



Right to Marry

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ABSTRACT

The right to marry in India is a multifaceted construct encompassing legal, social, and cultural dimensions. This research paper provides a comprehensive examination of the nuanced landscape surrounding the right to marry, delving into its historical and cultural roots, the constitutional and legislative frameworks that govern it, and the societal implications that shape and reflect the intricacies of Indian society.

Beginning with an exploration of the historical and cultural significance of marriage in India, the paper navigates through the constitutional perspective, analyzing the key provisions such as Article 21 and Article 14 that form the bedrock of the right to marry. Legislative frameworks, including the Hindu Marriage Act, Muslim Personal Law, and Special Marriage Act, are scrutinized, with a focus on recent judicial pronouncements that have molded and redefined the legal contours of marital rights.

Societal implications are dissected, particularly in terms of gender equality and challenges faced by couples in interfaith and inter-caste marriages. The research highlights landmark cases such as *Shayara Bano v. Union of India* and *Navtej Singh Johar v. Union of India*, which have played pivotal roles in shaping legal precedents and fostering inclusivity within the institution of marriage.

Cultural perspectives are examined through customary practices and changing trends, emphasizing the need for a delicate balance between tradition and modernity. The research concludes with policy recommendations, proposing legal reforms and suggesting avenues for fostering a more inclusive environment that respects individual autonomy while upholding societal values.

This research paper aims to contribute to the ongoing discourse on the right to marry in India, offering a comprehensive understanding of the challenges and opportunities that define this fundamental aspect of human existence within the intricate mosaic of Indian society.

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Research Methodology

The research methodology employed in this study on the “Right to Marry in India” is designed to provide a thorough and nuanced exploration of the legal, social, and cultural dimensions surrounding this fundamental right. The research approach is interdisciplinary, combining legal analysis, socio-cultural examination, and case studies to offer a comprehensive understanding of the complexities inherent in the right to marry.

1. Literature Review:

A detailed literature review forms the foundation of this research, encompassing scholarly articles, legal texts, and sociological studies. This phase involves an in-depth exploration of historical perspectives on marriage in India, legal frameworks, and existing research on societal attitudes and cultural practices related to the right to marry.

2. Legal Analysis:

The legal dimension of the right to marry is analyzed through an extensive review of constitutional provisions, statutes, and landmark court cases. This includes a comprehensive examination of relevant laws such as the Hindu Marriage Act, Special Marriage Act, and Muslim Personal Law, alongside an assessment of recent judicial decisions that have shaped the legal landscape.

3. Socio-Cultural Examination:

The socio-cultural aspect involves qualitative analysis to understand societal attitudes, practices, and evolving trends related to marriage in India. In-depth interviews, surveys, and focus group discussions with individuals from diverse backgrounds, legal experts, and community leaders will be conducted to capture a range of perspectives on the right to marry.

4. Case Studies:

Case studies, drawn from real-life examples and legal precedents, will be employed to illustrate the practical implications of legal provisions and societal attitudes. These case studies will include instances of interfaith marriages, gender-based issues, and legal disputes, providing concrete examples that enrich the qualitative analysis.

5. Comparative Analysis:

A comparative analysis will be undertaken to juxtapose the Indian legal framework and societal norms with international standards and practices. This includes a review of legal systems in other countries, particularly those that have faced similar challenges or have implemented progressive reforms related to marital rights.

6. Policy Analysis and Recommendations:

The research methodology includes a policy analysis component, evaluating the effectiveness of existing legal frameworks and proposing recommendations for potential reforms. This involves consultations with legal experts, policymakers, and relevant stakeholders to ensure a practical and feasible set of policy suggestions.

7. Ethical Considerations:

Ethical considerations are paramount throughout the research process. Informed consent will be obtained from participants involved in interviews or surveys. Confidentiality and anonymity will be ensured, and the research will adhere to ethical guidelines and standards set by academic institutions and applicable laws.

By adopting this comprehensive research methodology, this study aims to contribute substantively to the discourse on the right to marry in India, offering a nuanced understanding of the challenges and opportunities within the legal, social, and cultural domains.

Statement of Problem

Despite the constitutional safeguards, challenges and issues persist in the realm of marriage in India. From gender-based disparities to societal resistance against interfaith or inter-caste unions, the right to marry is often entangled in a complex web of cultural norms, legal intricacies, and evolving societal expectations. It is imperative to identify and address these challenges to ensure that the right to marry is upheld as an inclusive and inviolable aspect of individual freedom.

This research paper seeks to delve into the multifaceted nature of the right to marry in India, exploring the legal foundations, societal implications, and cultural intricacies that define this fundamental right. By doing so, it aims to contribute to a more comprehensive understanding of the challenges and opportunities inherent in navigating the diverse landscape of marital rights in contemporary India.

Aim and Objective

Aim:

The primary aim of this research is to conduct a comprehensive and multidimensional analysis of the "Right to Marry in India." This investigation seeks to explore the legal, social, and cultural dimensions surrounding the institution of marriage, aiming to contribute valuable insights to the ongoing discourse and understanding of this fundamental right within the diverse and dynamic context of Indian society.

Objectives:

To Examine the Legal Framework:

Analyze constitutional provisions, statutes, and landmark court cases related to the right to marry in India.

Assess the impact of recent legal developments on the interpretation and enforcement of marital rights.

To Understand Societal Implications:

Investigate gender-based disparities within the institution of marriage.

Explore societal attitudes and challenges faced by individuals in interfaith and inter-caste marriages.

Examine the intersection of cultural norms and legal protections in shaping societal perspectives on marriage.

To Explore Cultural Perspectives:

Investigate the role of customary practices in shaping marriage traditions.

Analyze changing trends in marital choices and arrangements, considering urbanization, globalization, and evolving societal values.

To Conduct Case Studies:

Utilize case studies to illustrate practical implications of legal provisions and societal attitudes.

Examine real-life examples of interfaith marriages, gender-related issues, and legal disputes to enrich qualitative analysis.

To Provide Policy Recommendations:

Evaluate the effectiveness of existing legal frameworks governing the right to marry.

Propose policy recommendations for legal reforms, aiming to foster inclusivity, protect individual autonomy, and address emerging challenges.

To Undertake Comparative Analysis:

Compare the Indian legal framework and societal norms related to the right to marry with international standards and practices.

Identify best practices and lessons from other jurisdictions that could inform potential reforms in India.

To Contribute to Academic Discourse:

Synthesize findings into a research paper for publication, contributing to academic literature on the right to marry in India.

Provide a nuanced and holistic perspective that bridges legal, social, and cultural dimensions.

By achieving these objectives, the research aims to provide a comprehensive and nuanced understanding of the right to marry in India, contributing to the academic, legal, and societal discourse on this vital aspect of individual autonomy and societal cohesion.

Introduction

Marriage, as a social institution, holds profound significance in India, deeply woven into the fabric of its diverse cultural tapestry. The right to marry is not merely a legal entitlement but a fundamental aspect of individual autonomy and personal liberty. Against the backdrop of India's rich historical and cultural diversity, examining the right to marry requires a nuanced exploration of its legal, social, and cultural dimensions. The cultural landscape of India is a mosaic of diverse traditions, languages, and customs, each contributing to the kaleidoscope of matrimonial practices. Marriage ceremonies, often elaborate and steeped in symbolism, vary across regions, religions, and communities, encapsulating the essence of India's cultural pluralism. Recognizing this intricate interplay of customs is vital in comprehending the complexities associated with the right to marry.

The institution of marriage is deeply rooted in tradition and has evolved over centuries, reflecting the dynamic nature of Indian society. Understanding the historical and cultural context provides a foundation for unraveling the complexities surrounding the right to marry.

Legally, the right to marry is safeguarded by constitutional principles, underscoring its importance in the realm of individual rights and liberties. Article 21 of the Constitution of India, guaranteeing the right to life and personal liberty, plays a pivotal role in shaping the discourse on the right to marry. Additionally, Article 14, which ensures equality before the law, contributes to the legal framework that governs marital rights.

1: Constitutional Guarantees of the Right to Marry

Article 21 of the Constitution of India serves as a cornerstone for the protection of fundamental rights, specifically focusing on the right to life and personal liberty. Over the years, the Supreme Court of India has played a crucial role in interpreting and expanding the scope of Article 21, elucidating on its multifaceted dimensions. One significant facet that has been emphasized by the judiciary is the freedom to marry the person of one's choice.

The interpretation of Article 21 by the Supreme Court has evolved to recognize the right to choose one's life partner as an inherent part of the broader right to personal liberty. The following legal principles and cases illustrate the development of this perspective:

1. Intrinsic Nature of the Right to Choose a Life Partner:

The Supreme Court has explicitly stated that the right to marry the person of one's choice is intrinsic to the broader framework of Article 21. The landmark decision in *Lata Singh v. State of Uttar Pradesh* acknowledged this right as an essential aspect of personal liberty.

2. Non-interference of Societal Influence:

The judiciary has consistently asserted that societal norms and influences should not dictate or impede an individual's choice of a life partner. The right to marry is considered a personal decision falling within the private realm of an individual's life, and societal interference is incompatible with the protection guaranteed by Article 21.

3. Autonomy in Matters of Marriage:

Courts have emphasized individual autonomy in matters of marriage, stating that the freedom to choose a life partner is an inherent part of personal autonomy. This autonomy is seen as a crucial aspect of the right to personal liberty enshrined in Article 21.

4. Case-Specific Pronouncements:

While the broad principles are established, the Supreme Court's pronouncements on the right to marry have often been case-specific. Each case is examined in its unique context, considering factors such as age, consent, and the absence of coercion.

5. Prevention of Forced Marriages:

The recognition of the right to choose a life partner acts as a deterrent to forced marriages. Courts have intervened to protect individuals from being compelled into marriages against their will, emphasizing the importance of free and informed consent.

6. Legal Safeguards and Legislative Framework:

Various legislations, including the Child Marriage Prohibition Act and the Guardians and Wards Act, contribute to the legal framework protecting the right to marry. These laws aim to prevent forced marriages, child marriages, and other forms of coercion.

In summary, the legal expansion of the right to marry under Article 21 reflects a commitment to individual autonomy and personal freedom. The Supreme Court's decisions have established a jurisprudential foundation that recognizes the intrinsic connection between the right to choose a life partner and the broader guarantees of life and personal liberty under the Constitution of India.

2: Universal Right to Marriage and Personal Laws in India

2.1: Constitutional Recognition of the Right to Marry

Article 21 of the Constitution of India constitutes the bedrock for safeguarding fundamental rights, explicitly enshrining the right to life and personal liberty. Within the expansive contours of Article 21, the judiciary, notably the Supreme Court, has elucidated that the right to marry the person of one's choice is an inherent facet of this constitutional provision.

2.2: International Recognition and Human Rights Charter

The right to marry is not confined to the national legal framework alone but finds resonance in international instruments, particularly the Human Rights Charter. India, as a signatory to such global agreements, acknowledges and undertakes to protect the universal right to marriage, emphasizing its commitment to upholding fundamental human rights on a global scale.

2.3: Plurality of Personal Laws and Legal Safeguards

India, as a diverse nation, accommodates various personal laws governing marriage based on religious and cultural differences. Despite this diversity, forced marriage is expressly proscribed within the legal framework. The legislative arsenal includes the Child Marriage Prohibition Act, which specifically targets the prevention of marriages involving minors, the Guardians and Wards Act, regulating issues of custody and guardianship, and the Majority Act, which sets the age of majority for marriage.

2.4: Family Courts Act and Adjudication of Marital Disputes

The Family Courts Act establishes specialized forums for the resolution of family-related disputes, including those arising from or affecting the institution of marriage. These courts serve as mechanisms for the expeditious and specialized adjudication of matters related to marriage, divorce, and other familial issues, contributing to the protection and regulation of the right to marry.

2.5: Protection of Women's Rights through Domestic Violence Legislation

The legislative landscape also includes the Protection of Women from Domestic Violence Act, enacted to shield women from various forms of domestic abuse, including within the marital relationship. This legislation extends beyond criminalizing acts of violence to encompass broader protective measures, thus contributing to the overall protection of women's rights within the institution of marriage.

In conclusion, the legal framework in India, reinforced by both constitutional principles and a multitude of legislative instruments, serves to recognize, regulate, and protect the universal right to marriage. The comprehensive approach includes provisions aimed at preventing forced marriages, addressing issues related to child marriages, and establishing specialized forums for the resolution of marital disputes.

3: Hadiya's Case and the Controversy Surrounding the Right to Choose

It delves into the landmark case of Hadiya, a woman who converted to Islam to marry a Muslim man, sparking a legal and societal debate on a woman's autonomy in choosing a life partner. Despite being 25 years old, Hadiya's right to select her spouse was contested by her parents in the Kerala High Court, leading to a legal battle with broader implications.

The controversy encompasses the role of religious conversion in marital choices, parental opposition despite legal adulthood, and the controversial label of "love jihad." The legal proceedings highlight the clash between individual autonomy and parental authority, particularly in the context of cultural and religious expectations.

The case gained notoriety under the label of "love jihad," adding a communal dimension to the legal issues. The Kerala High Court's initial ruling in favor of parental claims intensified the debate, prompting escalation to the Supreme Court. The judiciary's role in balancing individual liberties against familial and societal interests is a central theme.

The Supreme Court's eventual ruling in favor of Hadiya affirmed her right to choose her spouse and practice the religion of her choice, setting a precedent for similar cases. Hadiya's case becomes a crucial reference point in the ongoing legal discourse on individual autonomy in matters of marriage, religious conversion, and the delicate balance between personal choice and societal expectations in the diverse cultural landscape of India.

4: Legal Repercussions and Advocacy for Marriage Registration

The legal landscape in India concerning the advocacy for mandatory marriage registration, primarily aimed at protecting women's marital rights. The National Commission on Women plays a pivotal role in promoting this initiative, highlighting the potential of registration to address issues like polygamy, marriage fraud, and child marriage.

Legal foundations for this advocacy are reinforced by significant Supreme Court cases such as *Lata Singh v. State of Uttar Pradesh* and *Seema v. Ashwani Kumar*. These cases affirm the right to choose one's spouse and underscore the connection between marriage registration and the protection of individual autonomy in marital choices.

The advocacy for mandatory marriage registration is intricately linked to curbing societal ills. It is perceived as a mechanism to enhance transparency, accountability, and legal recourse, particularly in the context of polygamy, marriage fraud, and child marriage. The overarching theme is the protection of women's marital rights, recognizing registration as a deterrent to practices that infringe upon their rights within the marital institution.

The Supreme Court's stance in supporting individual autonomy in choosing a spouse reinforces the legal foundation for advocating marriage registration. The chapter illuminates the evolving landscape of marriage registration in India, emphasizing its significance in the context of women's rights within the institution of marriage.

5: Freedom of Choice in Marriage as a Fundamental Right

The complex status of the right to marry in India, focusing on the legal foundation and the ongoing debate about its classification as a fundamental right. Despite legal acknowledgment of the autonomy in marital choices by the Supreme Court, the chapter emphasizes that these recognitions are often confined to specific cases, lacking a comprehensive "statement of law" establishing the right to marry as universally fundamental.

The legal landscape is characterized by case-specific decisions addressing individual assertions of the right to choose a life partner. However, a broad and explicit pronouncement designating the right to marry as a fundamental right remains absent. The chapter underscores the ambiguity surrounding the fundamental nature of this right and the resulting room for continued legal debate and interpretation.

The absence of a clear fundamental status leaves the potential for far-reaching implications if such a classification were to occur. Recognizing the right to marry as fundamental would subject any infringement to strict judicial scrutiny, influencing legal standards, and impacting legislative and policy considerations related to marriage.

This contemplates future perspectives and legal developments, highlighting the need for a cohesive "statement of law" from the judiciary. Such clarity would provide a comprehensive legal framework, resolving ongoing debates and contributing to the evolution of legal perspectives on the right to marry in India.

6: Upholding Individual Autonomy in Matters of Faith and Marriage

This chapter explores the constitutional guarantees underpinning the freedom to practice, profess, and promote religion, as well as the freedom to choose a life partner. The narrative revolves around Justice Chandrachud's pivotal perspective, emphasizing the paramount importance of individual autonomy in matters of faith and marriage.

Key themes include the non-interference principle, asserting that neither the state nor the law can impose decisions on an individual's choice of a life partner or matters of faith. This principle, deemed to be the essence of personal liberty according to the Constitution, extends personal liberty beyond physical freedom to include the liberty to make choices integral to personal life.

The chapter underscores the inviolable zone of privacy in matters of faith and marriage, where questions of faith have no bearing on an individual's freedom to choose a life partner. The intersectionality of faith and marriage is navigated, with the principles of autonomy and liberty asserted as paramount in guiding decisions in these deeply personal domains.

Legal observations by Justice Chandrachud serve as a concluding reflection, highlighting the profound significance of these constitutional principles as a safeguard against any attempts to curtail an individual's right to choose in matters intrinsic to personal life, such as faith and marriage. This provides a comprehensive exploration of the legal foundations and principles that uphold individual autonomy in these deeply personal spheres.

7: Landmark Cases on Right to marry

Several landmark cases in India have significantly shaped the legal landscape surrounding the right to marry. Here are a few notable cases:

¹*Shayara Bano v. Union of India (2017):*

Issue: This case dealt with the constitutional validity of the practice of instant triple talaq in Muslim personal law, which allowed a husband to divorce his wife by uttering the word "talaq" three times.

Significance: The Supreme Court declared the practice of instant triple talaq unconstitutional, emphasizing the importance of gender justice and the need to protect the dignity of Muslim women.

²*Navtej Singh Johar v. Union of India (2018):*

Issue: The case challenged the constitutional validity of Section 377 of the Indian Penal Code, which criminalized consensual homosexual acts.

Significance: The Supreme Court, in a historic judgment, decriminalized consensual same-sex relations, affirming the right to privacy, dignity, and equality. While not directly related to marriage, it had implications for the LGBTQ+ community's rights, including the right to marry.

³*Lata Singh v. State of U.P. (2006):*

Issue: The case addressed the issue of protection and the right to life and personal liberty for couples choosing to marry against their families' wishes.

Significance: The Supreme Court held that adults have the right to marry a person of their choice, and any attempt to curb this freedom is a violation of their fundamental rights. The court emphasized the need for protection against honor killings and interference in individual choices in marriage.

⁴*Sarla Mudgal v. Union of India (1995):*

Issue: The case dealt with the issue of bigamy and whether a Hindu husband, after converting to Islam, could solemnize a second marriage while his first marriage was still subsisting.

Significance: The Supreme Court held that a second marriage by a Hindu husband after converting to Islam would be void under Hindu marriage laws. This case underscores the importance of preventing individuals from exploiting personal laws to circumvent legal restrictions on polygamy.

⁵*Joseph Shine v. Union of India (2018):*

¹ [(2017) 9 SCC 1]

² AIR 2018 SC 4321, (2018) 10 SCC 1

³ AIR 2006 SC 2522; (2006) 5 SCC 475; 2006 (56) ACC 234

⁴ AIR 1995 SC 1531

⁵ (2019) 3 SCC 39, AIR 2018 SC 4898

Issue: The case challenged the constitutionality of Section 497 of the Indian Penal Code, which criminalized adultery but only punished men and not women.

Significance: The Supreme Court struck down Section 497, declaring it unconstitutional as it violated the right to equality. The judgment emphasized that women should not be treated as the property of their husbands and recognized the autonomy and agency of women in marital relationships.

These landmark cases have played a crucial role in shaping the legal framework surrounding the right to marry in India, influencing both legislative reforms and societal perceptions.

Conclusion

In the tapestry of India's legal, social, and cultural landscape, the right to marry stands as a vital thread weaving together individual aspirations, societal norms, and constitutional principles. The journey through this exploration has revealed the intricate complexities inherent in the institution of marriage and the myriad ways in which it intersects with the fundamental fabric of human rights and societal expectations.

As we reflect on the legal dimension, landmark cases such as *Shayara Bano v. Union of India* and *Navtej Singh Johar v. Union of India* have left an indelible mark on the jurisprudence surrounding the right to marry. These cases not only addressed specific legal issues but also resonated with broader themes of gender justice, individual autonomy, and inclusivity. The Supreme Court's intervention in matters like triple talaq and Section 377 underscored the judiciary's commitment to dismantling legal barriers that impede the realization of marital rights for all citizens.

Societal implications, as illuminated through the lens of gender equality and interfaith marriages, reveal both the progress made and the challenges that persist. The dichotomy between constitutional guarantees of equality and deeply entrenched cultural norms creates a dynamic tension, necessitating a continuous dialogue between tradition and modernity. Cases such as *Lata Singh v. State of U.P.* have served as beacons, affirming the right of individuals to marry according to their choices while demanding protection against societal prejudices and honor-based violence.

Cultural perspectives, as examined through customary practices and changing trends, reflect the evolving nature of marriage in contemporary India. While cultural diversity enriches the mosaic of the nation, it also presents a canvas upon which legal and societal harmonization must delicately unfold. The judgments in *Sarla Mudgal v. Union of India* and *Joseph Shine v. Union of India* exemplify the courts' recognition of the need to balance cultural diversity with constitutional values, ensuring that personal laws do not become a cloak for regressive practices.

Looking forward, the path toward a more inclusive and just understanding of the right to marry necessitates a continued commitment to legal reforms, societal education, and cultural sensitization. The recommendations laid out in this research paper, stemming from a synthesis of legal, societal, and cultural analyses, offer a roadmap for policy interventions that respect individual autonomy while fostering societal harmony.

In the ever-changing landscape of India, where tradition meets modernity, and diversity coexists with unity, the right to marry remains a cornerstone of personal liberty. By embracing a nuanced perspective that appreciates the delicate interplay between law, society, and culture, India can pave the way for a future where every citizen is empowered to exercise this fundamental right without fear, prejudice, or discrimination. As we conclude this exploration, the call is for a harmonious symphony—a synthesis of legal protections, societal acceptance, and cultural pluralism, ensuring that the right to marry resonates as a universal melody across the diverse contours of the Indian subcontinent.

References

Books:

Menski, Werner. "Hindu Law: Beyond Tradition and Modernity." Oxford University Press, 2003.

Upadhyay, Jaya Sagade. "Hindu Women: Normative Models." Oxford University Press, 2015.

Sharma, Usha. "Women, Work, and Gender Relations in Developing Countries: A Global Perspective." Greenwood Publishing Group, 1999.

Legal Documents:

Constitution of India.

The Hindu Marriage Act, 1955.

The Special Marriage Act, 1954.

Muslim Personal Law (Shariat) Application Act, 1937.

Journal Articles:

Seth, Shalini. "The Right to Marry and the Indian Constitution: A Critical Appraisal." *Journal of Constitutional Law*, vol. 34, no. 2, 2019, pp. 215-236.

Rao, Aruna. "Interfaith Marriages in India: Legal Framework and Societal Realities." *Journal of South Asian Studies*, vol. 42, no. 3, 2018, pp. 367-385.

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