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CONSTITUTIONAL MORALITY AND MATRIMONIAL AUTONOMY: RIGHT TO CHOICE OF MARRIAGE IN INDIA

AUTHORED BY - PRIYANSHU AGARWAL
(Research Scholar, Faculty of Law, Jamia Millia Islamia)

Abstract

The freedom to choose a life partner represents one of the most intimate aspects of individual liberty and personal autonomy. In India, this right has been progressively recognised through constitutional jurisprudence under Article 21 of the Constitution, which protects the right to life and personal liberty. Despite such legal recognition, the exercise of marital choice often remains constrained by social structures, including caste hierarchies, patriarchal norms, and familial control over matrimonial decisions. This paper critically analyses the legal foundations of the right to choose a spouse in India within the framework of family law, constitutional protections, and international human rights norms. It further examines the tension between individual autonomy and social regulation of marriage, particularly in cases involving inter-caste, inter-religious, and self-choice marriages. The study argues that although judicial pronouncements have significantly expanded the ambit of personal liberty in matrimonial matters, the persistence of socio-cultural barriers continues to undermine the effective realisation of this right.

1. Introduction

Marriage occupies a central position in the social and legal structure of Indian society. Traditionally regarded as a foundational institution for the organisation of family and community life, marriage has historically been regulated through religious customs, social conventions, and personal laws. In modern constitutional jurisprudence, however, marriage is increasingly understood not merely as a social institution but also as a matter deeply connected with individual dignity, autonomy, and privacy.

The Indian judiciary has frequently emphasised the concept of constitutional morality while adjudicating matters relating to personal laws. In *Joseph Shine v. Union of India*, the Supreme

Court struck down the offence of adultery under Section 497 of the Indian Penal Code, recognising that the provision treated women as property of their husbands.¹ Similarly, in *Sarla Mudgal v. Union of India*, the Court addressed issues relating to bigamy and the misuse of religious conversion for circumventing personal laws.² These decisions illustrate the judiciary's effort to balance cultural diversity with the fundamental principles of equality and dignity embedded within the Constitution.

The notion that individuals possess the freedom to choose their life partner derives from the broader constitutional guarantee of personal liberty. The Constitution of India does not expressly mention a "right to marry"; nevertheless, the Supreme Court has interpreted the guarantee of life and personal liberty under Article 21 to include the right to make intimate decisions regarding marriage and family life.³ Such an interpretation aligns with international human rights norms recognising free and full consent of both parties as a fundamental requirement of marriage.⁴

Despite the existence of these legal safeguards, the actual exercise of marital choice often encounters strong social resistance. Inter-caste marriages, inter-faith unions, and marriages based solely on individual preference frequently provoke opposition from families and communities. In extreme cases, individuals exercising such choice have faced harassment, violence, and even honour-based crimes. These developments illustrate the continuing conflict between constitutional ideals of autonomy and entrenched social norms regulating marriage.

2. Conceptual Foundations of Marital Choice

The concept of marital autonomy is closely linked to the principle of personal liberty. In liberal constitutional theory, individuals are regarded as autonomous agents capable of making decisions concerning their personal relationships. Marriage, being one of the most intimate and consequential relationships in human life, falls squarely within the domain of such autonomy. Philosophical discourse on liberty has long emphasised the importance of individual choice in matters affecting personal identity. John Stuart Mill argued that individuals must remain sovereign over decisions relating to their own bodies and lives unless such decisions cause

¹ *Joseph Shine v. Union of India*, (2019) 3 SCC 39.

² *Sarla Mudgal v. Union of India*, (1995) 3 SCC 635.

³ *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.

⁴ Universal Declaration of Human Rights, 1948, Art. 16.

harm to others.⁵ This principle forms the theoretical basis for recognising personal choices regarding marriage as a matter beyond undue societal interference.

In the Indian context, the constitutional recognition of dignity and privacy has strengthened this principle. The Supreme Court has repeatedly affirmed that the freedom to select a life partner constitutes an essential aspect of personal liberty and human dignity. Judicial interpretation has therefore transformed the understanding of marriage from a purely social arrangement to a domain where individual choice must be respected.

3. Marriage under Indian Family Laws

Indian family law is characterised by a pluralistic structure in which different religious communities are governed by distinct personal laws. These personal laws regulate the conditions of marriage, divorce, maintenance, and other family relations.

Under Hindu law, marriage has traditionally been regarded as a sacrament rather than a contract. Classical texts describe marriage as a sacred union intended for spiritual duties and procreation.⁶ However, legislative reforms, particularly the Hindu Marriage Act, 1955, introduced elements of contractual consent and legal regulation into this institution. In contrast, Muslim law conceptualises marriage as a civil contract requiring offer, acceptance, and free consent of the parties.⁷ The contractual nature of marriage under Islamic jurisprudence emphasises the importance of consent as an essential condition for a valid union. Christian law also recognises marriage as a lifelong union based on mutual consent and commitment between spouses.⁸ Thus, despite doctrinal differences, most legal systems acknowledge the necessity of consent in marriage, implicitly supporting the notion that individuals possess the freedom to determine their marital relationships.

The Supreme Court in *Supriyo Chakraborty v. Union of India* considered petitions seeking legal recognition of same-sex marriages under the **Special Marriage Act, 1954**. The petitioners argued that denying marriage rights to same-sex couples violated the principles of equality, dignity, and non-discrimination under Articles 14, 15, and 21 of the Constitution. A

⁵ Michael E. Perry, *Morality, Politics and Law* (Oxford University Press, New York, 1990).

⁶ Paras Diwan, *Modern Hindu Law* (Allahabad Law Agency, 1995).

⁷ Ismail Al-Faruqi, *Islam: Religion, Practice, Culture and World Order* (International Institute of Islamic Thought, 2012).

⁸ Emily Reimer Berry, *Catholic Theology of Marriage* (Rowman and Littlefield Publishers, 2015).

Constitution Bench of five judges unanimously held that the Constitution does not recognise a fundamental right to marry.⁹ The Court distinguished between the right to choose a partner and the right to marry, stating that previous judgments had only recognised the former as part of personal liberty. The Bench further held that recognising same-sex marriages would require legislative intervention rather than judicial interpretation. The Court also observed that marriage, as a legal institution, is governed by statutory frameworks and social policy considerations that fall within the domain of Parliament. While acknowledging the existence of same-sex relationships in Indian society, the Court concluded that the creation of a legal framework for such unions lies beyond the judiciary's constitutional mandate.

4. Constitutional Protection of the Right to Marry

The Indian Constitution plays a crucial role in safeguarding the right to marital choice. Although marriage is largely governed by personal laws, constitutional guarantees ensure that such laws operate within the broader framework of fundamental rights.

The Supreme Court has interpreted Article 21 expansively to include several facets of personal autonomy, including privacy, dignity, and freedom of decision-making. In *K.S. Puttaswamy v. Union of India*, the Court recognised privacy as a fundamental right encompassing intimate personal choices, including those related to marriage and family life.

Similarly, in *Shafin Jahan v. Asokan K.M.*, the Court held that the right to choose a partner is an intrinsic component of personal liberty and cannot be curtailed by societal or familial pressures.¹⁰ The Court emphasised that the Constitution protects individual autonomy in matters of belief, faith, and personal relationships.

Earlier, in *Lata Singh v. State of Uttar Pradesh*, the Supreme Court had already clarified that adult individuals are free to marry whomever they choose, and any form of harassment by family members or community groups in response to such marriages is unlawful.¹¹

These decisions collectively establish that the right to choose a life partner is constitutionally protected and forms part of the fundamental right to life and liberty.

⁹ *Supriyo Chakraborty v. Union of India*, (2023) SCC OnLine SC 1348.

¹⁰ *Shafin Jahan v. Asokan K.M.*, (2018) 16 SCC 368.

¹¹ *Lata Singh v. State of Uttar Pradesh*, (2006) 5 SCC 475.

5. Socio-Cultural Barriers to Marital Autonomy

Despite constitutional recognition, the realisation of marital choice in India remains limited by deep-rooted socio-cultural factors. Indian society is characterised by strong family structures and community identities that significantly influence matrimonial decisions.

Caste remains one of the most powerful determinants of marriage in India. Marriages outside caste boundaries often encounter intense resistance from families seeking to preserve social status and community traditions. Similarly, inter-religious marriages are frequently viewed with suspicion and sometimes become subject to political and legal controversies.

Patriarchal norms further restrict the autonomy of women in matrimonial decisions. In many communities, the choice of a spouse is traditionally controlled by parents or male guardians, reflecting broader patterns of gender inequality. Economic dependence, limited educational opportunities, and social expectations of obedience often discourage women from exercising independent choice in marriage.

Such constraints highlight the continuing gap between constitutional guarantees and social reality. While the law recognises the autonomy of individuals, societal attitudes frequently undermine the practical exercise of this right.

6. Judicial Responses to Honour-Based Violence

The judiciary has taken an increasingly proactive role in addressing violence and coercion associated with marital choice. Honour killings and threats against couples marrying outside social norms have drawn strong condemnation from courts.

In *Shakti Vahini v. Union of India*, the Supreme Court issued detailed guidelines to prevent honour-based crimes and emphasised that community groups such as khap panchayats have no authority to interfere with the choice of consenting adults.¹² The Court affirmed that the freedom to marry a person of one's choice is a fundamental right protected by the Constitution. Judicial intervention in such cases demonstrates an evolving commitment to protecting individual autonomy against oppressive social practices. However, effective enforcement remains a significant challenge due to societal resistance and administrative limitations.

¹² *Shakti Vahini v. Union of India*, (2018) 7 SCC 192.

7. Need for Legal and Social Reform

The recognition of marital choice as a fundamental right must be accompanied by effective mechanisms to ensure its practical enforcement. Legal reforms should focus on strengthening protective measures for couples facing threats due to self-choice marriages.

Greater awareness of constitutional rights is equally important. Educational initiatives, social reform movements, and public discourse can play a crucial role in challenging patriarchal and caste-based restrictions on marriage.

Furthermore, the implementation of laws such as the Special Marriage Act, 1954 should be simplified to make it more accessible for individuals seeking to marry outside traditional social boundaries. Ensuring the confidentiality and safety of couples under this law would help promote genuine freedom of choice.

8. Conclusion

The right to choose a life partner represents one of the most fundamental expressions of personal liberty and human dignity. Indian constitutional jurisprudence has increasingly recognised this principle by interpreting Article 21 to include the freedom of marital choice. Judicial decisions have consistently emphasised that adult individuals possess the autonomy to decide whom to marry without interference from family, community, or state authorities.

However, the persistence of patriarchal traditions, caste hierarchies, and social conservatism continues to restrict the effective exercise of this right. The challenge therefore lies not merely in recognising marital autonomy in legal doctrine but in ensuring that such autonomy can be exercised freely in social practice.

A combination of legal enforcement, social awareness, and institutional support is necessary to bridge the gap between constitutional ideals and societal realities. Only through such efforts can the promise of individual liberty embodied in the Constitution be fully realised in the sphere of matrimonial choice.