

THE EXPANDING HORIZON OF ARTICLE 21: RIGHT TO MARRY AND THE QUESTION OF MARRIAGABLE AGE

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Abstract

This article examines the constitutional recognition of the right to marry under Article 21 of the Indian Constitution, alongside the legal challenges arising from statutory marriageable age. Article 21, though textually brief, has evolved into a reservoir of rights, including privacy, dignity, and marital choice. Through landmark judgments such as *Lata Singh*, *Shakti Vahini*, and *Shafin Jahan*, the Supreme Court affirmed the autonomy of individuals to marry by choice. However, conflicts emerge where one partner is under the statutory marriageable age. Analysing recent High Court rulings, the article highlights the judiciary's emphasis on prioritising life and liberty over societal or statutory constraints.

INTRODUCTION

Fundamental rights make the constitution truly functional and transform lives in substantive terms. These rights give life to the ideals enshrined in the Preamble. By ensuring justice, liberty, equality and fraternity, these rights turn the Preamble's aspirations from abstract principles into enforceable realities.

Article 21 is one of the most important fundamental rights. It forms part of the Right to Freedom from Articles 19 to 22. Textually, this article is the shortest fundamental right but today it has covered almost every aspect of an individual's life, contextually. It reads as:

Article 21: No person shall be deprived his life or personal liberty except according to the procedure established by law.

However, when cases with different legal issues get submitted to the counters of the Courts, it becomes duty of the Courts to apply law carefully. In due course of time many challenges

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relating to existing marriage system has increased. With the evolution of society, issues relating to validity of marriage, live in relations, same sex marriages, etc. have been resolved through the judicial advancement.

Whenever, two people marry against the social norms it becomes duty of the State to protect their rights. Freedom has no meaning until and unless it is not practiced through affirmative actions of the states. We have been hearing of 'honour killings', 'khaap panchayats and different other institutions which normalise killing of young couples in the name of religion, societal order and morality. But the question arises when marital status, age, laws, validity etc. pose challenges to the fundamental freedoms of the individuals which form part of their basic human rights.

This is when the judiciary comes into action. Judiciary has not only played vital role in widening the scope of Article 21 but has also resolved difficult legal issues that come up in different cases at various levels. Let us look at one such issue when marriageable age comes into conflict with fundamental right to marry recently recognised by Hon'ble Supreme Court.

RIGHT TO MARRY RECOGNISED FUNDAMENTAL RIGHT UNDER ARTICLE 21

Through judicial interpretation, it has evolved into an ever-expanding reservoir of rights, encompassing within its ambit the right to privacy, the right to marry, the right to health, education, and a clean environment, among many others. Recently, I got a chance to witness the power of Article 21 while presenting a case for young couple at District and Sessions Court. The couple were seeking protection as their life was under threat for marrying each other against the wishes of the petitioner's family. Article 21 came handy when their right to marry was already protected by precedents set by Hon'ble Supreme Court and some Hon'ble High Courts, in judicial pronouncements as a Fundamental Right to Life and Personal Liberty. Let us dive into these landmark judgments pronounced by Hon'ble Supreme Court adding one more right under the ever-expanding ambit of Article 21:

Lata Singh v. State of Uttar Pradesh²Lata, an adult woman, married Bramha Nand Gupta against the wishes of her brothers. Her brothers allegedly lodged false criminal complaints and threatened violence to force a break-up; proceedings were started against the husband and

² AIR 2006 SC 2522; (2006) 5 SCC 475).

his relatives and Lata claimed her fundamental rights were being violated. She moved the Supreme Court under Article 32 after criminal proceedings and other coercive steps followed her inter-caste marriage.

The Supreme Court protected Lata's decision to marry and quashed the malicious criminal proceedings which were being used to intimidate her. It affirmed that an adult's right to marry a person of one's choice is part of personal liberty under Article 21. The Court held that an adult, competent to make her own choices, has the constitutional right to marry a person of her choice; familial "honour" or caste objections cannot be allowed to override Article 21. The Court also directed police protection and warned of action against those who use criminal process to harass free adults.³

Lata Singh is an early, muscular affirmation that inter-caste or inter-community marriages are protected by Article 21 and that the State must guard—not abet—coercion in the name of family honour. It is often relied on in cases where families weaponize criminal complaints to annul adult choices.

Shakti Vahini v. Union of India & Ors⁴ This petition arose from multiple complaints about "honour" crimes and forced marriages where persons exercising choice were abducted, beaten or killed. Civil society group Shakti Vahini sought directions to the Centre/States to stop honour killings, forced marriages and to ensure police action and preventive measures. The matter travelled to the Supreme Court by public interest litigation.

The Supreme Court condemned honour-based violence and held that choice in marriage is protected by Articles 19 and 21. It directed the Centre and States to take concrete preventive and protective steps (e.g., timely police action, victim rescue, protocol for investigation and prosecution) to stop honour crimes and forced marriage.

The Court treated forced marriages and honour crimes as gross violations of personal liberty and life; State machinery must proactively protect vulnerable adults and ensure speedy,

³ Indian Kanoon. (n.d.). *Lata Singh v. State of Uttar Pradesh & Anr.* (2006). Retrieved October 10, 2025, from <https://indiankanoon.org/doc/1195939/>

⁴ AIR 2018 SC 1601; (2018) 7 SCC 192).

effective criminal investigation rather than permitting social morality to subvert constitutional rights. The judgment includes operational directions for police and administrators.⁵

Shakti Vahini shifts the response from rhetoric to procedure — it instructs the State to prevent and punish honour crimes and has been cited repeatedly where families or local communities threaten couples for marrying by choice. It's a leading authority on the State's protective duty.

Shafin Jahan v. Asokan K.M. & Ors. — the “Hadiya” case⁶Akhila (popularly known as Hadiya), a major, married Shafin Jahan and converted to Islam; her father filed a habeas corpus in the Kerala High Court asserting coercion and the High Court annulled the marriage and ordered her return. Shafin appealed to the Supreme Court. Hadiya personally told the Supreme Court that she had married of her own free will and wanted to live with her husband and practice her religion.

The Supreme Court set aside the High Court's annulment and restored Hadiya's freedom to make marital and religious choices. The Court emphasised that an adult woman's choice of partner and faith cannot be lightly overridden by courts or family; habeas corpus cannot be used to annul a lawful adult marriage without clear proof of illegality.

The Supreme Court held that the right to marry a person of one's choice and to choose religion are aspects of personal liberty and dignity guaranteed by Article 21 — but the Court also noted courts must be careful and must verify voluntariness without infantilising adults. The Kerala High Court had over-reached by annulling the marriage on uncertain findings; the SC stressed agency and consent.⁷

The Hadiya judgment is a vivid vindication of adult autonomy — especially for women — against paternalistic interventions. It is frequently invoked in debates about conversion, “protective” custody and the boundaries of habeas corpus when an adult's choices are contested.

⁵ Indian Kanoon. (n.d.). *Shakti Vahini v. Union of India & Ors.* (2018). Retrieved October 10, 2025, from <https://indiankanoon.org/doc/114806432/>

⁶ Criminal Appeal No. 366 of 2018; decided Mar–Apr 2018; reported at (2018) 16 SCC 368.

⁷ Indian Kanoon. (n.d.). *Shafin Jahan v. Asokan K.M. & Ors.* (2018). Retrieved October 10, 2025, from <https://indiankanoon.org/doc/163639357/>

WHEN RIGHT TO MARRY UNDER ARTICLE 21 CONFLICTS WITH MARRIAGABLE AGE OF THE PARTIES

Law applies to different facts and circumstances of the cases, according to the nature of the legal issue that arises. We cannot apply straightjacket formula to all the cases. Despite these important precedents we had in our favour, the case here demanded different recourse. Every case has its own delicacies. The case I was presenting, posed a very sensitive yet important question before the Hon'ble Court. The court was in constitutional dilemma when both the parties were major, but one of the spouses' i.e. petitioner no. 2, the boy, has yet not reached the marriageable age i.e. 21 years. Article 21 was posed a serious challenge – whether to prioritise the protection to life and personal liberty of the couple or to uphold the statutory mandate of marriageable age.

Section 5 of Hindu Marriage Act-Conditions for a Hindu marriage. —A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely: —

- (i) neither party has a spouse living at the time of the marriage;
- (ii) at the time of the marriage, neither party—
 - (a) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or
 - (b) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or
 - (c) has been subject to recurrent attacks of insanity
- (iii) the bridegroom has completed the age of twenty-one years and the bride, the age of eighteen years at the time of the marriage;
- (iv) the parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two;
- (v) the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two;

Section 5 of the Hindu Marriage Act, 1955 deals with the conditions which are to be fulfilled to make Hindu Marriage a valid marriage. If any of these conditions are not fulfilled,

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they can be declared void or voidable under **Sections 11 and 12**, respectively. Void Marriages are declared null and void, on presenting a petition by one of the parties. It means the marriage even if solemnized is not at all a valid marriage from its very inception and thus not legal. Marriages which violate the conditions (i), (iv), (v) of Section 5 are said to be void marriages under section 11.

However, condition (iii) under Section 5 which deals with marriageable age of the parties is only voidable under Section 12. This means it does not make such marriages automatically void by law, only if one of the parties file suits for annulment of marriage, such marriage can be declared void by the decree of nullity.

Moreover, special law deals with the marriageable age of the couple. **Section 3 of the Prohibition of Child Marriage Act, 2006** reads as (1) *Every child marriage, whether solemnised before or after the commencement of this Act, shall be voidable at the option of the contracting party who was a child at the time of the marriage: Provided that a petition for annulling a child marriage by a decree of nullity may be filed in the district court only by a contracting party to the marriage who was a child at the time of the marriage.*

Now, the legal issue that arises is whether the marriageable age is an important factor while granting protection under Article 21 to the couple who apprehends threat to their life and personal liberty? Or whether the question of valid age only arises in the cases for annulment of marriage under separate petition? Similar questions were arisen before Hon'ble High courts of some states. Following are the landmark authorities that dealt with these challenges and answered them very intelligently:

In Priyapreet Kaur & Anr. v. State of Punjab & Ors⁸, the Punjab & Haryana High Court held that two adults have a constitutional right under Article 21 to live together—even if the male partner has not yet attained the “marriageable age” according to personal or social norms.

⁸ CRWP-10828-2020, decided 23 December 2020.

Facts in brief: The woman (petitioner No.1), though an adult, faced abuse, confinement, threats, and violence from her parents after her relationship became known. The male partner (petitioner No.2) was also a major, but had not reached “marriageable age” under applicable laws or customs. The woman left her parental home and they both began cohabitating in a live-in relationship. Family members were opposing this and threatening them.

What the Court held:

- Because both petitioners are adults, the Court said they have a fundamental right to life and liberty under Article 21, which includes choosing a partner and living together.
- The Court rejected the idea that simply because the male partner isn’t of “marriageable age” (by statutory or customary standard), that fact alone can deny their rights.
- The parents (or relatives) have no constitutional power to dictate how a major should live or with whom, so long as the relationship is within the law.
- The law may regulate (subject to constitutional compliance) the conditions of a valid marriage, as it may regulate the situations in which a marital tie can be ended or annulled. These remedies are available to parties to a marriage for it is they who decide best on whether they should accept each other into a marital tie or continue in that relationship.⁹

This ruling reinforces that adulthood (capacity to make decisions) is more important than the socially defined “marriageable age” when it comes to freedom of choice in marriage or partnership. It affirms that cohabitation among consenting adults is a right protected under Article 21, and that violent coercion or familial pressure cannot be used to suppress that right.

In *Rekha Meghwanshi & Another v. State of Rajasthan & Others*¹⁰, the Rajasthan High Court held that the constitutional right to life and liberty under **Article 21** belongs to every citizen, **regardless** of whether they are of “marriageable age” or whether their relationship is socially sanctioned. The petitioners, a 20-year-old woman and a 19-year-old man, claimed

⁹ Daaman. (2020, December 23). *Boy not of marriageable age? The right of major couple to live together can't be denied: Punjab & Haryana High Court in Priyapreet Kaur v. State of Punjab*. Retrieved October 10, 2025, from <https://www.daaman.org/jd/priyapreet-kaur-and-another-vs-state-of-punjab-and-others/boy-not-of-marriageable-age-the-right-of-major-couple-to-live-together-can-t-be-denied>

¹⁰ 2024: RJ-JD:34581, decided 21 August 2024.

they were in a consensual live-in relationship and intended to marry once age requirements are met; but the woman's parents opposed this, and threats had been made to harm them.

The Court directed police authorities to provide protection to the couple, observing that even though they are minors by the standard of marriage law (in that one of them is under the legal "marriageable age"), that does not strip them of fundamental rights to life and personal liberty. The Court emphasized that the State has a duty to protect these rights, and that societal norms or parents' disapproval cannot justify threatening or infringing those rights.¹¹

Both the above authorities of respective High Courts have proved that: ***Protection of life and liberty under Article 21 of the Constitution of India is paramount and must be ensured by the State, irrespective of the marital status or age of the individuals seeking protection.***

CONCLUSION

The jurisprudence on Article 21 has consistently demonstrated that the Constitution prioritises the protection of life and personal liberty over societal conventions, family honour, or even statutory technicalities relating to the marriageable age. While the law regulates the conditions of a valid marriage, the right to life and liberty is inherent, inalienable, and paramount. Courts have thus struck a careful balance—making it clear that questions of marital validity can be addressed in appropriate proceedings, but threats to life and liberty admit of no delay and require immediate protection.

The decisions of the Punjab & Haryana High Court in *Priyapreet Kaur* and the Rajasthan High Court in *Rekha Meghwanshi* reflect this constitutional wisdom. They affirm that adulthood confers the autonomy to choose a partner and cohabit, and that the State is duty-bound to safeguard such autonomy against private or societal coercion.

Therefore, as the law continues to evolve, the guiding principle remains clear: Article 21 is the heart of the Constitution, and its guarantee of dignity, choice, and safety cannot be compromised. Power of Article 21 not only applies to the Indian population who have their

¹¹Latest Laws. (2024, August 21). *Rekha Meghwanshi & Anr. v. State of Rajasthan & Ors.* Retrieved October 10, 2025, from <https://latestlaws.com/judgements/rajasthan-high-court/2024/august/2024-latest-caselaw-7042-raj>

reach to higher courts but also assuring that the fundamental rights of the people from rural India or at district levels. The judiciary has played a pivotal role in expanding its ambit, ensuring that fundamental freedoms are not merely theoretical promises but lived realities, even in the sensitive domain of marriage and personal relationships.



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