

## Snag to Inter Religious Marriage in India

Dr Rajni Parmar, Associate Professor, Amity Law School, Amity University Rajasthan, Jaipur

### ABSTRACT

*Democracy, development and respect for human rights and fundamental freedoms are inter-dependent and have mutual reinforcement. Human rights are derived from the dignity and worth inherent in the human person. The human rights for women are therefore, inalienable, integral and an indivisible part of universal human rights. Right to marry has been recognized under Article 16 of the Universal Declaration of Human Rights 1948. Convention for Elimination of all forms of Discrimination against Women, CEDAW was ratified by the U.N.O. on December 18, 1979. In spite of these laws, the tensions between individual freedom and past social customs become crucial points of the community's ability to contemplate and provide for least hurting or agonizing solutions. The rightness or wrongness of any community's outlook and practices, their intrinsic impact on liberty, autonomy and self-esteem, as well as the parent's concern over impetuous and unreflective preferences – all these aspects come to the vanguard of deliberation. The issue, however, is the threatening phenomena of oppressive social practices in the name of honor triggering aggressive reaction from the prominent members of community who are sightless to individual autonomy. The case, right from the start, has been about Hadiya's personal liberty and her human rights as an adult woman with agency. Yet for the judiciary, this case has been about everything except Hadiya's agency as a woman. Clearly, the Supreme Court is undecided about 'Hadiya's freedom' and what it means in the present circumstances. And yet, the courts steer clear of the constitutional framework in this case. Therefore, through this paper author intend to highlight the problems regarding inter-religious marriages and their consequences in India due to vague customary laws and ineffective special laws.*

### Keywords

*Human rights, Customary laws, Love-jihad, Personal liberty*

### INTRODUCTION

*"Love has no limitations. It cannot be measured. It has no boundaries. Although many have tried, love is undefinable."*

*-Steve Maraboli*

The independence of every individual in matters concerning oneself - a free and willing creator of one's own choices and decisions, is now vital to all thinking on community order and organization. Such autonomy with its multiple dimensions is a constitutionally sheltered value and is essential to an open society and civilized order. Duly secured individual autonomy, exercised on informed understanding of the values integral to one's well being is deeply related to a free social order. Coercion against individual autonomy will then become least required.

In moments and phases of social transition, the tensions between individual freedom and past social customs become crucial points of the community's ability to contemplate and provide for least hurting or agonizing solutions. The rightness or wrongness of any community's outlook and practices, their intrinsic impact on liberty, autonomy and self-esteem, as well as the parent's concern over impetuous and unreflective preferences – all these aspects come to the vanguard of deliberation.

The issue, however, is the threatening phenomena of oppressive social practices in the name of honor triggering aggressive reaction from the prominent members of community who are sightless to individual autonomy.

The philosophy of 'vasudahiava kutumbakam' which rests on the pillars of mutual support, care, mutual-tolerance and harmony is well accepted in India still marrying outside caste or religion is considered as social stigma and is rebuked by various orthodox people. The society along with parents, generally, does not accept such affiliations and consequently tense relations amongst various religion or caste build up.

The case, right from the start, has been about Hadiya's personal liberty and her human rights as an adult woman with agency. Yet for the judiciary, this case has been about everything except Hadiya's agency as a woman. Clearly, the Supreme Court is undecided about 'Hadiya's freedom' and what it means in the present circumstances. And yet, the courts steer clear of the constitutional framework in this case. Hadiya's case has been, from the very outset, a violation of Hadiya's freedoms.

Human rights are derived from the dignity and worth inherent in the human person. Human rights and fundamental freedoms have been reiterated in the Universal declaration of Human Rights. Democracy, development and respect for human rights and fundamental freedoms are inter-dependent and have mutual reinforcement. The human rights for women are therefore, inalienable, integral and an indivisible part of universal human rights.

### **PROTECTION OF WOMEN'S RIGHT TO MARRY IN INTERNATIONAL AND INDIAN SCENARIO**

Following are the fortifications and safeguard which every woman of the country is entitled irrespective of her religion and these are given by way of various international instruments and constitutional and legal protections along with judiciary's interpretation for shielding the women's rights.

### **UNIVERSAL DECLARATION OF HUMAN RIGHTS, 1948**

Right to marry has been recognized under the Universal Declaration of Human Rights 1948. Art. 16 of the same states:

- 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.
- Marriage shall be entered into only with the free and full consent of the intending spouses.
- The family is the natural and fundamental group unit of society and is entitled to protection by society and the state. [1]

### **CONVENTION FOR ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN, 1979**

The full development of personality and fundamental freedoms and equal participation by women in political, social, economic and cultural life are concomitants for national development, social and family stability and growth-cultural, social and economical. All forms of discrimination on grounds of gender is violative of fundamental freedoms and human rights.

Convention for Elimination of all forms of Discrimination Against Women, CEDAW was ratified by the U.N.O. on December 18, 1979 and the Government of India had ratified as an active participant on June 19, 1993 acceded to CEDAW and reiterated that discrimination against women violates the principles of equality of rights and respect for human dignity and it is an obstacle to the participation on equal terms with men in the political, social, economic and cultural life of their country; it hampers the growth of the personality from society and family, making more difficult for the full development of potentialities of women in the service of the respective countries and of humanity.

Article 1 defines 'discrimination against women' to mean "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognized enjoyment or exercise by women, irrespective of their marital status, on the basis of equality of men and women, all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."

Article 2(b) enjoins upon the State parties, while condemning discrimination against women in all its forms, to pursue, by appropriate means, without delay, elimination of discrimination against women by adopting "appropriate legislative and other measures including sanctions where appropriate prohibiting all discriminations against women; to take all appropriate measures including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women. Clause C enjoins upon the State to ensure legal protection of the rights of women on equal basis with men, through constituted national tribunals and other public institutions against any act of discrimination to provide effective protection to women.

Article 3 enjoins upon the State parties that it shall take, in all fields, in particular, in the political social, economic

and cultural fields, all appropriate measures including legislation to ensure full development and advancement of women for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on the basis of equality with men.

Article 13 states that “the State parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women.”

## THE CONSTITUTION OF INDIA, 1949

The preamble of Indian Constitution entails the concept of justice, liberty and equality to all the people of India apart from their caste and religion. In the onward march of establishing an egalitarian secular social order based on equality and dignity of person, Article 15(1) prohibits discrimination on grounds of religion or caste identities so as to foster national identity which does not deny pluralism of Indian culture but rather to preserve it. Also Art. 14 entails the concept of equality before law. The right to marry is a component of Right to Life under art. 21 of the constitution of India which says, ‘No person shall be deprived of his life or personal liberty except according to the procedure established by law’.

The Constitution gives equal respect to all communities, sects, lingual and ethnic groups, etc. in the country. The Constitution guarantees to all citizens freedom of speech (Article 19), freedom of religion (Article 25), equality (Articles 14 to 17), liberty (Article 21), etc.

## THE PROTECTION OF HUMAN RIGHTS ACT, 1993

The Parliament has enacted the Protection of Human Rights Act, 1993. Section 2(b) defines ‘human rights’ to mean “the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution, embodied in the international conventions and enforceable by courts in India”.

## JUDICIAL PRONOUNCEMENTS

In the case of *Lata Singh v. State of Uttar Pradesh*, [2] it was held that Right to Marriage is an indispensable part of the right under Art.21 and that people have the right to choose their partners without any compulsion. It was stated in this case, “This is a free and democratic country, and once a person becomes a major he or she can marry whosoever he/she likes. If the parents of the boy or girl do not approve of such inter-caste or inter-religious marriage

the maximum they can do is that they can cut off social relations with the son or the daughter, but they cannot give threats or commit or instigate acts of violence and cannot harass the person who undergoes such inter-caste or inter-religious marriage.”

Similar views were taken in the case of *Hiralben Vishnubhai Joshi v. State of Gujarat*, [3] *Ashok Kumar Todi v. Kishwar Jahan & Ors*, [4] *Mr. Mahaveer Bishnoi v. State of U.P.*, [5] *Mamta Rani And Another v. State of Punjab And Others*, [6] *Amnider Kaur And Another v. State of Punjab And Others.*, [7] *M. Gopalan v. State of Kerala*, [8] *Ranjana Verma v. State of Jharkhand*, [9] *Meenu Kaura And Another v. State of Punjab And Others* [10] and *Raman Kumar Chopra And Another v. State Of Punjab And Others* [11]. Right to life includes right to live without constant threat to life and right to liberty includes the liberty to choose the partners with whom one wishes to live. Indian law erects no barriers to marriages between faiths, or against conversion by willing and informed consent.

In *Arumugam Servai v. State of T.Nadu* [12] it was held that in the modern age nobody’s feelings should be hurt. In particular in a country like India with so much diversity we must take care not to insult anyone’s feelings on account of his caste, religion, tribe, language, etc. Only then can we keep our country united and strong. India has tremendous diversity and this is due to the large scale migrations and invasions into India over thousands of years. The various immigrants/invasers who came into India brought with them their different cultures, languages, religions, etc. which accounts for the tremendous diversity in India. Since India is a country of great diversity, it is absolutely essential if we wish to keep our country united to have tolerance and equal respect for all communities and sects. It was due to the wisdom of our founding fathers that we have a Constitution which is secular in character, and which caters to the tremendous diversity in our country. [13]

The Constitution seeks to establish secular socialist democratic republic in which every citizen has equality of status and of opportunity, to promote among the people dignity of the individual, unity and integrity of the nation transcending them from caste, sectional, religious barriers fostering fraternity among them in an integrated Bharat. [14]

Indian culture is a product or blend of several strains or elements derived from various sources, in spite of inconsequential variety of forms and types. There is unity of spirit informing Indian culture throughout the ages. It is

this underlying unity which is one of the most remarkable everlasting and enduring feature of Indian culture that fosters unity in diversity among different populace. This generates and fosters cordial spirit and toleration that make possible the unity and continuity of Indian traditions. Therefore, it would be the endeavor of everyone to develop several identities which constantly interact and overlap, and prove a meeting point for all members of different religious communities, castes, sections, sub-sections and regions to promote rational approach to life and society and would establish a national composite and cosmopolitan culture and way of life. [15]

Freedom guaranteed under Article 25 of the Constitution is such freedom which does not encroach upon a similar freedom of the other persons. Under the constitutional scheme every person has a fundamental right not merely to entertain the religious belief of his choice but also to exhibit his belief and ideas in a manner which does not infringe the religious right and personal freedom of others. Freedom of religion is the core of our culture. Even the slightest deviation shakes the social fiber. [16]

“In cases of inter-caste or inter-religion marriage the Court has only to be satisfied about two things:

- That the girl is above 18 years of age, in which case, the law regards her as a major vide Section 3 of the Indian Majority Act, 1875. A major is deemed by the law to know what is in his or her welfare.
- The wish of the girl.” [17]
- A major girl is free to marry anyone she likes or “live with anyone she likes”. In such a situation, the Court further held that no offence was committed by any of the accused and the whole criminal case in question was held to be abuse of the process of the Court [18].

## CONCLUSION

In the 21st century, though women are given full and equal rights, their bodies and sexuality remain the battleground for a political and cultural war. The case of Hadiya is a classic 21st century example when the law gives in to a political narrative, sidelines individual rights and women take the status of chattels and property.

It is clear that this issue is not the sole concern of Hindus but a collective problem faced by numerous communities in the state. Unfortunately, the government in the current

political discourse seems to be ignoring this crucial development, which also runs the risk of being ignored by the police for the sake of political correctness.

In many ways, it is a system failure. The Kerala High Court made a mistake in delivering a sound judgment and instead of quashing it; the Supreme Court is out to cover it up. The topmost court in the country cannot adjudicate on the basis of issues, instead of rights and freedoms. Hadiya has ceased to be a person in the eyes of the judiciary; she has become the poster-child for judiciary's blunders. In years to come, we will analyze this case to understand when courts should not exercise judicial activism.

The Courts in this country are expected to uphold the right of an adult woman to her choice of a partner. Women's autonomy and equal citizenship rights flow from the constitutional framework, not from religious authority or tradition. The Kerala High Court judgement should be struck down by the apex court. We cannot afford to have such a judgment as legal precedent.

## REFERENCES

- [1] Kusum, (2015) *Family Law Lectures- Family Law I*, 4th Edn., p.3.
- [2] AIR 2006 SC 2522, Deepika And Another vs State Of U.P. And Others, Writ - C No. - 33919 of 2013
- [3] R/SCR.A/5988/2016
- [4] (2011) 3 SCC 758
- [5] 2006 Cri.L.J. 3312
- [6] CRM-M 31755 of 2009
- [7] CRM-M 29790 of 2009
- [8] WP(C).No. 24015 of 2011
- [9] 2007 Cri.L.J. 663
- [10] CRM No.49101 of 2009
- [11] CRM No.50839 of 2009
- [12] (2011) 6 SCC 405
- [13] Kailas & Ors v. State Of Maharashtra, (2011) 1 SCC 793

- [14] Mrs. Valsammappaul v. Cochin University And Ors., AIR 1996 SC 1011 [19]
- [15] ibid.
- [16] Lily Thomas etc. v. Union Of India & Ors., (2000) 6 SCC 224
- [17] Gurpreet Kaur And Another v. State Of Punjab And Others ,Crl.Misc.No.M-35032 of 2013; Harwinder Kaur And Another v. State Of Punjab And Others, Crl.Misc.No.M-35020 of 2013;
- [18] Gulab Singh And Another v. State Of Punjab And Others, Crl.Misc.No.M-35099 of 2013; Reena Devi And Another v. State Of Punjab And Others, Crl.Misc.No.M-35101 of 2013.