

Shafin Jahan (vs)Ashokan K.M

(Hadiya marriage case)

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Introduction:

The case of *Shafin Jahan v. K. M. Ashokan* is also known as Hadiya's case revolves around intercaste marriage and a woman's right to marry. The case guides and directs the freedom and liberty of an individual. This case was titled by the media as the "Love Jihad case." The rights of women to marry against the wishes of their parents were being questioned in the case. There were some arguments and allegations presented by the father of Hadiya that made the case more complex as he alleged that Shafin Jahan influenced to change her faith and further he raised concern that she was being taken to be out of India.

K.M Ashokan filed the case before a divisional bench of Kerala High Court challenging the validity of the marriage and her daughter's conversion to Islam through the writ of Habeas Corpus. The High Court rejected the petition. Following this, another writ petition was filed and the High Court passed the judgment in the favour of the petitioner. The matter went to the Supreme Court, and the Apex court annulled the judgment of the Kerala High Court on 09.04.2018.

Background facts:

Hadiya Jahan, who was originally known as Akhila Ashokan was a Hindu by birth. She converted her religion into Islam when she was studying for Homeopathy (BHMS) form Shivraj Homeopathic Medical College, Salem in Coimbatore, Tamil Nadu. She stayed in a house with her friends named as Jaseena and Faseena. She then married a Muslim man named Shafin Jahan at the age of twenty-five years. On 6th January 2016, Mr Ashokan, father of Hadiya, found that her daughter was inspired by someone to change her religion from Hindu to Muslim. After finding out about the marriage of her daughter, Mr Ashokan filed a police complaint before S.P. Malappuram District. He then moved to High court and filed a habeas corpus petition challenging the validity of the marriage on the ground of misleading and forcing his daughter to become a Muslim.

The divisional bench of the High Court rejected the petition and stated that Hadiya has expressly affirmed her marriage to Sahfin Jahan and conversion to Islam. Hadiya appeared before the High Court and stated that she had accepted Islam as a religion of choice and settled at the establishment of Sathyasarani Education Charitable Trust at Mallapuram. So, the High Court observed that Hadiya was not wrongfully confined by Sahfin Jahan, and she has free will to do so. The Kerala High Court held that the marriage between Hadiya and Sahfin Jahan is only a sham and is of no consequence.” After seven months, Ashokan filed another writ (habeas corpus) petition before the High court alleging that

his daughter had been forcefully converted into Islam and was likely to be transported out of the country. The High Court ruled in favour of Mr Ashokan and held that it is the father's responsibility to keep custody of his daughter until she may realize her actions. The court exercised the *parens patriae* jurisdiction and mentioned that it is for the welfare of the child of such an age. The court also stated that a girl aged 24 years may be exploited easily as they are weak and vulnerable. Therefore, the court declared the marriage as null and void and allowed the custody of Hadiya to her parents, despite the fact that Hadiya did not consent to it.

Main issues:

1. Whether the High Court has the power under [Article 226](#) of the Constitution of India to annul and void the marriage of an adult?
2. Whether the petitioner had a right cause to file a writ petition of *Habeas Corpus* before the High Court?
3. Whether a National Investigating Agency probe ordered by the Kerala High Court was necessary?
4. Whether women or men have to take prior approval from their parents if they are above the age of eighteen and twenty-one respectively?

Laws/Provisions Mentioned:

- **Article 226 of the Constitution of India:**

Power of High Courts to issue certain writs:

Notwithstanding anything in Article 32 every High Court shall have powers, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibitions, quo warranto, and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.[1]

- **Article 32 of the Constitution of India:**

Remedies for enforcement of rights conferred by this Part:

1. The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.
2. The Supreme Court shall have the power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto, and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.[2]

- **Article 19 of the Constitution of India:**

Protection of certain rights regarding freedom of speech, etc:

1. All citizens shall have the right
 - a. to freedom of speech and expression;
 - b. to assemble peaceably and without arms;
 - c. to form associations or unions;
 - d. to move freely throughout the territory of India;
 - e. to reside and settle in any part of the territory of India; and
 - f. (omitted)
 - g. to practice any profession, or to carry on any occupation, trade or business[3]

- **Article 21 of the Constitution of India:**

Protection of life and personal liberty: No person shall be deprived of his life

or personal liberty except according to procedure established by law.[4]

- **Valid Requisites of a Muslim Marriage:**

The conditions for a valid Muslim marriage are:

- i.Both the individuals must profess Islam;
- ii.Both should be of the age of puberty;
- iii.There has to be an offer and acceptance and two witnesses must be present;
- iv.Dower and Mehar; and
- v.Absence of a prohibited degree of relationship.

Important Arguments –

For Appellant–

- The article 21 of Constitution of India which includes right to marriage to all the adults and the other right to profess and practice any religion of own choice is being violated by the High Court order as it annulled the marriage between two adults of sound mind.

- The Counsel for Respondent No.1 has tried to make the present case as a matter of jihad and relate it with communalism which is not the case and such step is taken to distract the law and order of society.
- Also , the courts can exercise their '*Parens Patrie jurisdiction*' under special cases. The present case was not the one where it should be exercised.
- The writ of habeas corpus can be allowed if there is forceful detention of any person against its will and the same person should be presented before the court. In the present case, Hadiya who was alleged to be forcefully dentented had appeared before the court as and when the court asked . She was not kept against her will. On contrary, the order of the court to keep her mandatory stay with her parents was a violation of her right and was a case of forceful detention.

For Respondents–

- The present case was one of the severe cases of love jihad and so there shall be in camera proceedings to maintain confidentiality and security.
- The appellant tried to escort Hadiya to Syria and for that he had brainwashed her while she met him on an online site named as ready for nikah and was staying away from her parents during the same time.

- She is weak and vulnerable and so the decision of marriage without her parents consent for the same is not right.
- The court by exercising its ‘Parens Patriae Jurisdiction’ shall order Akhila to stay with her parents as they are her true and only well wishers.
- Also the marriage should be declared null and void as it is made out of undue influence.

Analysis:

The Supreme Court ordered Respondent No. 1 to produce his daughter, Hadiya (Respondent No. 9) before the Court. After interacting with Hadiya, the Court noted her will and directed that she be admitted to the Medical College in Salem where she intended to pursue her internship, and the Government of Kerala to make all necessary arrangements for her to travel to Salem.

The Court traced the legal history of the writ of habeas corpus and interpreted its meaning and scope. In doing so, it referred to Indian as well as English and American cases such as:

- i. Cox vs. Hakes ((1890)[6],
- ii. Secretary of State for Home Affairs vs. O'Brien (1923)[7],

- iii. Kanu Sanyal vs. District Magistrate, Darjeeling and Ors. (1973)[8],
- iv. Ware vs. Sanders (1910)[9], and
- v. Ummu Sabina vs. State of Kerala and Ors. (2011)[10].

The Court observed that:

"The pivotal purpose of the said writ is to see that no one is deprived of his/her liberty without the sanction of law. It is the primary duty of the State to see that the said right is not sullied in any manner whatsoever and its sanctity is not affected by any kind of subterfuge. The role of the Court is to see that the detenu is produced before it, find out about his/her independent choice, and see to it that the person is released from illegal restraint."

Moreover, the "ambit of a habeas corpus petition is to trace an individual who is stated to be missing. Once the individual appears before the court and asserts that as a major, she or he is not under illegal confinement, which the court finds to be a free expression of will, that would conclude the exercise of the jurisdiction."

The Court further noted that the "expression of choice is a fundamental right under Articles 19 and 21". The Court pointed out that "Hadiya (had) appeared before the High Court and stated that she was not

under illegal confinement" and in view of this, the High Court had no warrant to proceed further in the exercise of its jurisdiction under Article 226 but had been incorrectly swayed by Respondent No. 1's averments.

It observed that the Court could not be influenced by parental concerns and did not have the jurisdiction to decide what would "be a 'just' way of life or 'correct' course of living for Hadiya. She has absolute autonomy over her person." Moreover, the High Court was wrong in making observations relating to social radicalization and welfare concerns in a writ of habeas corpus, and any apprehensions related to future criminal activity and otherwise were not under the writ jurisdiction and were to be governed and controlled by the State in accordance with the law.

Further, the Court invalidated the order of the High Court invoking the **Parens Patriae Doctrine**. It traced the origin of the doctrine in British Common law and referred to precedents in India, the U.K., the U.S., Canada, and Australia to note its usage and purpose.

It referred to:

- i. Thomasset vs. Thomasset ((1894) P 295),
- ii. Charan Lal Sahu vs. Union of India (1990)[11],
- iii. Anuj Garg and Ors. vs. Hotel Association of India and Ors. (2008)[12],
- iv. Aruna Ramachandra Shanbaug vs. Union of India (2011)[13],
- v. Heller vs. Doe (1993)[14], E. (Mrs.) vs. Eve (1986)[15],
- vi. Secretary, Department of Health and Community Service vs. J.W.B. and
- vii. S.M.B. (1992)[16], and AC vs. OC (a minor) ((2014)[17].

The Court noted that "the said doctrine has to be invoked only in exceptional cases where the parties before it are either mentally incompetent or have not come of age and it is proved to the satisfaction of the court that the said parties have either no parent/legal guardian or have an abusive or negligent parent/legal guardian."

Referring to the interaction with Hadiya, the Court opined that the parens patriae jurisdiction was "not applicable to the facts of the present case, as "there is nothing to suggest that she suffers from any kind of mental incapacity or vulnerability". Moreover, "(s)he was absolutely categorical in her submissions and unequivocal in the expression of her choice".

The Court noted that "each individual will have a protected entitlement in determining a choice of partner to share intimacies within or outside marriage". It cited **Justice K.S. Puttaswamy vs. Union of India and Ors. (2017)[18]**, which held that autonomy was an individual's ability to make decisions on important matters of their life and that the intersection between one's mental integrity and privacy entitles the person to the freedom of thought and self-determination regarding marriage, procreation, and sexual orientation, and were integral to a person's dignity.

The Court held that the "exercise of the jurisdiction to declare the marriage null and void, while entertaining a petition for habeas corpus, is plainly in excess of judicial power. The High Court has transgressed the limits on its jurisdiction in a habeas corpus petition. In the process, there has been a serious transgression of constitutional rights."

The Court elucidated this aspect further and noted that liberty and autonomy recognized by the Constitution included the ability to make decisions on "aspects which define one's personhood and identity" and the "choice of a partner whether within or outside marriage lies within the

exclusive domain of each individual (as) Intimacies of marriage lie within a core zone of privacy, which is inviolable". The Court also noted that the "Constitution guarantees to each individual the right freely to practice, profess and propagate religion. Choices of faith and belief as indeed choices in matters of marriage lie within an area where individual autonomy is supreme".

The Court held that the High Court had erred in deciding whether Shafin Jahan was a fit person for Hadiya to marry, as "the right to marry a person of one's choice is integral to Article 21 of the Constitution" and "society has no role to play in determining our choice of partners".

The Court was of the opinion that "The exercise of the jurisdiction to declare the marriage null and void, while entertaining a petition for habeas corpus, is plainly in excess of judicial power. Hadiya and Shafin Jahan are adults. Under Muslim law, marriage or nikah is a contract. Muslim law recognizes the right of adults to marry of their own free will. The conditions for a valid Muslim marriage are:

- i. Both the individuals must profess Islam;
- ii. Both should be of the age of puberty;

- iii. There has to be an offer and acceptance and two witnesses must be present;
- iv. Dower and Mehar; and
- v. Absence of a prohibited degree of relationship.

A marriage can be dissolved at the behest of parties to it, by a competent court of law. Marital status is conferred through legislation or, as the case may be, custom. The law prescribes conditions for a valid marriage. It provides remedies when relationships run aground.

Deprivation of marital status is a matter of serious import and must be strictly in accordance with 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. Society has no role to play in determining our choice of partners. Our choices are respected because they are ours. Social approval for intimate personal decisions is not the basis for recognizing them. Indeed the Constitution protects personal liberty from disapproving audiences.

A Constitution Bench of this Court, in **Common Cause (A Regd. Society) v Union of India** (2005)[19], held: "Our autonomy as persons is founded on the ability to decide: on what to wear and how to dress, on what to eat and on the food that we share, on when to speak and what we speak, on the right to believe or not to believe, on whom to love and whom to partner, and to freely decide on innumerable matters of consequence and detail to our daily lives."

The strength of the Constitution, therefore, lies in the guarantee which it affords that each individual will have a protected entitlement in determining a choice of partner to share intimacies within or outside marriage.

Further on matters of belief and faith, the Court noted that "whether to believe (or not) are at the core of constitutional liberty. The Constitution exists for believers as well as for agnostics. The Constitution protects the ability of each individual to pursue a way of life or faith to which she or he seeks to adhere". The Court thus quashed the impugned judgment of the High Court and upheld Hadiya's right to autonomy and self-determination regarding her marriage and faith.

Judgment:

The Apex court, in this case, set aside the judgment ruled by the Kerala High Court declaring it null and void the marriage of Hadiya and Shafin Jahan. The marriage was restored by the Supreme court, and the court held that the investigation led by NIA to probe the marriage and any other criminality shall continue but there should be no interference between the marriage. A 3-Judge Bench comprising the Chief Justice Deepak Misra, Justice A.M. Khanwilkar and Justice DY Chandrachud delivered the judgment and removed Hadiya from the custody of her parents as it was against her will. The court also sent her back to the college after she had expressed her willingness to continue her studies.

Legal implications of the judgment:

The judgment given by the Supreme Court was apt according to the present situation in society. The marriage between Shafin Jahan and Hadiya was valid as the court did not find any ulterior motive behind the marriage. The allegations made by the father of Hadiya were erroneous and had no relevance with the marriage. The constitution of India provides liberty and freedom of choice to every individual. In the case of Lata Singh v. State of Uttar Pradesh, it

was observed by the Supreme Court that the right to marry is a component of Right to life enshrined under [Article 21 of the Indian Constitution](#). The court further held that India is a free and democratic country and a person is free to marry whosoever he/she likes after attaining the age of majority that is 21 for boys and 18 for girls. Parents of the boy or girl do not have any right to harass or instigate acts of violence against them. Therefore, we can say that a person can marry whomsoever he/she likes irrespectively of the caste and it is the fundamental right to marry guaranteed under the constitution of India.

Thus, it is rightly said that social values, faith and morals have their space in society but they are considered above the Fundamental rights enshrined under the Indian Constitution. The said freedom is constitutional and a human right. In the case of [*Bhagwan Das v. State \(NCT of Delhi\)*](#), the court averted the social evil in society such as Honour killings and love jihad and stated that these practices are a reflection of a feudal mindset which is a blot on the nation. The duty of the court is to protect the individual's fundamental rights and not to shorten the rights except under certain circumstances. The courts must abide by the laws and regulation and determine the case on the basis of legality and not morality. Everyone has a freedom of choice of religion and faith which is expressly enshrined under the Indian Constitution.

Conclusion:

Terming the case of Shafin Jahan v. K.M. Ashokan as the appropriate example of “patriarchal autocracy and possibly self-obsession with the feeling that a female is a chattel”. The judgment of the Kerala High Court reflects the patriarchal system in the society which is a slur on the nation. The judgment showed that women are vulnerable in society. Thus, the Supreme Court rightly quashed the order of the High Court and passed the judgment in the favour of Hadiya where she has freedom of choice of religion and faith. Moreover, the conversion was valid, and the validity of the marriage cannot be decided by the court of law if parties have attained the age of majority.

Every person has the right to marry and enter into a legal contract if he/she attains the age of majority without any interference from parents. The right to marry is not expressly mentioned under the Indian Constitution but it is interpreted under [Article 21](#) which provides for the right to life and personal liberty. Thus, the marriage between Hadiya and Shafin Jahan was valid and the High Court decision to annul it was bad in the eyes of the law.

Reference:

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