

## RIGHT TO CHOICE IN MARRIAGE

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### ABSTRACT

*In India, there are many constitutional, legal and other political rights. Citizens enjoy these rights and whenever there is any kind of obstacle in proper implementation of these rights; judiciary intervenes and guides the law makers to reach to the correct path. There should be a p<sup>61</sup> roper balance between our liberties and restrictions on them. At the times when a law demands change in it, society raise voice and force parliament to fulfil the demand of time and society. Judiciary sometimes also plays a key role in fulfilling such demands. It interprets the laws and gives them a proper and broader meaningful sense so that it could benefit the public at large. In India, when it comes to freedom of speech and expression, both legislator and judiciary are performing their functions well. But still it is the demand of present time to bring broader perspective in this constitutional right and includes right to choice in marriage and officially recognizes it. The present article revolves around the points whether there is any true need to recognize this right, obstacles and the possible solution and alternatives.*

### INTRODUCTION:

For any society to progress, it is basic requirements that its members could express their views, can comment on decisions taken from time to time in that society and should also participate in the decision making process (or can indirectly represent their part through someone else on their behalf). This kind of regulation in any society allows people a right, in modern and present form known as- 'Right to freedom of speech and expression'.

### **Importance:**

The parameter that this fundamental right (especially in context of mate choice) should be fundamental or mere a legal right; should it be termed as a 'liberty' 'guaranteed' or simply assigned (given) to citizens, should be examined first. As discussed above, the very fact that this right to freedom of speech and expression helps the society to progress, is one of the basic grundnorm for this provision. Another major importance of this provision is that it allows public to express its views on any policy or law made by ruling class, they can freely

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express their grievances, reflect their ideas and ultimately they help themselves by raising their voice. Imagine a situation, if people do not have this privilege, we could not freely express what we want from govt., the concept of legitimate expectation cannot be assured, moreover, if any law or policy of govt. will somehow later on- will not be proved fruitful, that will definitely result in harm of society and ultimately to our nation. If this principle is not enshrined in the hands of public, a situation of anarchy may also arise, moreover, any law or policy will only be effective and proved to be fruitful, if it passes through different stages of discussion, thus, conflict of views is necessary as laws are made for the benefit of society. The purpose of ruler is not just to make laws, but should be one in which he can do welfare of ruled class. The object and purpose of any law should be benefit of general public which can only be assured if that public is allowed to make demands from govt. and freely express their grievances. This is the very concept and purpose of a democratic form of govt.; otherwise laws are also made in dictatorship form of govt., society is also regulated, but the significant difference should be evaluated in terms of involvement of public. This right ensures two-way participation and unlike any other form of govt., this right must be ensured in a democratic form of govt. Thus, it can now be construed that right to freedom of speech and expression should be guaranteed as fundamental and not to be given status of mere a legal right because of its inevitable importance in the society. On the same time, this right should not be absolute as it will give enormous powers to public to comment on every step of govt. in that situation, govt. could not work freely, properly and efficiently; at one or the other moment, it will remain busy in trying to solve the conflict of views of people and cannot take further decisions. The progress and growth of society hampers. There must be some restrictions with a blend of reasonableness. This right should not be termed as absolute freedom, but a beneficial liberty. The same interpretation and application is enshrined in the Indian constitution, which guarantees, its citizens a fundamental right to freedom of speech and expression under article 19(1)(a), and its reasonable restrictions in art. 19 (2).

## **INTERPRETATION: STRICT OR LIBERAL: IN CONTEXT OF RIGHT TO CHOICE IN MARRIAGE:**

The construction of this right should be moderate, moreover it should be expressed in terms and in the light of other fundamental rights and especially with art. 21. Its interpretation should neither be too strict or too liberal. There must be harmony in all fundamental rights of

person. Moving towards the right to choice in marriage; by using literal rule of interpretation, this right can't directly be constructed from the expression- 'freedom of speech and expression' according to art.19(1)(a) of the Indian constitution. But by linking it with art. 14 and 21, by applying rule of golden triangle, golden and mischief interpretation, this right can definitely be extracted. In a situation where person cannot express his/her views regarding mate choice, right under article 19(1)(a) will definitely be hampered.

### **AVAILABILITY UNDER PERSONAL LAWS OR CUSTOMS:**

The present Indian society cannot be confined in just a limited number of classes or religious groups. Earlier, it was Hindu, Muslims, Sikhs, and Christians forming major population of religious sections, while other were considered to be weaker, minorities and less represented ones; but now the situations has changed. Various constitutional and legal rights present in the country ensure the legitimate and significant existence of all other various communities or groups as well and along with majority classes. All these small or large groups have their own different usages and customs, varied practices of their day to day conducts, they each have diverse practices of laws regulating their conduct and all these things are based on different believes. Moving to the right of marriage in these groups, again they have different customs, some allowed marriage in same groups while other prohibits it and believes it to be a sin, while there are others too which freely allows their members to marry with anyone, even in the same kinship. We can't confine the study on Indian society by seeing it from the spectacles of Hindu-Muslim, but emphasis on other communities should also be given.

Under Hindu family law, an attempt was made in 1955 for codifying and uniting all diverse practices on Hindu customs regarding marriage and other family laws. Various small segments which are derived from the mainstream Hinduism like Sikhism, Buddhism, Jainism and other small or large groups are collectively made a subject for the application of the newly made codified law. However, there is a special provision left for them that if there is any conflict between the codified law and customs, later one will prevail. Thus, if one class of Hindu community allows marriage in same kinship, that one will be valid. The same situation is with other religious groups too, they allowed its members to marry in their own kinship; but the major question or problem is that whether the members of the families following these religions are allowed to get married on their own choice or their decisions are controlled by someone else, if yes then what are those factors, who are getting this right to


choice, who are more vulnerable sections in the society; all these things needs to be examined first.

## **PROBLEM WITH THIS RIGHT:**

The rivalry between choosing marriage partner is going on in this way. To understand what is right and what should be right, traces of ancient marriage system needs to be comprehended first. In ancient India, marriages generally took place by a ceremony of 'swayamvar', where girl or a boy got opportunity to marry mate of his/her choice. In that system, one party has to fulfil the conditions that swayamvar, this results in the satisfaction of parents of girl/ boy, as they got to know the qualifications or ability of person to get married, on the other hand this ceremony also satisfies that girl/boy as he gets opportunity to make his or her own choice among the best. There were very less chances of any dispute in the conjugal relationships at the later stages of marriage life. But in modern day India, mainly because of lack of communication between children and parents, the problem of right to choose mate becomes a problem. There is a dispute to the point that who own this right, parents or children themselves. Parents on one side claims that they can always decide for betterment of future of their children, while children on the other hand contends that it is their life and only they has the right, no one can force them in this regard. This thinking is the main cause of this problem. Reason behind this mentality is that young boys and girls somehow got attracted towards each other and started making reciprocal promises of marriage etc. without even knowing the consequences of it. At such young age, where their decisions in this regard are completely affected by that attraction, which later on proves to be wrong. At first, they made promises to live with each other, but later on cannot continue it because of any reason. It is fact that one party 'traps' the other one, may for any reason like money, and prima facie pretends to be nicest person in the world, but later on when they starts continue to live with each other all that pretending character dissolves and real personality comes out which other can't bear. At the initial stage, they thought that they had made a free choice and exercised their rights and are self-dependant, but later regret on their decision. Now-a-days, the number of divorce based on this reason is more. In this situation, parents think that it would be much better that their ward will adjust the marriage life rather being getting a stigma of divorce on them. It is not wrong to choose the life partner, moreover it would be better if parties know each other very well, but the way today's generation is choosing their partners is in question.

## CONCLUSION:

Our constitution safeguards various rights to people in India, right to choice in marriage is one them. It is available to citizens, various precedents of Indian judiciary has upheld this fundamental right, but the major impediment behind the availability and proper exercise of this right is the double standard orthodox ideology of the society. The most vulnerable is females, at some instances men can freely exercise this right but when it comes to females, their choice is restricted by their family and society in the name of their customs and private personal laws. So, these laws must needs a reform along with this, mentality of society needs to be improved.

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