

Right To Choose Life Partner: As A Fundamental Right

Vikas Thakur

Student, B.A.LL.B., SoLJ&G,
Gautam Buddha University, Greater Noida, (U.P.)

Dr. Santosh Kumar Tiwari

Assistant Professor, SoLJ&G,
Gautam Buddha University, Greater Noida, (U.P.)

Abstract-

The right to choose a life partner is a fundamental human right that is intrinsic in the right to life and personal liberty under Article 21. The right to choose life partner recognizes an individual's autonomy and agency in deciding whom they wish to form a romantic or marital relationship with. It is generally considered a fundamental aspect of personal freedom and individual autonomy. The right to choose a life partner is safeguarded by various international human rights tools and instruments, such as the 'Universal Declaration of Human Rights', which states that '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.' Additionally, the 'International Covenant on Civil and Political Rights- ICCPR' and the 'Convention on the Elimination of All Forms of Discrimination against Women- CEDAW', and other regional and national human rights laws also recognize and protect the right to choose a life partner. Some cultures and traditions place a high value on arranged marriages or familial control over marriage decisions, which can limit an individual's freedom to choose their partner. It is important to note that the right to choose a life partner also includes the right to freely end a relationship or marriage if one wishes to do so, without any coercion or pressure from others. This aspect of the right to choose a life partner recognizes that individuals have the autonomy and freedom to make decisions about their own personal relationships and to pursue their own happiness and well-being.

Keywords: ICCPR, CEDAW, IHDS, Right to Choose, Life Partner, Fundamental Right, Mutual Consent, Caste, Religion, homosexual, same-sex marriage, life partner, Khap Panchayat.



Published in IJIRMP (E-ISSN: 2349-7300), Volume 11, Issue 6, Nov- Dec 2023

License: [Creative Commons Attribution-ShareAlike 4.0 International License](https://creativecommons.org/licenses/by-sa/4.0/)



Introduction

Our Constitution guaranteed the individuals right. Now in these days it has become a global phenomenon that a welfare State protects life and liberty of the persons. This chapter deals with the Fundamental Right of Right to Choose Life Partner that is available to all individuals and it is considered an essential component of individual autonomy, dignity, and freedom. This topic is of immense importance as it reflects the evolution of society's values and beliefs regarding human rights, gender equality, and individual autonomy. In this context, it is necessary to understand the historical development of this right, the relevant statutory provisions, and the challenges that still exist in ensuring its protection and promotion.

Objective

Some basic objectives of the study are as-

1. To find out the constitutional and legal provisions regarding the right to choose life partner;
2. To find out the international perspective about the right to choose life partner;

3. To find out the role of judiciary to establish the right to choose life partner; and
4. To find out the social stigma about the right to choose life partner in current global perspective.

Statement of Problems

When the selection or decision of the bride or bridegroom is made by parents or guardians, they insist on religion and caste. But when the selection or decision comes to youngsters or a teenager, we come across and see many inter-religious and inter-caste marriages. Many of them are successful but not all. These types of marriages are good and helpful for social and national integration and harmony among different castes and religions in the state or country. But there are many practical problems of adjustments in such type of marriages. In India, the marriages are between two families and not only between two persons. The families or society may not accept such type of marriages and interfere with each one's customs and life-style. When two persons from two different religions or castes marry, they must be willing to accept and respect each other's faith, beliefs and values. Usually, the problem comes when the birth of a child happens, both of the parents or guardians will consciously or unconsciously try to practice his/her own customs, faith, beliefs and values which result in a conflict for the new born child. If both the parents are strictly secular, such problems can be solved or eliminated to some point.

Research Methodology

The Research Methodology adopted will be Doctrinal Research Methodology, where we will be studying about the laws, provisions, articles and judgements made in the ambit of the Right to Choose Life Partner.

Right To Choose Life Partner

Meaning

“Choosing a partner for the life is an essential part of choosing one's course of life. Some persons may consider this act as the most important or integral decision of their life”. The root of this particular right goes to the right to life and personal liberty enshrined under Article 21 of the Indian Constitution. The meaning of ‘right to choose a life partner’ refers to the fundamental human right to have the freedom and autonomy to decide whom one wishes or wants to enter into a romantic or marital relationship with. It is the ability of an individual to make their own choices or decisions about their personal relationships, based on their own preferences, choices, desires, and consent, without any external coercion or discrimination.

Definition

The right to choose life partner is a fundamental right of a person and the freedom to marry a person of his/her own choice and is protected under Articles 21, 19(1)(a) and 14 of the Indian Constitution as held by the Supreme Court of India in the case of “Shakti Vahini v. Union of India”¹. ‘The apex court held that the freedom or right to marry a person of one's choice is safeguarded under Articles 21, 19(1)(a) and 14 of the Constitution of India’. As soon as the fundamental right is inherent in a person, then no one can scuttle such right by leaning on any kind of philosophical, moral or social, or self-given elevation.²

The most important aspect of the choosing life partner is this because it will influence your happiness, career, success, health, finances, children, friends, family and everything.

Historical Perspective

The right to choose a life partner has a long and complex historical development, which varies across different cultures and societies. In many ancient societies, such as Greece and Rome, marriages were often arranged by families and based on economic or political considerations rather than personal choice.

¹ AIR 2018 SC 1601

² Ibid

During the Middle Ages, the Catholic Church played a significant role in regulating marriage and family life, and marriages were often arranged by parents or local authorities. However, during the Renaissance, the concept of romantic love emerged, leading to the gradual recognition of the right to choose one's own partner based on personal preferences.

In the 18th and 19th centuries, the idea of individual rights and freedoms became more prominent in Western societies, leading to the emergence of the concept of a right to choose a life partner. In Europe and the United States, laws were enacted to protect the right to marry based on mutual consent, rather than coercion or familial pressure.

In India, the right to choose a life partner has a long and complex history. Traditionally, marriages in India were arranged by parents and elders based on caste, religion, and social status, rather than personal preferences or mutual consent. However, with the influence of modern education, urbanization, and globalization, the concept of love marriages or marriages based on personal preferences has gained acceptance in many parts of the country.

The Indian Constitution which was adopted in the year 1950, recognized the freedom to life and personal liberty as a fundamental right under Article 21 of the Constitution of India, which has been explained by the Indian judiciary to include the right to choose a life partner based on personal preferences and mutual consent. This interpretation was strengthened by several landmark judgments of the Supreme Court of India, such as the case of "Lata Singh vs. State of Uttar Pradesh"³ which held that inter-caste marriages were not illegal and that the couples had the right to live together.

In the 20th century, several social reformers and activists advocated for the right to choose a life partner and worked to eliminate discriminatory practices such as dowry, child marriages, and caste barriers. For example, Raja Ram Mohan Roy, a 19th century social reformer, advocated for widow remarriage and women's education. Mahatma Gandhi, a prominent political leader and social reformer, opposed child marriages and advocated for gender equality in marriage.

In recent years, there have been several initiatives to promote the right to choose a life partner in India, including awareness campaigns, legal aid programs, and community outreach programs. However, forced marriages, dowry violence, and other forms of discrimination and coercion still exist in some parts of the country, and there is a need for continued efforts to strengthen the legal framework and enforcement mechanisms to ensure greater protection of the right to choose a life partner.

Provisions

Constitutional Provisions

Article 21 of the Indian Constitution is one of the fundamental rights guaranteed to all the citizens of India. It declares that "Not any person shall be deprived of his/her life or personal liberty except according to procedure established by the law. This abovementioned article is one of the most essential provisions of the Indian Constitution and provides protection to the citizens against arbitrary and unlawful deprivation of their life or personal liberty. 'It is a cornerstone of the Indian Legal System and has been explained by the Indian Judiciary to include a wide range of rights and freedoms for the public.

Article 21 hence provides the "Right to Choose Life Partner" as when two mature persons choose each other as their life partners, it is the matter of their choice or decision which is given under the Article 21 of the Indian Constitution which means that this right has the sanction of the Indian Constitution and cannot be deprived of.

Changing Dimension

Now in these days the dimension of choosing the life partner has been changed. Instead of being a spouse, a person can be a life partners to someone others. A life partner can also be any person who is in a serious, committed relationship with someone else, but they are not married yet. Even a life partner can be any person as in any type of relationship or connection, whether it is heterosexual or homosexual. Most important thing is this they are free to choose to have children or not.

³ AIR 2006 SC 2522

Statutory Provisions

It is very much safer to choose a partner from the same caste, creed, religion and culture. Even in the developed or big countries, where the mate or spouse selection is done or made mostly by Couples, preferences are made for the mate or spouse from the same race, caste, creed, religion and culture. In this regards I would like to discuss here some specific national and international provisions to deal with the issue which is helpful to establish the right to choose a life partner right now need and demand of time.

Special Marriage Act, 1954 - The Special Marriage Act provides for the registration of marriages and recognizes the right of individuals to marry based on their own choice and without any caste, religion, or community barriers.

Hindu Marriage Act, 1955 – The Hindu Marriage Act, 1955 provide for the regulation of Hindu marriages and the rights of the individuals to marry based on their choice and consent.

Other than these Statutory Provisions present in India, there are various other Statutory Provisions that are present Worldwide:

Article 16- ‘Universal Declaration of Human Rights (UDHR)’ explains that, "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. They are entitled to equal rights as to marriage, during marriage and at its dissolution."

Article 23- ‘International Covenant on Civil and Political Rights (ICCPR)’, explains that the right to marriage is based on the free, fair and full consent of the intending spouses or mates.

Article 16- ‘Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)’ explains that the right to marriage and family life is based on the free, fair and full consent of the intending spouses, and prohibits discrimination against women in marriage and family relations.

Role of Judiciary Towards “Right to Choose Life Partner”:

In the case study of ‘Gian Devi v. Superintendent, Nari Niketan, Delhi’⁴, 1974, the court held that if an individual is over the age of 18 years then there should be no compulsion on her choice on where to reside or with whom she could stay.

In the case study of ‘M. Vijaya Kumari v. K. Devabalan’⁵, it was decided that a marriage between a Hindu man who has been converted to Christian with a Christian lady in Hindu form is not a valid marriage as given under Section 5 of the Hindu Marriage Act, 1955, as a marriage can only be solemnized between two Hindus.

In the landmark judgement of ‘Lata Singh v. State of Uttar Pradesh and another’⁶, Hon’ble Justice Ashok Bhan and Markandey Katju held that the women i.e. Lata Singh has the right to choose her life partner and clarified the validity of inter-caste marriages. In this case the Court deprecated the caste system which is a dividing factor of the nation and the violence is committed against young men and women undergoing inter-cast marriage and held- the police officials had no role in the conjugal affairs of the deceased and the girl. Law enforcing authorities do not have any right to interfere within their married life rather they are duty bound to prevent or stop others, who interfered in their married life. The Court also directed or stated that any police action against the police officers as given by the Single Judge would be in accordance with law and the service conditions applicable to them and after affording opportunity to them⁷.

In the case study of ‘K. S. Puttaswamy vs. Union of India’⁸, the court held or decided that, “Right to choose a partner irrespective of caste, creed or religion, is inherited under the right to life and personal liberty, an integral part of the Fundamental Right under Article 21 of the Constitution of India.”

⁴ (1976) 3 SCC 234

⁵ AIR 2003 Ker. 363

⁶ AIR 2006 SC 2522

⁷ Pandey. J. N., “Constitutional Law of India”, CLA, 58TH Ed. 2021, p.331.

⁸ AIR 2017SC 4161

In the case study of ‘Shakti Vahini vs. Union of India’⁹, the Supreme Court of India declared that the ‘Freedom to Choose a Life Partner’ is a Fundamental Right and the ‘Freedom to marry a person of his/her choice’ is protected under the Articles 21, 19(1) (a) and 14 of the Indian Constitution. The Court in a three Judge Bench decision issued directives for preventive, remedial and punitive measures. CJI Dipak Mishra held: “the honour crime is the genus and honour killing is the species. Any type of torture or torment or ill-treatment in the name of honour that tantamount to atrophy of choice relating to an individual person in love and marriage by any assembly is illegal and cannot be allowed a moment it exists. The consent or decision of the family or the community or the class or of the society is not necessary, once two adult individuals have agreed to enter into a wedlock. Rule of law’s concept is meant to have the order in a society. It respects the human rights of the individuals. “Khap Panchayat or any other Panchayat cannot create a dent in the exercise of the said right. Khap Panchayat or such assembly should not take the law into their hands. Law has to be allowed to sustain by the law enforcement agencies¹⁰”.

In the case study of ‘Shafin Jahan v. Asokan K.M. and others’¹¹, the Supreme Court of India upheld the individual’s right of marriage to marry the person of his/her choice as well as right to choose religion.

In the case study of ‘Salamat Ansari and others v. State of Uttar Pradesh and others’¹², the court ordered that the “Interference in a personal relationship, would constitute a serious encroachment into the right to freedom of choice of the two individuals. We fail to understand that if the law permits two persons even of the same sex to live together peacefully then neither any individual nor a family nor even State can have objection to relationship of two major individuals who out of their own free will are living together.”

Societal Perception

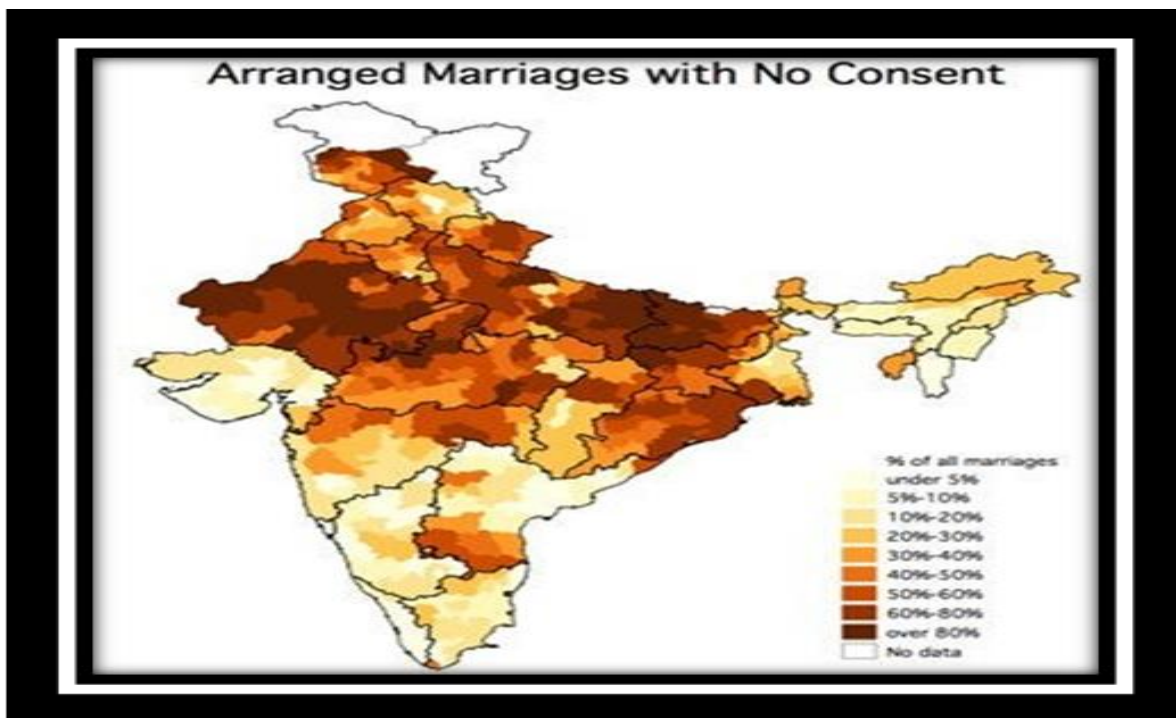
The Indian Human Development Survey – IHDS conducted a survey over 34,000 rural and urban women, between the age group of 15 and 81, in 34 Indian States & Union Territories. The survey held that Life Partners of about 73% women are chosen by their Family Members and Relatives.

⁹ AIR 2018 SC 1601

¹⁰ Pandey. J. N., “Constitutional Law of India”, CLA, 58TH Ed. 2021, p.357.

¹¹ AIR 2018 SC 357

¹² 2021 (1) ALJ 453



The map records the percentage of ever married women 25-49 who report that their parents selected or choose their husbands and they had nothing to say in the choice (35% of all women). Another 23% of women reports that their parent chooses their husbands but that they had something to say in the decision of their parents. Another 37% of women reports that their marriages were arranged jointly by their parents and themselves. Only 5% of women reports that they have chosen their husbands by themselves.

Conclusion

In the light of overall abovementioned discussion, the author draws the concluding remarks that the 'Right to Choose a Life Partner is a Fundamental Human Right that is mentioned, recognized and protected by various constitutional as well as Statutory Provisions in India'. The Right to Choose a Life Partner based on personal preferences and Mutual Consent is considered a critical component of Individual autonomy, dignity, and freedom. While there have been historical challenges and discriminatory practices that limit the exercise of this right, there have also been significant developments in the Legal Framework and Social Norms that promote greater acceptance and protection of the Right to Choose a Life Partner in India. Efforts are ongoing to further strengthen the Legal Framework and raise awareness about the importance of respecting and protecting this fundamental right.

Suggestions

Asking about my Opinion, I would like to say that "Right to Choose Life Partner is a Fundamental Right that defines Life as Right to Life and Personal Liberty guaranteed under Article 21 of the Constitution of India and cannot be encroached upon by the Family, Community, Society or Clan". Religion, community, society, etc., doesn't come into picture at all in a democratic country. This is something which the legislature, the executive and even at times, the judiciary need to keep in mind.

BIBLIOGRAPHY:

1. Aircce.com
2. Casemine.com
3. Ccgnlud.org
4. Hindu Marriage Act, 1955

5. <https://timesofindia.indiatimes.com/>
6. <https://www.thehindu.com/>
7. Ihds.umd.edu (Indian Human Development Survey)
8. Indian Penal Code, 1860
9. IHDS IndianKanoon.Org
10. Nhrc.nic.in
11. Special Marriage Act, 1954
12. The Constitution of India, 1949
13. www.ohchr.org
14. www.un.org