



## An Analysis of Judicial Pronouncements on Right to Marry in India

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### Abstract

Marriage is the foundation of social life. It is union of two persons who live together after solemnisation of marriage. Marrying a partner of one's own choice is a natural desire of an adult with sound mind and capacity. In Indian society however it is considered a taboo to marry a person of own liking. Although constitutionally and legally there is no restriction about marriage except the age barrier. Yet in everyday soci we witness a lot of incidents where persons are devoid of their right to marry. Judiciary has been proactive regarding this issue and has delivered umpteen judgements upholding the right to marry and choice in marriage. Present paper gives an account of leading judgements on right to marry.

### Keywords

Right to marry, judicial pronouncements, liberty, honour killing, constitutional right.

“The freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness by free men.”

-U.S. Supreme Court, *Loving v. Virginia*(1967)<sup>1</sup>

Even though the Right to marry the person of one's choice is not categorically mentioned in the Constitution, the Indian Judiciary has recognized and upheld this right through various judgments. One such instance has been the Supreme Court's judgment in *Lata Singh vs. State of U.P.* (2006). In that case, the woman had married a man belonging to a different caste than her. The Supreme Court held that since the woman was a major (above 18 years of age), she had the freedom to choose whomever she wanted to marry.

In the case of *Municipal Employees Union v. Additional Commissioner (Water) Delhi Water Supply and Sewage Disposal Undertaking and another, 1996(1) L.L.N. 398*, the Division Bench of the Delhi High Court held the condition to be arbitrary wherein the widow was given compassionate appointment only on the condition that she shall not remarry.

In the case of *Shrawan Kumar @ Pappu v. Nirmala, (2013) 3 All LJ 651*, the Allahabad High Court held that the right to marry is an integral part of right to life and liberty and is akin to a fundamental right.

In the case of *Geeta Singh v. State of Rajasthan*<sup>2</sup> the Court observed that boys and girls of marriageable age have the full liberty to select their own spouse. If any of the family members threatens or harasses them the Court directed the State to take suitable steps to prevent such dreadful crime.

In *Ashok Kumar v. State of Punjab and Haryana*<sup>3</sup> the Court observed that Indian traditional practice does not permit to conduct love marriage as it hit the very concept of caste system.

In *Sujith Kumar v. State of UP*<sup>4</sup> the High Court held that any people willing to marry from different caste or community have full right to conduct the same. No parents or guardians have legal right to harass them or to stop the marriage. Annoyance, maltreatment or murdering of such persons for bringing dishonour to family should be prohibited. Such practice of Honour killing is a blemish in the society. High Court directed police to take strong procedures against those who commit such Honour killings.

And in the most notable case *Lata Singh v State of U.P and Others*<sup>5</sup> the Court observed that, if the young couples solemnizing love marriage are major then there is no right to prevent them in the name of caste and Honour. Indian Constitution clearly allows right to marry with a person of his/her choice.<sup>6</sup> In fact Hindu personal law does not bar to commit an inter caste marriage. So hereby it is absolutely clear that citizens of India have complete liberty to select his/her spouse as per their choice. The fact of the case is a young woman namely Lata Gupta alias Lata Singh aged 27 years who started living with her brother at Lucknow after the demise of her parents. She left her brother 's house and got married at Arya Samaj Mandir to Bramhanand Gupta a businessman in Delhi and a child was born out of this wedlock. Her brother lodged a missing complaint and Bramhanand Gupta and his two sisters, husband of one sister and son were arrested. Brothers of the lady became outrageous as their sister has done inter-caste marriages. They went to the paternal residence of their sister and intensely beat up her in-laws, locked one of his brothers-in-law and threw all their furniture, luggage,

<sup>1</sup> 388 U.S.1,12 (1967).

<sup>2</sup> (2008) 118FLR37.

<sup>3</sup> (2009) DMC 120.

<sup>4</sup> AIR 2002.

<sup>5</sup> AIR 2006 SC, 2522.

<sup>6</sup> Constitution of India. art.21



etc. They even cut the crops of the land and took forcible possession of the land and the shop of their sister's husband. The three brothers constantly threatened the family of their sister's husband and were fixed to the complaint that their sister was kidnapped. The lives of the relatives of Lata Singh's husband were ruined as they were not allowed any bail. Lata Singh approached Rajasthan Women Commission, Jaipur. The President of the Commission wrote a letter to the National Human Rights Commission to intrude in the matter after recording the statement of Lata Singh. She has to cross several hurdles to prove her marriage happened voluntarily without any pressure. She was denoted mentally unfit as she has given a clear statement in favour of her husband. Lastly, bail was allowed, and the matter resolved by long prolongation and struggles.

In an, another landmark case *Manoj v. Babli*<sup>7</sup> Manoj and Babli, the newly married couple, was murdered by the girl's family in 2007. The couple escaped from Karoda village in Kaithal district of Haryana. Babli's family members were dominant people and enjoyed the patronage of the Khap Panchayat. But Manoj's mother Chandepati was raised against all the probabilities and waged a legal encounter to get justice for her son and daughter-in-law. As a result, in March 2010, a Karnal district court granted death penalty to the five criminals, first time an Indian court had done so in an Honour Killing case. The Khap leader, who ordered and coordinated the killings but did not take part in the killings, was awarded a life sentence. The determination convoluted in the abduction got a seven-year prison term. Villagers threatened Manoj's mother Chandepati to exclude her with her two daughters and son. But, impervious in her decision, she sustained her combat to get justice. Manoj had lost his father at an early age and established a deep affection with his mother. Manoj, after eloping with Babli, kept his mother and sister informed about their happiness. Girl's family was not informed as they could cause serious danger to the life of Manoj and Babli. The couple called their family and informed that they had married on 7th April, 2007 and also shared their marriage ceremony photographs. Babli's family lodged an FIR with the Kaithal police after the couple eloped. Babli's family accused Manoj and his family of kidnapping their daughter.

On May 31, 2007, Manoj and Babli approached the court and sought protection. They furnished their age proof certificate and testified in the court that they had married at their own will.

In the month of June, Babli called his mother-in-law and informed her that they were being chased on way to Chandigarh. She further told her that they were made to deboard the bus by police after Babli saw two of her relatives on the bus. She was scared and nobody heard about the couple after that. Manoj's family lodged a complaint. But no steps were taken. Family members of Manoj made enquiry on their own. The conductor of the bus told them that the couple was made to de-board the bus. They were compressed and then taken away in a Scorpio car. Despite narrating all the information to the police, no action was taken. On June 23, 2007, two mutilated bodies were found from Barwala branch canal in Hissar. Investigations were carried out which revealed shocking details. The couple was first asked to accept each other as brother and sister. When they refused, they were forcefully fed with pesticides. Manoj resisted, so he was strangled to death. After the murder, the bodies were thrown into the canal. After the arrest of the driver of the car in a Scorpio, all other culprits were arrested.

*Maya Kaur, Baldev Singh Sardar and Anr v. The State of Maharashtra*<sup>8</sup> Rajvinder Kaur, the youngest daughter of Maya Kaur and Baldev Singh Sardar was residing on the outskirts of Mumbai at Panvel city. During the continuation of studies Rajvinder fell in love with Rajvinder Singh, a boy belonging to lower caste and financially weak familial background and gradually they capped a secret love marriage without their family consent. When Rajvinder's parents started arranging her marriage she disclosed the fact to her parents but they disagreed to her marriage and reacted with severe aggression as the boy was not apt for their family. Rajvinder in this critical situation eloped with her husband but she received repeated threats from her family for the same. Her mother and maternal aunt demanded the ornaments she had been wearing during escape, but Rajvinder told that they can collect in presence of Police in Police station as already she had lodged a complaint about harassing them.

On 30th May, 1999 Rajvinder's mother and maternal aunt came to meet her she handed over the ornaments to them. They informed Rajvinder that their maternal uncle is waiting downstairs. Rajvinder's mother-in-law told her to call them upstairs. In the meanwhile, when Rajvinder went out to her balcony she found few persons carrying weapons in hand and waiting outside. Rajvinder's mother-in-law noticed about the presence of some strangers outside and she alarmed to inform some of their neighbours immediately but was shot by the family members of Rajvinder. Rajvinder saw her family members carrying weapons and entering the house. She shouted for help, but somebody entered in the balcony and pushed her brutally, as a result, she sustained severe injuries. Rajvinder, grievously hurt went crawling into the house of her neighbour and informed them about the dangerous incident because of which they called the police. The police reached the spot after some time and found Rajvinder, Rajvinder Singh's husband; her brother in laws and in-laws were killed. A formal FIR was registered under sections 302, 307, 120-B, 34 and 392 of Cr. P.C and the Trial Court announced death

<sup>7</sup> Revision No.2173 of 2010 C.

<sup>8</sup> Appeal (crl.)1364-66 of 2004.



penalty to four accused other two to life imprisonment. Kuldip Singh (a close relative of Maya Kaur) and Baldev Singh (father of Rajvinder) were however acquitted.

*Shiv Kumar Gupta Alias Raju v. State of UP and Ors*<sup>9</sup> Rani Gupta moved the court demanding her father was compelling her to marry a boy she disliked. Of her own free will, she married a person, but her family members refused to accept the same. Her family members brought a case of abduction against Rani's husband. The Court accepted that she was a major and she was given the chance to express her free will. The court ordered bail to her husband affirming that the personal liberty of Rani Gupta should not be interfered with as it is one of the vital Constitutional rights of everybody.

*In Re: Indian Woman says gang-raped on orders of Village Court*<sup>10</sup> published in *Business & Financial News* dated 23.01.2014 (2014) was another landmark judgment in which the Supreme Court included the "freedom of choice in marriage" within Article 21 of the Indian Constitution. In this case, the victim was a tribal woman who had married a man from a different community. The incident took a horrifying course when a village forum for dispute resolution called *Salishi Sabha* decided to punish her by ordering her to pay a hefty sum of Rs. 50,000 as a fine, when she could not, the *Sabha* ordered men to gang-rape her. The Court held the involved men liable for the offence of rape.

In *Shakti Vahini vs. Union of India* (2018), the Supreme Court categorically held that the decision of two adult individuals to marry each other is an example of their exercising the freedom given to them under Articles 19 and Article 21 of the Constitution.

In *Shafin Jahan vs. K.M. Asokan* (2018) (popularly known as the "Hadiya case"),

"The Constitution recognises the liberty and autonomy which inheres in each individual. This includes the ability to take decisions on aspects which define one's personhood and identity. The choice of a partner whether within or outside marriage lies within the exclusive domain of each individual. Intimacies of marriage lie within a core zone of privacy, which is inviolable. The absolute right of an individual to choose a life partner is not in the least affected by matters of faith. The Constitution guarantees to each individual the right freely to practise, profess and propagate religion. Choices of faith and belief as indeed choices in matters of marriage lie within an area where individual autonomy is supreme."

In this case, the Supreme Court upheld an individual's right to marry a person of one's own choice as well as the right to choose a religion. The Court noted that expression of choice was a fundamental right under Article 19 and 21 of the Constitution and formed an essential component of the exercise of liberty and autonomy. These constitutionally protected freedoms fell under the umbrella of Article 21, including the ability to take decisions on aspects which define one's personhood and identity. Relying on the judgment in *K.S. Puttaswamy vs. Union of India* ((2017) 10 SCC 1), Justice Chandrachud's opinion also reaffirmed the idea that the choice of marital partner would fall within the sphere of the right to privacy.

The Supreme Court analysed the allegations made by K.M. Asokan, the Respondent, that her daughter, Hadiya alias Akhila had been forcibly converted to Islam and was deceived into marrying Shafin Jahan, the Appellant. The Supreme Court noted that the High Court *vide* its impugned order had annulled Hadiya's marriage, calling it a 'sham' and directed her to be in the custody of her parents, ignoring the fact that she was an adult aged about 24 years. The Supreme Court examined the exercise of jurisdiction by the High Court and noted that it had wrongly exercised its *habeas corpus* jurisdiction in deciding the "just way of life or correct course of living" for Hadiya, denying her autonomy over her person. The High Court also erred in invoking the *parens patriae* doctrine, as Hadiya did not suffer from any kind of mental incapacity or vulnerability and had expressed her choice in unequivocal terms. Relying on the judgment in *Anuj Garg vs. Hotel Association of India* ((2008) 3 SCC 1), the Supreme Court further noted that the *parens patriae* doctrine could be subject to constitutional challenge on the grounds of the right to privacy. The Court held that parental concerns could not be reflected in the judiciary's exercise of constitutional powers. It noted that by declaring the marriage of Hadiya with Shafin Jahan null and void while entertaining a writ of *habeas corpus*, the High Court had transgressed its powers. The Court took note of the statements by Hadiya and affirmed her right to live her life in the manner of her choosing, striking down the judgment of the High Court.

*Mr. X v. Hospital Z*<sup>11</sup>, Mr. X was a doctor in government service from a well-known family in a Northeast state of India. He was asked to accompany an uncle of a minister of his state on official duty for surgical treatment to a well-known hospital in the southern part of India. During the surgery the uncle required blood. The complainant was requested to give blood. He was asked to be ready, and his blood sample was taken. However, his blood was not used without assigning any reason. After the surgery was over, they returned back. Later his marriage was proposed with one Ms. Y. Both families and the minister also approved the match. They were officially engaged. The hospital authorities had no knowledge of the proposed marriage. But without any reason they informed the minister that the Mr. X was HIV+ve. The minister told his sister that the marriage would have to be called off. When Mr. X came to know about it he volunteered for the

<sup>9</sup> Lucknow Law Reporter Journal 1999.

<sup>10</sup> Published in *Business & Financial News* dated 23.01.2014 (2014)

<sup>11</sup> C.A.No. 4641/1998(1998) 8 SCC 296



confirmation test. On getting the confirmation he returned, and the marriage was called off. However, by this time everyone knew the sero status of Mr. X. He was severely ostracised and had to quit his job and his home state. Being aggrieved he moved the consumer forum for the breach of duty by disclosure and consequent liability of the hospital. The NCDRC asked Mr. X to approach a civil court. However, he preferred an appeal to the Supreme Court.

The Apex Court has held that PWHA have no right to marry. The basis of the finding was that the personal laws provide as a ground for divorce when one spouse is suffering from communicable vulnerable disease. Thus, when one party is suffering from communicable vulnerable disease there cannot be a lawful marriage.

Further the Court held that the object of marriage is sex. As AIDS is a product of undisciplined sexual impulse, sex with PWHA is to be avoided; the Court cannot assist those persons in achieving that object.

The right of a major individual to marry a person of his or her choice is a fundamental right enshrined in the Constitution of India and no religion or caste can encroach this right between the two individuals. A single-judge bench consisting of *Justice Sachin Shankar Magadum*, while adjudicating the matter in **Mr Wajeed Khan v. Commission of Police and Anr**<sup>12</sup> dealt with the issue of inter-religious marriage and its scope in the 21<sup>st</sup> century.

The complainant is a Hindu woman who alleged that her parents have infringed her right to liberty by not allowing her to marry the petitioner who is a man of her choice. The petitioner is Muslim by religion and that served to be the main reason for the complainant's parents to not permit marriage between the two. The mother of the petitioner claimed to have no objections to her son marrying the complainant. The petitioner pleaded the Court to pronounce the writ of habeas corpus and thus produce the complainant. The petitioners stated that in an era where liberty of an individual has been given utmost importance through judicial pronouncements across the world, curbing the liberty of an individual by limiting her choice to marry a man of her choice is brutally unjust. The wide generational gap between the parents and the children often makes the parents become extra protective of their children to the point at which their good intentions get shadowed by the toxic imposition of conditions on their child's life.

The Court upon considering the aforesaid facts stated that the complainant is mature enough to understand the consequences of her decision and must be allowed to marry the man of her choice. The Bench sounded the judgment that *"It is well settled that a right of any major individual to marry the person of his or her choice is a fundamental right enshrined in the Constitution of India and the said liberty relating to personal relationships of two individuals cannot be encroached by anybody irrespective of caste or religion. The scope of habeas corpus being limited to produce the person of complainant and she being produced before the Court, regarding her submission as aforesaid, we dispose off her writ petition setting her at liberty."*

### Conclusion

In the cases discussed above, the Supreme Court repeatedly recognized the right to marry an individual of one's own choice as being part of Fundamental Rights under Article 21. Right to marry is a basic human right. Although judiciary is supportive of right to marry, but the judicial process is lengthy and costly. Most of the times couples are not allowed to approach the court by their relatives. Even though courts are so far silent and haven't made supportive observation in the specific context of same-sex couples, the recent happenings offer an opportunity for the judiciary to rise to the occasion and clarify that the fundamental right to marry extends to same-sex couples.

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<sup>12</sup> W.P.H.C.NO. 92 OF 2020