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Right to Life Includes Right of a Person to Choose Life Partner

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Abstract

In India, the right to choose one's partner and relationships, free from interference by family or community, is enshrined in the constitution under Article 19(1) (c) and 21, protecting individual in matters of marriage and personal choices. Adults have the freedom to marry and live as they wish, regardless of societal norms or family expectations. This article explores the legal dimensions of marriage, emphasizing its status as a sacred sacrament transcending mere socio-legal contracts. It underscores that marriage is a lifelong commitment, symbolizing the beginning of a family and a profound union of love, respect, between an adult man and woman.

Key Words- Marriage, Consent, Choice, Caste system, Right to privacy

Introduction-

Marriage is one of the most ancient, important, universal and indispensable social institution which has been in existence since the inception of human civilization. It is generally the conjunction of a man and woman, in a constant society, and agreement of living together; until the contract is dissolved by death or breach of faith or some notorious misbehavior, bride and bridegroom accepts each other and vows to keep with utmost love and respect till the last breath of their life.

This article is designed to discuss law related to Hindu marriage. This research is conducted in order to determine the legal aspects of Hindu marriage with its effects. The research is expected to benefit our new generation to get knowledge regarding marriage.

Concept of Marriage

Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. In Hindu institution marriage is a sacrament (Samskara) and not a mere socio-legal contract¹, Marriages are made in heaven but performed on earth, so object of Marriage is to perform religious ceremonies, duties², dharma and rites in the companionship of his wife otherwise they will not bear any fruits³.

¹ Gopal Krishna v. Bhagwanthymma, AIR 1962 Mad. 40

² Sundarbai v. Shivnarayana (1908) 32 Bom. 81

³ Mahabharat Anushashan Parva 46.1-13, Manu IX, 96.

Marriage is wishes of a continued conjugal relationship provided the couple has attained the age of marriage, as required by law⁴. It is the beginning of the family and is a life-long commitment; it is not only a physical but a spiritual and emotional union also. Thus, marriage is a socially acknowledged and legally ratified union between an adult male and adult female⁵. It is neither performed for mere emotional gratification nor a mere betrothal⁶.

Consent of parties for Marriage-

The consent of parties plays an important part in the formation of marriage⁷. No marriage shall be legally entered into without the full and free consent of both parties. Such marriage shall be entered into only with the free and full consent of the intending spouses⁸, certain customs, ancient laws and practices relating to marriage and the families were inconsistent with the principles set forth in the Charter of the United Nations and in the Universal Declaration of Human Rights, 1948. Reaffirming that all States, including those which have or assume responsibility for the administration of Non-Self-Governing and Trust Territories until their achievement of independence, should take all appropriate measures with a view to abolishing such customs, ancient laws and practices by ensuring, inter alia , complete freedom in the choice of a spouse.....⁹”

Right to choice in relationships-

Every prudent adult has the right to marriage and have a family. Marriage is a fulfilling experience. In some Indian societies, women's freedom to make choices about their relationships is often denied. A woman's "right to choice in relationships" means she can decide when, with whom, and whether to be in a relationship. Laws and court rulings protect this right.

In *Lata Singh vs. State of U.P*¹⁰ The Supreme Court condemned violence against inter-caste marriages, emphasizing that the caste system is a curse on the nation and that such marriages are in the national interest, as they contribute to dismantling this system. It affirmed that in a free and democratic country, individuals have the right to marry whomever they choose once they reach adulthood, and parents cannot harass them for their inter-caste or interreligious marriage decisions.

In *In Re v. Indian Woman Says Gang-Raped Suo Motu W. P. (Criminal) No. 24 of 2014*¹¹-The State is duty bound to protect the Fundamental Rights of its citizens; and an inherent aspect of Article 21 of the Constitution is the freedom of choice in marriage.

In *Vikas Yadav vs. State of U.P*¹² Vikas and Vishal Yadav convicted for 25 years imprisonment for brutally murdering Nitish Katara who was in love with their sister, while delivering the judgment Apex court said “*neither the family members nor the members of the collective have any right to assault the boy chosen by the girl. Her individual choice is her self-respect and creating dent in it is destroying her honour. And to impose so called brotherly or fatherly honor or class honor by eliminating her choice is a crime of extreme brutality.*”

⁴ Deepika and other v. State Of U.P Allahabad High Court, W.P. No. - 33919 of 2013 11 November, 2013

⁵ Collins Dictionary of Sociology, 1st edition, Harper Collins 1991

⁶ *Gopal Krishna v. Mithilesh Kumar* AIR 1979 ALL 316

⁷ Sec 5 Hindu Marriage Act, 1955, see also Special marriage Act, 1954 and other marriage laws

⁸ Art.16 Universal Declaration of Human Rights, 1948

⁹ General Assembly of the United Nations declared, by resolution 843 (IX) of 17 December 1954.

¹⁰ (2006) 5 SCC 475

¹¹ (2014) 4 SCC 786

¹² (2016) 9 SCC 541

In *Asha Ranjan vs. State of Bihar*¹³, the Supreme Court again declared the right of a person in choosing a partner to be legitimate constitutional right recognized under Article 19 (1) (c)¹⁴ of the Constitution of India “.....choice of woman in choosing her partner in life is a legitimate constitutional right. It is founded on individual choice that is recognized in the Constitution under Article 19”.

In *Shakti Vahini vs. Union of India*¹⁵ The Hon’ble Supreme Court affirmed that the consent of family or community is unnecessary when two adults choose to marry, emphasizing that interference with this right is a constitutional violation recognized under Article 19(1)(c) and 21 of the Constitution, as it upholds individual autonomy in various aspects of life, including the choice of a life partner. Our constitutional strength lies in guaranteeing the freedom to decide on matters like whom to love and partner with, recognizing the fundamental importance of individual choice in numerous aspects of daily life.¹⁶”

In *Dr. Sangamitra Acharya and others vs. State of Delhi and others*¹⁷ A 23-year-old woman, residing with her music teacher since turning 18, was forcibly taken away, violating her fundamental rights under Article 21 of the Indian Constitution due to her exercising freedom of choice in her living arrangements. Once person reaches adulthood, their parents no longer have the authority to dictate their living arrangements, even if it's unconventional by societal standards, as long as it's within legal bounds.¹⁸.

In *Shafin Jahan v. Asokan K.M*¹⁹-The Supreme Court affirmed that an individual's right to choose their partner and practice their faith is inviolable, emphasizing the importance of individual autonomy in marriage and faith matters. Hence we are citizen of democratic country, and once a person becomes a major he or she can marry whosoever he/she likes²⁰.

The Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020 backlash to India’s secularism.

Society evolves with changing needs, and the law should adapt accordingly. Inter-caste and inter-faith marriages have faced opposition, but India's constitutional principles emphasize equal treatment for all individuals, aiming to transcend societal divisions like caste endogamy to foster a pluralistic society.

Religion is matter of faith, with individuals or communities and it is not necessarily theistic²¹. India is secular country, and Supreme Court held- secularism has a positive meaning that is developing, understanding and respect towards different religions²².

Indian women already have a hard time releasing themselves from the shackles of their families and communities in order to choose their own life partners, Hindu woman married a Muslim man and converted to Islam to marry him with will and wish it is our duty of protect them ‘*efforts should be (made) to preserve the marriage rather than destroy the same*²³’.

¹³ (2017) 4 SCC 397

¹⁴ Art. 19(1)(c) to form associations or unions.

¹⁵ (2017) 4 SCC 397

¹⁶ Common Cause (A Regd. Society) vs. Union of India reported in (2018) 5 SCC 1, held: (SCC p.194, Para 346)

¹⁷ WP.No. (Cri.) 1804/2017, 18 April, 2018

¹⁸ Payal Sharma v. Superintendent, Nari Niketan, Agra and Others 2001(3) AWC 1778

¹⁹ Appeal No. 366/2018, arising out of SPL (Cri.) No 5777 of 2017, decided on April 9, 2018

²⁰ Salamat Ansari and Others vs. State Of U.P. Criminal Misc. WP No. - 11367 of 2020, on 11 November, 2020 see also *Soni Gerry v Gerry Douglas*, AIR 2018 SC 346

²¹ Commissioner HRE, Madras v. Shri Lakshmindra, AIR 1954,290

²² Aruna Ray vs. Union of India, AIR 2003 SC 3176

²³ Mohd Kallu alias Mohd Jubeel v. State and Others Writ Petition No. 979 (MIB) of 1999

The notification of *Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020* specifies the procedure for undergoing religious conversion and prohibits unlawful religious conversion by force, misrepresentation, undue influence, allurements and fraud. Whereas Sec. 8 of Ordinance, requires individuals seeking to convert and religious converters (who perform the conversion) to submit an advance declaration of the proposed religious conversion to the District Magistrate (DM), which is violative of right to privacy protected under Article 21 Constitution of India, as well as it is clear violations of Art. 14, 15, 19 (1) (a), 25 and violate the principle of secularism thereby violating the basic structure of the Constitution. The ordinance is anti-women and discriminates against women, male dominant and spreading hatred and suppression of female interests and pushing women back into medieval times or under both patriarchy and caste system.

Forced Conversion not allowed- In *Rev Stainislaus v. State of M.P.*²⁴ The Supreme Court upheld the validity of the *Madhya Pradesh Dharma Swatantrya Adhiniyam, 1968*, and *Orissa Freedom of Religion Act, 1967*, stating that they aimed to prevent disruptions to public order by prohibiting coercive or reprehensible religious conversions. It clarified that while Art. 25(1) guarantees freedom of conscience to all citizens, it does not grant a fundamental right to convert another person to one's own religion, because if a person purposely undertakes the conversion of another person to his religion, that would impinge on the freedom of conscience guaranteed to all citizens of the country alike²⁵.

In *Lily Thomas, Etc. vs. Union of India & Ors*²⁶ Mr. Ghosh only converted to Islam because he wanted to contract a second marriage and he had actually no faith in his converted religion, such a conversion is manifestly fraudulent and is feigned in order to achieve an ulterior motive. Hon'ble Supreme Court in this case declares marriage is illegal with another person by converting to Islam, while previous marital tie is in existence.

Right to Privacy and Marriage- Recognition of right to privacy by apex court has opened a new area for discussion, which is related with marital rights. A citizen has the right to protect his or her own private, as well as the privacy of his or her family, marriage, reproduction, maternity, child-bearing, and education.

In *Smt. Safiya Sultana through Husband Abhishek Kumar Pandey & another*.²⁷ on the inter cast marriage of petitioner Hon'ble Vivek Chaudhary, J. held - A notice under Section 5 of the Special Marriage Act 1954 is considered optional and not an invasion of the right to privacy. If the marriage officer has doubts, they can request relevant details/proof as needed, as young couples often avoid litigation to protect their privacy and avoid unnecessary social pressure on their choice of life partner.

In *Smt Pooja Arya & Anr v. State of UP & Ors*²⁸ - on the Hindu-Muslim inter Cast marriage, Allahabad High Court directs the police 'not to interfere with the matrimonial life of the petitioners, and to provide adequate protection to them, as and when necessary'.

²⁴ AIR 1977 SC 908

²⁵ The Times of India, 3 September, 2003.

²⁶ 2000 (2) ALD Cri 686, 2000 (1) ALT Cri 363, 2001 (1) BLJR 499, 2000 CriLJ 2433, II (2000) DMC 1 SC, JT 2000 (5) SC 617, 2000 (4) SCALE 176, (2000) 6 SCC 224, 2000 (2) UJ 1113 SC

²⁷ Allahabad High Court, Habeas Corpus No.- 16907 of 2020, Delivered on: 12.01.2021

²⁸ 2006 (1) ALJ 424 (DB) at 424

In *Ashok Kumar Todi v. Kishwar Jahan*²⁹ Hon'ble supreme court reiterate *The police and law enforcement have no right to interfere in the married life of consenting adults who have married of their own will, as such inter-caste marriages contribute to breaking the caste system and fostering communal harmony, and the law should respect their choices just as it does for other relationships.*"³⁰

In *Pooja @ Zoya vs State of Uttar Pradesh and others*³¹- The petitioner had converted to Islam before getting married, on her own volition and she is free to exercise her choice. "A citizen has the right to profess practice or propagate the religion of his / her choice but it is disconcerting that in matrimonial matters one party should change his / her faith to the others just for the sake of matrimony and nothing more."

Conclusion-

When individuals consensually choose each other as life partners, it's a manifestation of their rights under Articles 19(1) (C) and 21 of the Indian Constitution, which must be protected. Family, community, or clan consent is unnecessary once two adults agree to marry, and any threats or violence against inter-caste marriages are unacceptable violations of these constitutional rights. Their consent has to be piously given primacy. As old saying goes "Jab miya bibi razi toa kay karega kazi!" When the husband and wife are agreeing who is the kazi (in olden days kazi was a judge) to decide. When women choose to marry outside their caste or religion, it is not 'love jihad' but a choice. There is a need to incorporate values that see beyond differences in religious faith. We must have faith in the constitutional values instilled in us, and not allow the growing misinformation campaigns to draw lines between those practicing different faiths.

"Respect the rights of the citizen in this secular country to declare that he belongs to no religion at all or that he does belong to humanity with no walls of religion to segregate him from any other"³² "Intimacies of marriage lie within a core zone of privacy," Justice Kaul reproduced the core of the Hadiya case judgment.

"The choice of an individual is an inextricable part of dignity, for dignity cannot be thought of where there is erosion of choice. Such a right or choice is not expected to succumb to the concept of 'class honour' or 'group thinking'.

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²⁹ AIR 2011 SC1254

³⁰ Salamat Ansari and Others vs. State Of U.P, Criminal Misc. WP No. - 11367 of 2020, on 11 November, 2020

³¹ (HC W.P No. 446 of 2020) on October 8, 2020

³² *Perumal v. Ponnuswami* AIR1971 S. C. 2352