

Orissa HC allows woman to live with her same-sex partner, state to provide protection

Tuesday 15 September 2020, by [SINHA Bhadra](#) (Date first published: 26 August 2020).

Orissa HC also extends protection to the 'woman partner' in the relationship under the domestic violence law to secure her rights in case of a separation.

New Delhi: In a first, the Orissa High Court has allowed a same-sex couple to have a live-in relationship, and also extended protection of domestic violence law to the woman partner to exercise her legal rights in case of a separation.

The order was pronounced Monday by a bench of Justices S.K. Mishra and Savitri Ratho on a habeas corpus petition filed by one of the partners, seeking production of the other before court.

According to the petitioner, her partner was forcibly separated by the latter's mother in April in Bhubaneswar.

The petitioner exercised her rights to self-gender determination under the Supreme Court's 2014 verdict in the NALSA case and preferred to be addressed as "he".

His case was that both he and his partner are adults, and belonging to the same gender are not competent to enter into wedlock but still have the right to live together.

The petitioner also contended that in the provisions of the Domestic Violence Act, 2005, the legislature acknowledged live-in relationships — irrespective of the gender — by giving rights and privileges to the 'woman partner'.

The judges wrote two separate but concurring verdicts while allowing the habeas corpus, after they conversed with the petitioner's partner through video-conferencing to know what she desired.

The Odisha government took no stand in the case but undertook to carry out the court orders.

The partner's mother urged the bench to ensure her daughter's well-being and safety, if the court was to allow the habeas corpus.

"Thus, taking into consideration the aforesaid authoritative pronouncements of the Supreme Court, there is hardly any scope to take a view other than holding that the petitioner has the right of self-determination of sex/gender and also he has the right to have a live-in relationship with a person of his choice even though such person may belong to the same gender as the petitioner," the court held.

"We hope and trust that the petitioner and his partner (name) will lead a happy and harmonious life so that their family members have no cause for worry and society has no excuse to raise a finger at them," said the bench.

‘State to provide all kind of protection’

The petitioner claimed in his plea that the couple fell in love with each other in 2011 and have been in a consensual relationship since 2017. The two met each other in school and continued their association even in college.

The couple also filed a joint affidavit that gave details of where they stayed in Bhubaneswar and affirmed that the two were in a live-in relationship. The petitioner furnished a certificate to show that he had gender dysphoria (gender incongruence) and has no psychotic symptoms or other psychiatric morbidities.

The petitioner approached the court after the Bhubaneswar police did not take action on his complaint against his partner’s mother and uncle for forcibly taking her away on 9 April against her will. The mother, he claimed, pressured his partner to marry someone else.

Taking note of the submissions, the court directed the Odisha government to safeguard the couple’s rights under Part-III of the Constitution — right to life, right to equality before law and equal protection of law. Both the state administration and the police were ordered to facilitate the partner to join the petitioner.

The court, alive to the apprehensions of the partner’s mother, ordered the petitioner to “take all good care of the lady” as long as she resided with the latter.

The partner, it added, would not be stopped from speaking to her mother and sister over the phone or even visit them. Further, her family too would have the right to visit her at the petitioner’s residence.

To ensure her legal rights as a woman are not compromised on account of entering into a same-sex live-in relationship, the court empowered her to move court under the Protection of Women from Domestic Violence Act 2005.

‘Cannot stifle one’s right to choose a partner’

In a separate but concurring judgment, Justice Savitri Ratho underscored that law is a reflection of current social values and keeps abreast with the changing social norms.

“The oft quoted maxim — love knows no bounds has expanded its bounds to include same sex relationships. A reading of the Supreme Court judgements will indicate that individual rights have to be balanced with social expectations and norms. The freedom of choice is therefore available to the two individuals in this case who have decided to have a relationship and live together and society should support their decision,” she said.

The judge took into account that the partner’s mother had brought up two daughters as a single parent and was, therefore, rightly worried about their future. But, according to Justice Ratho, the possibility of social stigma or mental turmoil caused to her family cannot stifle or negate her right to select her life partner.

She even advised her not to forget her duty towards her mother and younger sister, and to look after their financial, social and emotional well-being.

A judicial stamp over their relationship will not bar the partner to separate ties with the petitioner in case their relationship falls apart or she wants to go back to her mother, the judge clarified.

Bhadra Sinha

[Click here](#) to subscribe to our weekly newsletters in English and or French. You will receive one email every Monday containing links to all articles published in the last 7 days.

P.S.

The Print

<https://theprint.in/judiciary/orissa-hc-allows-woman-to-live-with-her-same-sex-partner-state-to-provide-protection/489218/>