitise the functionaries of the justice system instead.

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