



CRWP-4660-2021
CRWP-149-2024 &
LPA-968-2021 (O&M)

-1-

2024:PHHC:118245-DB



In the High Court of Punjab and Haryana at Chandigarh

1. CRWP No. 4660 of 2021
Reserved on: 27.8.2024
Date of Decision: 09.9.2024

Yash Pal and anotherPetitioners

Versus

State of Haryana and othersRespondents

2. CRWP No. 149 of 2024

Komal and anotherPetitioners

Versus

State of Haryana and othersRespondents

3. LPA No. 968 of 2021

Gagandeep Singh and anotherAppellants

Versus

State of Punjab othersRespondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Argued by: Mr. P.S.Ahluwalia, Advocate (Amicus Curiae).

Mr. Pawan Girdhar, Addl. Advocate General, Haryana.

Mr. Satya Pal Jain, Additional Solicitor General of India
 assisted by Ms. Neha Sharma, CGC for UOI.

Mr. Maninderjit Singh Bedi, Addl. A.G., Punjab.

Mr. B.R.Rana, Advocate for
 Mr. J.S.Toor, APP for U.T., Chandigarh.

SURESHWAR THAKUR, J.

1. Since a common question of law involves in both the petitions (supra) as well as in the LPA (supra), hence both the petitions (supra) as well



CRWP-4660-2021
CRWP-149-2024 &
LPA-968-2021 (O&M)

-2-

2024:PHHC:118245-DB



as the LPA (supra) are amenable for a common verdict being made thereons.

2. In **CRWP-4660-2021**, the petitioners have sought a direction being passed upon the respondents concerned to protect their life and liberty, from the respondents concerned. In the petition (supra), though petitioner No. 1 is already married, however he has been living with petitioner No. 2 in a live-in relationship and they want to perform marriage, but after obtaining a decree of divorce by petitioner No. 1, from his wife.

3. **CRWP-149-2024**, has been filed by the petitioners seeking a direction being passed upon the respondents concerned to protect their life and liberty from the respondents concerned. In the petition (supra), though petitioner No. 1 is already married, however she has been living with petitioner No. 2 in a live-in relationship.

4. **LPA No. 968 of 2021** has been filed by the appellants seeking for the quashing the impugned order dated 31.8.2021 passed by this Court in CRWP No. 8208 of 2021, whereby the petition (supra) filed by the appellants seeking protection to their life and liberty, has been dismissed with costs of Rs. 25,000/- to be paid by appellant No. 1.

5. When CRWP-4660-2021, came up for hearing before this Court on 21.5.2021, the following order was passed:-

“The hearing of the case was held through video conferencing on account of restricted functioning of the Courts.

In the present petition, the Petitioners seek appropriate directions from this Court providing them protection from the private respondents. Petitioner No. 1 is stated to be married. It is further stated that relations between Petitioner No. 1 and his wife are strained, but a divorce has not been obtained by them. It is further stated that Petitioner No. 1 has now run away with Petitioner No. 2 and they wish to reside together, but their relationship is not acceptable to the private respondents.



CRWP-4660-2021
CRWP-149-2024 &
LPA-968-2021 (O&M)

-3-

2024:PHHC:118245-DB



It appears that various benches of this Court, of co-ordinate strength, have formed different opinions on the matter concerned, which cannot be easily reconciled. Hence, it is considered appropriate to request the Hon'ble Chief Justice to constitute a Larger Bench to decide the following questions:-

- 1. Where two persons living together seek protection of their life and liberty by filing an appropriate petition, whether the Court is required to grant them protection, per se, without examining their marital status and the other circumstances of that case?*
- 2. If the answer to the above is in the negative, what are the circumstances in which the Court can deny them protection?*

Illustratively, this Court has refused to grant protection to persons living together, where one of them is already married in:

- 1. CWP-26067 of 2019 (Seema and another Vs. State of Punjab and others) decided on 16.09.2019.*
- 2. CRWP-1621-2020 (Sundri Yadav and another Vs. State of Haryana and others) decided on 13.02.2020.*
- 3. CRWP-8081-2020 (Rajbala and another Vs. State of Haryana and others) decided on 07.10.2020.*

On the other hand, in similar circumstances, protection was granted to the Petitioners in CRWP-5229-2020 (Geeta Kaur and another Vs. State of Punjab and others), decided on 30.7.2020.

Even in relation to live-in relationships between two adults, this Court has, considering the facts of some cases, declined protection to the Petitioners, illustratively, in:

- 1. CRWP-488-2020 (Sunita and another Vs. State of Haryana and others) decided on 16.01.2020.*
- 2. CRWP-2421-2021 (Moyna Khatun and another Vs. State of Punjab and others) decided on 10.3.2021.*
- 3. CRWP-4199-2021 (Gulza Kumari and another Vs. State of Punjab and others) decided on 11.05.2021.*
- 4. CRWP-4268-2021 (Ujjawal and another Vs State of Haryana and others) decided on 12.05.2021.*

A view contrary to the above seems have been taken by this Court, illustratively, in:

- 1. CRWP-7659-2020 (Banshi Lal and another Vs. State of*



**CRWP-4660-2021
CRWP-149-2024 &
LPA-968-2021 (O&M)**

-4-

2024:PHHC:118245-DB



Haryana and others) decided on 25.09.2020.

2. *CRWP-10828-2020 (Priyapreet Kaur and another Vs. State of Punjab and others) decided on 23.12.2020.*
3. *CRWP-4521-2021 (Pardeep Singh and another Vs. State of Haryana and others) decided on 18.05.2021.*
4. *CRWP-4533-2021 (Soniya and another v. State of Haryana and others), decided on 18.05.2021.*

I have used the expression “person” in the first question framed above, instead of using the expression “adult”, in view of the fact that this Court also seems to have granted protection in certain cases where both the Petitioners were not adults (for instance, see CRWP-7659-2020).

Keeping in view the fact that a large number of writ petitions are being filed before this Court involving the questions framed, the counsels would be at liberty to request the Larger Bench for interim relief and expeditious disposal.

6. On 15.9.2021, when the case (supra) came up for hearing before the larger Bench, the following order was passed thereon.

“The aforesaid reference has been listed before us to decide the following questions:-

- “1. *Where two persons living together seek protection of their life and liberty by filling an appropriate petition, whether the Court is required to grant them protection, per se, without examining their marital status and the other circumstances of that case?*
2. *If the answer to the above is in the negative, what are the circumstances in which the Court can deny them protection?”*

Keeping in view the importance of the issue, we deem it appropriate to appoint Mr. Preetinder Singh Ahluwalia, Advocate as Amicus Curiae to assist the Court.

Registry is directed to supply the copy of entire paper book to Mr. Preetinder Singh Ahluwalia, Advocate.

List for arguments on 29.09.2021.”



CRWP-4660-2021
CRWP-149-2024 &
LPA-968-2021 (O&M)

-5-

2024:PHHC:118245-DB



Cases where protection to the persons living together, where one of them is already married, has been declined.

7. This Court in ***CWP-26067-2019*** titled as ***Seema and another versus State of Punjab and others***, has declined protection to the petitioners living together, where one of them is already married. The relevant paragraphs of the judgment (supra) are extracted hereinafter.

“x x x x

During the course of arguments, it has gone uncontroverted that petitioner No.1, Seema was earlier married to one Vikram and out of wedlock, 2 children were born. They are stated to be minors. Petitioner No.2 has now left her matrimonial home and without even her marriage having been dissolved by a competent Court and is now staying with petitioner No.2. Custody of both the minor children is stated to be with the husband. Mother i.e. Petitioner No.1 is stated to be in a live-in-relationship with petitioner No.2.

This Court under no circumstances would approve of such relationship/liaison between the petitioners.

Even otherwise, pleadings are wholly insufficient for this Court to infer any imminent danger to the life and liberty of the petitioners.

No intervention in the matter is called for.

Petition is dismissed.”

8. Similar view has been taken by this Court in ***CRWP-1621-2020*** titled as ***Sundri Yadav and another versus State of Haryana and others***, and in ***CRWP-8081-2020*** titled as ***Rajbala and another versus State of Haryana and others***.

Case where protection to the persons living together, where one of them is already married, has been granted

9. To the contrary, this Court in ***CRWP No. 5229 of 2020***, titled as ***Geeta Kaur versus State of Punjab***, has granted protection to the persons living together where one of them is already married. The relevant para of the said judgment is extracted hereinafter.

“x x x x



CRWP-4660-2021
CRWP-149-2024 &
LPA-968-2021 (O&M)

-6-

2024:PHHC:118245-DB



4. *Considering the nature of the order being passed there is no necessity to serve the private respondents or to seek a reply from any one of the respondents.*

5. *The petition is disposed of with a direction to respondent No.2 to take into consideration the request of the petitioners made vide representation dated 16.07.2020 (Annexure P-3) and to provide necessary protection in case the facts of the case so dictate.*

6. *It is made clear that this order is not a bar on initiation of any proceedings in accordance with law.”*

Cases related to the issue of Right to Choice forming part of Right to Life
Under Article 21

10. The judgments with respect to Right to Choice forming part of Right to Life under Article 21 of the Constitution of India, must be protected in face of any threat or apprehension. The relevant paragraphs of the judgments (supra) rendered by the Apex Court and by this Court become reproduced as under.

(1) Devu G Nair versus The State of Kerala and others, SLP (Criminal) No. 1891 of 2023

“x x x x

10. *The High Court must duly bear this facet in mind. Ascertaining the wishes of a person is one thing but it would be completely inappropriate to attempt to overcome the identity and sexual orientation of an individual by a process of purported counselling. Judges must eschew the tendency to substitute their own subjective values for the values which are protected by the Constitution.*

x x x x

16. *Guidelines for the courts in dealing with habeas corpus petitions for petitions for police protection are formulated below:*

(a) Habeas corpus petitions and petitions for protection filed by a partner, friend or a natal family member must be given a priority in listing and hearing before the court. A court must avoid adjourning the matter, or delays in the disposal of the case;

(b) In evaluating the locus standi of a partner or friend, the court



**CRWP-4660-2021
CRWP-149-2024 &
LPA-968-2021 (O&M)**

-7-

2024:PHHC:118245-DB



must not make a roving enquiry into the precise nature of the relationship between the appellant and the person;

(c) The effort must be to create an environment conducive for a free and uncoerced dialogue to ascertain the wishes of the corpus;

(d) The court must ensure that the corpus is produced before the court and given the opportunity to interact with the judges in-person in chambers to ensure the privacy and safety of the detained or missing person. The court must conduct in-camera proceedings. The recording of the statement must be transcribed and the recording must be secured to ensure that it is not accessible to any other party;

(e) The court must ensure that the wishes of the detained person is not unduly influenced by the Court, or the police, or the natal family during the course of the proceedings. In particular, the court must ensure that the individuals(s) alleged to be detaining the individual against their volition are not present in the same environment as the detained or missing person. Similarly, in petitions seeking police protection from the natal family of the parties, the family must not be placed in the same environment as the petitioners;

(f) Upon securing the environment and inviting the detained or missing person in chambers, the court must make active efforts to put the detained or missing person at ease. The preferred name and pronouns of the detained or missing person may be asked. The person must be given a comfortable seating, access to drinking water and washroom. They must be allowed to take periodic breaks to collect themselves. The judge must adopt a friendly and compassionate demeanor and make all efforts to defuse any tension or discomfort. Courts must ensure that the detained or missing person faces no obstacles in being able to express their wishes to the court;

(g) A court while dealing with the detained or missing person may ascertain the age of the detained or missing person. However, the minority of the detained or missing person must not be used, at the threshold, to dismiss a habeas corpus petition



CRWP-4660-2021
CRWP-149-2024 &
LPA-968-2021 (O&M)

-8-

2024:PHHC:118245-DB



against illegal detention by a natal family;

(h) The judges must showcase sincere empathy and compassion for the case of the detained or missing person. Social morality laden with homophobic or transphobic views or any personal predilection of the judge or sympathy for the natal family must be eschewed. The court must ensure that the law is followed in ascertaining the free will of the detained or missing person;

(i) If a detained or missing person expresses their wish to not go back to the alleged detainer or the natal family, then the person must be released immediately without any further delay;

(j) The court must acknowledge that some intimate partners may face social stigma and a neutral stand of the law would be detrimental to the fundamental freedoms of the appellant. Therefore, a court while dealing with a petition for police protection by intimate partners on the grounds that they are a same sex, transgender, inter-faith or inter-caste couple must grant an ad-interim measure, such as immediately granting police protection to the petitioners, before establishing the threshold requirement of being at grave risk of violence and abuse. The protection granted to intimate partners must be with a view to maintain their privacy and dignity;

(k) The Court shall not pass any directions for counselling or parental care when the corpus is produced before the Court. The role of the Court is limited to ascertaining the will of the person. The Court must not adopt counselling as a means of changing the mind of the appellant, or the detained/missing person;

(l) The Judge during the interaction with the corpus to ascertain their views must not attempt to change or influence the admission of the sexual orientation or gender identity of the appellant or the corpus. The court must act swiftly against any queerphobic, transphobic, or otherwise derogatory conduct or remark by the alleged detainers, court staff, or lawyers; and

(m) Sexual orientation and gender identity fall in a core zone of privacy of an individual. These identities are a matter of self-identification and no stigma or moral judgment must be imposed when dealing with cases involving parties from the LGBTQ+



CRWP-4660-2021
CRWP-149-2024 &
LPA-968-2021 (O&M)

-9-

2024:PHHC:118245-DB



community. Courts must exercise caution in passing any direction or making any comment which may be perceived as pejorative.”

(2) *Shafin Jahan versus Ashokan K.M. and others (2018) 16 Supreme Court Cases 368*

x x x x

27. *Thus, the pivotal purpose of the said writ is to see that no one is deprived of his/her liberty without 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 detinue is produced before it, find out about his/her independent choice and see to it that the person is released from illegal restraint. The issue will be a different one when the detention is not illegal. What is seminal is to remember that the song of liberty is sung with sincerity and the choice of an individual is appositely respected and conferred its esteemed status as the Constitution guarantees. It is so as the expression of choice is a fundamental right under Articles 19 and 21 of the Constitution, if the said choice does not transgress any valid legal framework. Once that aspect is clear, the enquiry and determination have to come to an end.*

28. *In the instant case, the High Court, as is noticeable from the impugned verdict, has been erroneously guided by some kind of social phenomenon that was frescoed before it. The writ court has taken exception to the marriage of Respondent 9 herein with the appellant. It felt perturbed. As we see, there was nothing to be taken exception to. Initially, Hadiya had declined to go with her father and expressed her desire to stay with Respondent 7 before the High Court and in the first writ it had so directed. The adamant attitude of the father, possibly impelled by obsessive parental love, compelled him to knock at the doors of the High Court in another habeas corpus petition whereupon the High Court directed the production of Hadiya who appeared on the given date along with the appellant herein whom the High Court calls a stranger. But Hadiya would insist that she had entered into marriage with him. True it is, she had gone with Respondent 7 before the High Court but that does not mean and can never mean that she, as a major,*



CRWP-4660-2021
CRWP-149-2024 &
LPA-968-2021 (O&M)

-10-

2024:PHHC:118245-DB



could not enter into a marital relationship. But, the High Court unwarrantably took exception to the same forgetting that parental love or concern cannot be allowed to fluster the right of choice of an adult in choosing a man to whom she gets married. And, that is where the error has crept in. The High Court should have, after an interaction as regards her choice, directed that she was free to go where she wished to.

29. The High Court further erred by reflecting upon the social radicalisation and certain other aspects. In a writ of habeas corpus, especially in the instant case, it was absolutely unnecessary. If there was any criminality in any sphere, it is for the law-enforcing agency to do the needful but as long as the detenu has not been booked under law to justify the detention which is under challenge, the obligation of the Court is to exercise the celebrated writ that breathes life into our constitutional guarantee of freedom. The approach of the High Court on the said score is wholly fallacious.

30. The High Court has been swayed away by the strategy, as it thought, adopted by Respondent 7 before it in connivance with the present appellant and others to move Hadiya out of the country. That is not within the ambit of the writ of habeas corpus. The future activity, if any, is required to be governed and controlled by the State in accordance with law. The apprehension was not within the arena of jurisdiction regard being had to the lis before it.

x x x x

52. It is obligatory to state here that expression of choice in accord with law is acceptance of individual identity. Curtailment of that expression and the ultimate action emanating therefrom on the conceptual structuralism of obeisance to the societal will destroy the individualistic entity of a person. The social values and morals have their space but they are not above the constitutionally guaranteed freedom. The said freedom is both a constitutional and a human right. Deprivation of that freedom which is ingrained in choice on the plea of faith is impermissible. Faith of a person is intrinsic to his/her meaningful existence. To have the freedom of faith is essential to his/her autonomy; and it strengthens the core norms of the Constitution. Choosing a faith is the substratum of individuality and sans it, the right of choice becomes a shadow. It



CRWP-4660-2021
CRWP-149-2024 &
LPA-968-2021 (O&M)

-11-

2024:PHHC:118245-DB



has to be remembered that the realisation of a right is more important than the conferment of the right. Such actualisation indeed ostracises any kind of societal notoriety and keeps at bay the patriarchal supremacy. It is so because the individualistic faith and expression of choice are fundamental for the fructification of the right. Thus, we would like to call it indispensable preliminary condition.

53. Non-acceptance of her choice would simply mean creating discomfort to the constitutional right by a constitutional court which is meant to be the protector of fundamental rights. Such a situation cannot remotely be conceived. The duty of the court is to uphold the right and not to abridge the sphere of the right unless there is a valid authority of law. Sans lawful sanction, the centripodal value of liberty should allow an individual to write his/her script. The individual signature is the insignia of the concept.”

11. Similar view was taken by the Apex Court in a judgment rendered in case titled as ***Nandakumar and another versus State of Karala and others (2018) 16 Supreme Court Cases 602.***

12. This Court while dealing the issue (supra) in ***LPA No. 769 of 2021*** titled as ***Ishrat Bano and another versus State of Punjab and others*** has observed as under:-

“x x x x

The aspect which we are considering and dealing with is with regard to the threat to the life and liberty to the appellants as has been asserted by them. No doubt, in case a criminal case is registered against any of the parties, the law should take its own course, however, the life and liberty of any person who has approached the Court with such a grievance need to be taken care of and the protection be provided as permissible in law. No person can be permitted or allowed to take law in his hands and therefore, keeping in view the said aspect, we dispose of the present appeal by observing that the Senior Superintendent of Police, Maler Kotla, shall take into consideration the representation dated 17.08.2021 (Annexure P-5) submitted by the appellants and if some substance is



CRWP-4660-2021
CRWP-149-2024 &
LPA-968-2021 (O&M)

-12-

2024:PHHC:118245-DB



found therein, take appropriate steps in accordance with law to ensure that the life and liberty is not jeopardized of the appellants at the hands of the private respondents. This direction shall not be construed in any manner to restrain the official respondents to proceed against the appellants in case there is some criminal case registered against them. The law shall take its own course and it shall be open to the authorities/investigating agency to proceed against the appellants, if required in law and in accordance thereto.”

13. The contra postures taken in judgments (supra) vis-a-vis the claim for protection being granted to the persons living together, where one of them is already married, does require the makings of reconciliation of the said contra postures.

14. It is but the avalanche of social morality which befalls the above genre of relationship, that makes the task of reconciling the above contra postures to be an extremely hazardous task.

15. The avalanche of social morality sliding onto the above genre of live-in relationship does naturally also affect the socio moral fabric of the society. Resultantly therebys to ensure the intactness of the social moral fabric of the society, that judicial postures have been taken in some of the decisions (supra), that live-in relationships where one of the live-in partners is married, does not well muster, rather in the said live-in couple, even upon evident threats emanating from the members of their respective families or from some moral vigilants, thus the leverage to claim protection against the apposite resistances vis-a-vis the continuance of their live-in relationships.

16. However, the beacon of light rather for providing protection to the genre of live-in relationship (supra) is purveyed by a judgment rendered by the Apex Court in ***Joseph Shine versus Union of India*** reported in ***(2019) 3 Supreme Court Cases 39***. The relevant paragraphs, as borne in the



CRWP-4660-2021
CRWP-149-2024 &
LPA-968-2021 (O&M)

-13-

2024:PHHC:118245-DB



said judgments become extracted hereinafter.

“x x x x

44. Having stated about the dignity of a woman, in the context of autonomy, desire, choice and identity, it is obligatory to refer to the recent larger Bench decision in [K.S. Puttaswamy and another v. Union of India](#) and others³² which, while laying down that privacy is a facet of [Article 21](#) of the Constitution, lays immense stress on the dignity of an individual. In [the said judgment](#), it has been held:-

108. Over the last four decades, our constitutional jurisprudence has recognised the inseparable relationship between protection of life and liberty with dignity. Dignity as a constitutional value finds expression in the Preamble. The constitutional vision seeks the realisation of justice (social, economic and political); liberty (of thought, expression, belief, faith and worship); equality (as a guarantee (2017) 10 SCC 1 against arbitrary treatment of individuals) and fraternity (which assures a life of dignity to every individual). These constitutional precepts exist in unity to facilitate a humane and compassionate society. The individual is the focal point of the Constitution because it is in the realisation of individual rights that the collective well-being of the community is determined. Human dignity is an integral part of the Constitution. Reflections of dignity are found in the guarantee against arbitrariness ([Article 14](#)), the lamps of freedom ([Article 19](#)) and in the right to life and personal liberty ([Article 21](#)).

xxx xxxx xxx

119. To live is to live with dignity. The draftsmen of the Constitution defined their vision of the society in which constitutional values would be attained by emphasising, among other freedoms, liberty and dignity. So fundamental is dignity that it permeates the core of the rights guaranteed to the individual by Part III. Dignity is the core which unites the fundamental rights because the fundamental rights seek to achieve for each individual the dignity of existence...

xxx xxx xxx

298. Privacy of the individual is an essential aspect of dignity. Dignity has both an intrinsic and instrumental value. As an intrinsic value, human dignity is an entitlement or a



CRWP-4660-2021
CRWP-149-2024 &
LPA-968-2021 (O&M)

-14-

2024:PHHC:118245-DB



constitutionally protected interest in itself. In its instrumental facet, dignity and freedom are inseparably inter-twined, each being a facilitative tool to achieve the other. The ability of the individual to protect a zone of privacy enables the realization of the full value of life and liberty.

Liberty has a broader meaning of which privacy is a subset. All liberties may not be exercised in privacy. Yet others can be fulfilled only within a private space. Privacy enables the individual to retain the autonomy of the body and mind. The autonomy of the individual is the ability to make decisions on vital matters of concern to life. Privacy has not been couched as an independent fundamental right. But that does not detract from the constitutional protection afforded to it, once the true nature of privacy and its relationship with those fundamental rights which are expressly protected is understood. Privacy lies across the spectrum of protected freedoms. The guarantee of equality is a guarantee against arbitrary state action. It prevents the state from discriminating between individuals. The destruction by the state of a sanctified personal space whether of the body or of the mind is violative of the guarantee against arbitrary state action. Privacy of the body entitles an individual to the integrity of the physical aspects of personhood. The intersection between one's mental integrity and privacy entitles the individual to freedom of thought, the freedom to believe in what is right, and the freedom of self-determination

xxx

xxx

xxx

525. But most important of all is the cardinal value of fraternity which assures the dignity of the individual. The dignity of the individual encompasses the right of the individual to develop to the full extent of his potential. And this development can only be if an individual has autonomy over fundamental personal choices and control over dissemination of personal information which may be infringed through an unauthorized use of such information. It is clear that [Article 21](#), more than any of the other Articles in the fundamental rights chapter, reflects each of these constitutional values in full, and is to be read in consonance with these values and with the international covenants that we have referred to. In the ultimate analysis, the fundamental right of privacy, which has



CRWP-4660-2021
CRWP-149-2024 &
LPA-968-2021 (O&M)

-15-

2024:PHHC:118245-DB



so many developing facets, can only be developed on a case to case basis. Depending upon the particular facet that is relied upon, either [Article 21](#) by itself or in conjunction with other fundamental rights would get attracted.

x x x x

48. *From the aforesaid analysis, it is discernible that the Court, with the passage of time, has recognized the conceptual equality of woman and the essential dignity which a woman is entitled to have. There can be no curtailment of the same. But, [Section 497](#) IPC effectively does the same by creating invidious distinctions based on gender stereotypes which creates a dent in the individual dignity of women. Besides, the emphasis on the element of connivance or consent of the husband tantamounts to subordination of women. Therefore, we have no hesitation in holding that the same offends [Article 21](#) of the Constitution.*

49. *Another aspect needs to be addressed. The question we intend to pose is whether adultery should be treated as a criminal offence. Even assuming that the new definition of adultery encapsules within its scope sexual intercourse with an unmarried woman or a widow, adultery is basically associated with the institution of marriage. There is no denial of the fact that marriage is treated as a social institution and regard being had to various aspects that social history has witnessed in this country, the Parliament has always made efforts to maintain the rights of women. For instance, [Section 498-A](#) IPC deals with husband or relative of husband of a woman subjecting her to cruelty. The Parliament has also brought in the [Protection of Women from Domestic Violence Act, 2005](#). This enactment protects women. It also enters into the matrimonial sphere. The offences under the provisions of the said enactment are different from the provision that has been conceived of under [Section 497](#) IPC or, for that matter, concerning bringing of adultery within the net of a criminal offence.*

50. *There can be no shadow of doubt that adultery can be a ground for any kind of civil wrong including dissolution of marriage. But the pivotal question is whether it should be treated as a criminal offence. When we say so, it is not to be understood that there can be any kind of social licence that destroys the matrimonial home. It is an ideal condition when the wife and husband maintain their loyalty. We are not commenting on any kind of ideal situation but, in fact, focusing on*



CRWP-4660-2021
CRWP-149-2024 &
LPA-968-2021 (O&M)

-16-

2024:PHHC:118245-DB



whether the act of adultery should be treated as a criminal offence. In this context, we are reminded of what Edmund Burke, a famous thinker, had said, —a good legislation should be fit and equitable so that it can have a right to command obedience. Burke would like to put it in two compartments, namely, “equity” and “utility”. If the principle of Burke is properly understood, it conveys that laws and legislations are necessary to serve and promote a good life.”

x x x x

57. *We have referred to the aforesaid theories and authorities to understand whether adultery that enters into the matrimonial realm should be treated as a criminal offence. There can be many a situation and we do not intend to get into the same. Suffice it to say, it is different from an offence committed under Section 498-A or any violation of the [Protection of Women from Domestic Violence Act, 2005](#) or, for that matter, the protection conceived of under [Section 125](#) of the Code of Criminal Procedure or Sections 306 or 304B or 494 [IPC](#). These offences are meant to sub-serve various other purposes relating to a matrimonial relationship and extinction of life of a married woman during subsistence of marriage.*

58. *Treating adultery an offence, we are disposed to think, would tantamount to the State entering into a real private realm. Under the existing provision, the husband is treated as an aggrieved person and the wife is ignored as a victim. Presently, the provision is reflective of a tripartite labyrinth. A situation may be conceived of where equality of status and the right to file a case may be conferred on the wife. In either situation, the whole scenario is extremely private. It stands in contradistinction to the demand for dowry, domestic violence, sending someone to jail for non-grant of maintenance or filing a complaint for second marriage. Adultery stands on a different footing from the aforesaid offences. We are absolutely conscious that the Parliament has the law making power. We make it very clear that we are not making law or legislating but only stating that a particular act, i.e., adultery does not fit into the concept of a crime. We may repeat at the cost of repetition that if it is treated as a crime, there would be immense intrusion into the extreme privacy of the matrimonial sphere. It is better to be left as a ground for divorce. For any other purpose as the Parliament has perceived or may, at any time, perceive, to treat it as a criminal offence will offend the two facets of [Article 21](#) of the*



CRWP-4660-2021
CRWP-149-2024 &
LPA-968-2021 (O&M)

-17-

2024:PHHC:118245-DB



Constitution, namely, dignity of husband and wife, as the case may be, and the privacy attached to a relationship between the two.

59. *Let it be clearly stated, by no stretch of imagination, one can say, that Section 498-A or any other provision, as mentioned hereinbefore, also enters into the private realm of matrimonial relationship. In case of the said offences, there is no third party involved. It is the husband and his relatives. There has been correct imposition by law not to demand dowry or to treat women with cruelty so as to compel her to commit suicide. The said activities deserve to be punished and the law has rightly provided so.*

x x x x

63. *In case of adultery, the law expects the parties to remain loyal and maintain fidelity throughout and also makes the adulterer the culprit. This expectation by law is a command which gets into the core of privacy. That apart, it is a discriminatory command and also a socio-moral one. Two individuals may part on the said ground but to attach criminality to the same is inapposite.*

64. *We may also usefully note here that adultery as a crime is no more prevalent in People's Republic of China, Japan, Australia, Brazil and many western European countries. The diversity of culture in those countries can be judicially taken note of. Non-criminalisation of adultery, apart from what we have stated hereinabove, can be proved from certain other facets. When the parties to a marriage lose their moral commitment of the relationship, it creates a dent in the marriage and it will depend upon the parties how they deal with the situation. Some may exonerate and live together and some may seek divorce. It is absolutely a matter of privacy at its pinnacle. The theories of punishment, whether deterrent or reformatory, would not save the situation. A punishment is unlikely to establish commitment, if punishment is meted out to either of them or a third party.*

65. *Adultery, in certain situations, may not be the cause of an unhappy marriage. It can be the result. It is difficult to conceive of such situations in absolute terms. The issue that requires to be determined is whether the said "act" should be made a criminal offence especially when on certain occasions, it can be the cause and in certain situations, it can be the result. If the act is treated as an offence and punishment is provided, it would tantamount to punishing people who are unhappy in marital relationships and any law that*



CRWP-4660-2021
CRWP-149-2024 &
LPA-968-2021 (O&M)

-18-

2024:PHHC:118245-DB



would make adultery a crime would have to punish indiscriminately both the persons whose marriages have been broken down as well as those persons whose marriages are not. A law punishing adultery as a crime cannot make distinction between these two types of marriages. It is bound to become a law which would fall within the sphere of manifest arbitrariness.”

“x x x x

98. *International trends worldwide also indicate that very few nations continue to treat adultery as a crime, though most nations retain adultery for the purposes of divorce laws. Thus, adultery continues to be a criminal offence in Afghanistan, Bangladesh, Indonesia, Iran, Maldives, Nepal, Pakistan, Philippines, United Arab Emirates, some states of the United States of America, Algeria, Democratic Republic of Congo, Egypt, Morocco, and some parts of Nigeria. On the other hand, a number of jurisdictions have done away with adultery as a crime. The People’s Republic of China, Japan, Brazil, New Zealand, Australia, Scotland, the Netherlands, Denmark, France, Germany, Austria, the Republic of Ireland, Barbados, Bermuda, Jamaica, Trinidad and Tobago, Seychelles etc. are some of the jurisdictions in which it has been done away with. In South Korea and Guatemala, provisions similar to Section 497 have been struck down by the constitutional courts of those nations.*

x x x x

106. We have, in our recent judgment in *Justice K.S. Puttaswamy (Retd.) and Anr. v. Union of India and Ors., (2017) 10 SCC 1*, (“Puttaswamy”), held:

"108. *Over the last four decades, our constitutional jurisprudence has recognised the inseparable relationship between protection of life and liberty with dignity. Dignity as a constitutional value finds expression in the Preamble. The constitutional vision seeks the realisation of justice (social, economic and political); liberty (of thought, expression, belief, faith and worship); equality (as a guarantee against arbitrary treatment of individuals) and fraternity (which assures a life of dignity to every individual). These constitutional precepts exist in unity to facilitate a humane and compassionate society. The individual is the focal point of the Constitution because it is in the realisation of individual rights that the collective well-being of the community is determined. Human*



CRWP-4660-2021
CRWP-149-2024 &
LPA-968-2021 (O&M)

-19-

2024:PHHC:118245-DB



dignity is an integral part of the Constitution. Reflections of dignity are found in the guarantee against arbitrariness (Article 14), the lamps of freedom (Article 19) and in the right to life and personal liberty (Article 21)."

xxx xxx xxx

"298. *Privacy of the individual is an essential aspect of dignity. Dignity has both an intrinsic and instrumental value. As an intrinsic value, human dignity is an entitlement or a constitutionally protected interest in itself. In its instrumental facet, dignity and freedom are inseparably intertwined, each being a facilitative tool to achieve the other. The ability of the individual to protect a zone of privacy enables the realisation of the full value of life and liberty. Liberty has a broader meaning of which privacy is a subset. All liberties may not be exercised in privacy. Yet others can be fulfilled only within a private space. Privacy enables the individual to retain the autonomy of the body and mind. The autonomy of the individual is the ability to make decisions on vital matters of concern to life. Privacy has not been couched as an independent fundamental right. But that does not detract from the constitutional protection afforded to it, once the true nature of privacy and its relationship with those fundamental rights which are expressly protected is understood. Privacy lies across the spectrum of protected freedoms. The guarantee of equality is a guarantee against arbitrary State action. It prevents the State from discriminating between individuals. The destruction by the State of a sanctified personal space whether of the body or of the mind is violative of the guarantee against arbitrary State action. Privacy of the body entitles an individual to the integrity of the physical aspects of personhood. The intersection between one's mental integrity and privacy entitles the individual to freedom of thought, the freedom to believe in what is right, and the freedom of self-determination. When these guarantees intersect with gender, they create a private space which protects all those elements which are crucial to gender identity. The family, marriage, procreation and sexual orientation are all integral to the dignity of the individual. Above all, the privacy of the individual recognises an inviolable right to determine how freedom shall be exercised. An individual may perceive that the best form of expression is to remain silent. Silence postulates a realm of privacy. An artist finds*



CRWP-4660-2021
CRWP-149-2024 &
LPA-968-2021 (O&M)

-20-

2024:PHHC:118245-DB



reflection of the soul in a creative endeavour. A writer expresses the outcome of a process of thought. A musician contemplates upon notes which musically lead to silence. The silence, which lies within, reflects on the ability to choose how to convey thoughts and ideas or interact with others. These are crucial aspects of personhood. The freedoms under Article 19 can be fulfilled where the individual is entitled to decide upon his or her preferences. Read in conjunction with Article 21, liberty enables the individual to have a choice of preferences on various facets of life including what and how one will eat, the way one will dress, the faith one will espouse and a myriad other matters on which autonomy and self-determination require a choice to be made within the privacy of the mind. The constitutional right to the freedom of religion under Article 25 has implicit within it the ability to choose a faith and the freedom to express or not express those choices to the world. These are some illustrations of the manner in which privacy facilitates freedom and is intrinsic to the exercise of liberty. The Constitution does not contain a separate article telling us that privacy has been declared to be a fundamental right. Nor have we tagged the provisions of Part III with an alpha-suffixed right to privacy: this is not an act of judicial redrafting. Dignity cannot exist without privacy. Both reside within the inalienable values of life, liberty and freedom which the Constitution has recognised. Privacy is the ultimate expression of the sanctity of the individual. It is a constitutional value which straddles across the spectrum of fundamental rights and protects for the individual a zone of choice and self-determination."

xxx xxx xxx

"482. *Shri Sundaram has argued that rights have to be traced directly to those expressly stated in the fundamental rights chapter of the Constitution for such rights to receive protection, and privacy is not one of them. It will be noticed that the dignity of the individual is a cardinal value, which is expressed in the Preamble to the Constitution. Such dignity is not expressly stated as a right in the fundamental rights chapter, but has been read into the right to life and personal liberty. The right to live with dignity is expressly read into Article 21 by the judgment in **Jolly George Varghese v. Bank of Cochin [Jolly George Varghese v. Bank of Cochin, (1980) 2 SCC 360>]**, at para 10. Similarly, the right against bar fetters and*



CRWP-4660-2021
CRWP-149-2024 &
LPA-968-2021 (O&M)

-21-

2024:PHHC:118245-DB



*handcuffing being integral to an individual's dignity was read into Article 21 by the judgment in **Sunil Batra v. Delhi Admn.** [**Sunil Batra v. Delhi Admn., (1978) 4 SCC 494 : 1979 SCC (Cri) 155**], at paras 192, 197-B, 234 and 241 and **Prem Shankar Shukla v. Delhi Admn.** [**Prem Shankar Shukla v. Delhi Admn., (1980) 3 SCC 526 : 1980 SCC (Cri) 815**], at paras 21 and 22. It is too late in the day to canvas that a fundamental right must be traceable to express language in Part III of the Constitution. As will be pointed out later in this judgment, a Constitution has to be read in such a way that words deliver up principles that are to be followed and if this is kept in mind, it is clear that the concept of privacy is contained not merely in personal liberty, but also in the dignity of the individual."*

xxx xxx xxx

*"525. But most important of all is the cardinal value of fraternity which assures the dignity of the individual. [In 1834, Jacques-Charles DuPont de l'Eure associated the three terms liberty, equality and fraternity together in the *Revue Républicaine*, which he edited, as follows: "Any man aspires to liberty, to equality, but he cannot achieve it without the assistance of other men, without fraternity." Many of our decisions recognise human dignity as being an essential part of the fundamental rights chapter. For example, see **Prem Shankar Shukla v. Delhi Admn., (1980) 3 SCC 526** at para 21, **Francis Coralie Mullin v. UT of Delhi, (1981) 1 SCC 608** at paras 6, 7 and 8, **Bandhua Mukti Morcha v. Union of India, (1984) 3 SCC 161** at para 10, **Maharashtra University of Health Sciences v. Satchikitsa Prasarak Mandal, (2010) 3 SCC 786** at para 37, **Shabnam v. Union of India, (2015) 6 SCC 702** at paras 12.4 and 14 and **Jeeja Ghosh v. Union of India, (2016) 7 SCC 761** at para 37.] The dignity of the individual encompasses the right of the individual to develop to the full extent of his potential. And this development can only be if an individual has autonomy over fundamental personal choices and control over dissemination of personal information which may be infringed through an unauthorised use of such information. It is clear that Article 21, more than any of the other articles in the fundamental rights chapter, reflects each of these constitutional values in full, and is to be read in consonance with these values and with the international covenants that we have referred to. In the ultimate analysis, the*



CRWP-4660-2021
CRWP-149-2024 &
LPA-968-2021 (O&M)

-22-

2024:PHHC:118245-DB



fundamental right to privacy, which has so many developing facets, can only be developed on a case-to-case basis. Depending upon the particular facet that is relied upon, either Article 21 by itself or in conjunction with other fundamental rights would get attracted."

107. *The dignity of the individual, which is spoken of in the Preamble to the Constitution of India, is a facet of [Article 21](#) of the Constitution. A statutory provision belonging to the hoary past which demeans or degrades the status of a woman obviously falls foul of modern constitutional doctrine and must be struck down on this ground also."*

x x x x

114. *In the preceding years, the Court has evolved a jurisprudence of rights- granting primacy to the right to autonomy, dignity and individual choice. The right to sexual autonomy and privacy has been granted the stature of a Constitutional right. In confronting the sources of gendered injustice which threaten the rights and freedoms promised in our Constitution, we set out to examine the validity of [Section 497](#) of the Indian Penal Code. In doing so, we also test the constitutionality of moral and societal regulation of women and their intimate lives through the law.*

x x x x

145. *In 2015, the South Korean Constitutional Court, by a majority of 7-2 struck down Article 241 of the Criminal Law; a provision which criminalized adultery with a term of imprisonment of two years as unconstitutional. In doing so, South Korea joined a growing list of countries in Asia and indeed around the world that have taken the measure of effacing the offence of adultery from the statute books, considering evolving public values and societal trends. The Constitutional Court had deliberated upon the legality of the provision four times previously[, but chose to strike it down when it came before it in 2015, with the Court's judgement acknowledging the shifting public perception of individual rights in their private lives.*

146. *The majority opinion of the Court was concurred with by five of the seven judges who struck down the provision. The majority acknowledged that the criminal provision had a legitimate legislative purpose in intending "to promote the marriage system based on good sexual culture and practice and monogamy and to preserve marital fidelity between spouses." However, the Court sought to strike a balance between the legitimate interest of the legislature in promoting*



CRWP-4660-2021
CRWP-149-2024 &
LPA-968-2021 (O&M)

-23-

2024:PHHC:118245-DB



the institution of marriage and marital fidelity vis-a-vis the fundamental right of an individual to self-determination, which included sexual-self-determination, and was guaranteed under Article 10 of their Constitution. The Court held:

"The right to self-determination connotes the right to sexual self-determination that is the freedom to choose sexual activities and partners, implying that the provision at issue restricts the right to sexual self-determination of individuals. In addition, the provision at Issue also restricts the right to privacy protected under Article 17 of the Constitution in that it restricts activities arising out of sexual life belonging to the intimate private domain."

The Court used the test of least restrictiveness, and began by acknowledging that there no longer existed public consensus on the criminalization of adultery, with the societal structure having changed from holding traditional family values and a typeset role of family members to sexual views driven by liberal thought and individualism. While recognizing that marital infidelity is immoral and unethical, the Court stated that love and sexual life were intimate concerns, and they should not be made subject to criminal law. Commenting on the balance between an individual's sexual autonomy vis-a-vis societal morality, the Court remarked:

"...the society is changing into one where the private interest of sexual autonomy is put before the social interest of sexual morality and families from the perspective of dignity and happiness of individuals."

Next, the Court analysed the appropriateness and effectiveness of criminal punishment in curbing the offence of adultery. Addressing the question of whether adultery should be regulated, the Court stated that modern criminal law dictated that the State should not seek to interfere in an act that is not socially harmful or deleterious to legal interests, simply because it is repugnant to morality. Moreover, it held that the State had no business in seeking to control an individual's actions which were within the sphere of his or her constitutionally protected rights of privacy and self-determination.

x x x x

148. Addressing the concern that an abolition of a penal consequence would result in "chaos in sexual morality" or an increase of divorce due to adultery, the Court concluded that there was no data at all to support these claims in countries where adultery is repealed,



CRWP-4660-2021
CRWP-149-2024 &
LPA-968-2021 (O&M)

-24-

2024:PHHC:118245-DB



stating:

"Rather, the degree of social condemnation for adultery has been reduced due to the social trend to value the right to sexual self-determination and the changed recognition on sex, despite of the punishment of adultery. Accordingly, it is hard to anticipate a general and special deterrence effect for adultery from the perspective of criminal policy as it loses the function of regulating behaviour."

The Court also analysed the argument that adultery provisions protected women:

"It is true that the existence of adultery crimes in the past Korean society served to protect women. Women were socially and economically underprivileged, and acts of adultery were mainly committed by men. Therefore, the existence of an adultery crime acted as psychological deterrence for men, and, furthermore, enabled female spouses to receive payment of compensation for grief or divided assets from the male spouse on the condition of cancelling the adultery accusation.

However, the changes of our society diluted the justification of criminal punishment of adultery. Above all, as women's earning power and economic capabilities have improved with more active social and economic activities, the premise that women are the economically disadvantaged does not apply to all married couples."

Finally, the Court concluded its analysis by holding that the interests of enforcing monogamy, protecting marriage and promoting marital fidelity, balanced against the interference of the State in the rights to privacy and sexual autonomy were clearly excessive and therefore failed the test of least restrictiveness.

x x x x

168. *The hypothesis which forms the basis of the law on adultery is the subsistence of a patriarchal order. Section 497 is based on a notion of morality which fails to accord with the values on which the Constitution is founded. The freedoms which the Constitution guarantees inhere in men and women alike. In enacting Section 497, the legislature made an ostensible effort to protect the institution of marriage. 'Ostensible' it is, because the provision postulates a notion of marriage which subverts the equality of spouses. Marriage in a constitutional regime is founded on the equality of and between*



CRWP-4660-2021
CRWP-149-2024 &
LPA-968-2021 (O&M)

-25-

2024:PHHC:118245-DB



spouses. Each of them is entitled to the same liberty which Part III guarantees. Each of them is entitled to take decisions in accordance with his and her conscience and each must have the ability to pursue the human desire for fulfilment. Section 497 is based on the understanding that marriage submerges the identity of the woman. It is based on a notion of marital subordination. In recognising, accepting and enforcing these notions, Section 497 is inconsistent with the ethos of the Constitution. treats a woman as but a possession of her spouse. The essential values on which the Constitution is founded - liberty, dignity and equality - cannot allow such a view of marriage. Section 497 suffers from manifest arbitrariness.

169. While engrafting the provision into Chapter XX of the Penal Code - "of offences relating to marriage" - the legislature has based the offence on an implicit assumption about marriage. The notion which the law propounds and to which it imposes the sanctions of penal law is that the marital tie subordinates the role and position of the woman. In that view of marriage, the woman is bereft of the ability to decide, to make choices and give free expression to her personality. Human sexuality is an essential aspect of identity. Choices in matters of sexuality are reflective of the human desire for expression. Sexuality cannot be construed purely as a physiological attribute. In its associational attributes, it links up with the human desire to be intimate with a person of one's choice. Sharing of physical intimacies is a reflection of choice. In allowing individuals to make those choices in a consensual sphere, the Constitution acknowledges that even in the most private of zones, the individual must have the ability to make essential decisions. Sexuality cannot be dis-associated from the human personality. For, to be human involves the ability to fulfil sexual desires in the pursuit of happiness. Autonomy in matters of sexuality is thus intrinsic to a dignified human existence. Human dignity both recognises and protects the autonomy of the individual in making sexual choices. The sexual choices of an individual cannot obviously be imposed on others in society and are premised on a voluntary acceptance by consenting parties. Section 497 denudes the woman of the ability to make these fundamental choices, in postulating that it is only the man in a marital relationship who can consent to his spouse having sexual intercourse with another. Section 497 disregards the sexual autonomy which every woman possesses as a necessary



CRWP-4660-2021
CRWP-149-2024 &
LPA-968-2021 (O&M)

-26-

2024:PHHC:118245-DB



condition of her existence. Far from being an equal partner in an equal relationship, she is subjugated entirely to the will of her spouse. The provision is proffered by the legislature as an effort to protect the institution of marriage. But it proceeds on a notion of marriage which is one sided and which denies agency to the woman in a marital tie. The ability to make choices within marriage and on every aspect concerning it is a facet of human liberty and dignity which the Constitution protects. In depriving the woman of that ability and recognising it in the man alone, Section 497 fails to meet the essence of substantive equality in its application to marriage. Equality of rights and entitlements between parties to a marriage is crucial to preserve the values of the Constitution. Section 497 offends that substantive sense of equality and is violative of Article 14.

x x x x

181. *Underlying Section 497 is a gender stereotype that the infidelity of men is normal, but that of a woman is impermissible. In condemning the sexual agency of the woman, only the husband, as the 'aggrieved' party is given the right to initiate prosecution. The proceedings once initiated, would be geared against the person who committed an act of 'theft' or 'trespass' upon his spouse. Sexual relations by a man with another man's wife is therefore considered as theft of the husband's property. Ensuring a man's control over the sexuality of his wife was the true purpose of Section 497.*

182. *Implicit in seeking to privilege the fidelity of women in a marriage, is the assumption that a woman contracts away her sexual agency when entering a marriage. That a woman, by marriage, consents in advance to sexual relations with her husband or to refrain from sexual relations outside marriage without the permission of her husband is offensive to liberty and dignity. Such a notion has no place in the constitutional order. Sexual autonomy constitutes an inviolable core of the dignity of every individual. At the heart of the constitutional rights guaranteed to every individual is a primacy of choice and the freedom to determine one's actions. Curtailing the sexual autonomy of a woman or presuming the lack of consent once she enters a marriage is antithetical to constitutional values.*

x x x x

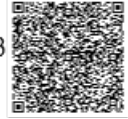
186. *Section 497 rests on and perpetuates stereotypes about women and sexual fidelity. In curtailing the sexual agency of women, it exacts*



CRWP-4660-2021
CRWP-149-2024 &
LPA-968-2021 (O&M)

-27-

2024:PHHC:118245-DB



sexual fidelity from women as the norm. It perpetuates the notion that a woman is passive and incapable of exercising sexual freedom. In doing so, it offers her 'protection' from prosecution. Section 497 denudes a woman of her sexual autonomy in making its free exercise conditional on the consent of her spouse. In doing so, it perpetuates the notion that a woman consents to a limited autonomy on entering marriage. The provision is grounded in and has a deep social effect on how society perceives the sexual agency of women. In reinforcing the patriarchal structure which demands her controlled sexuality, Section 497 purports to serve as a provision envisaged for the protection of the sanctity of marriage. In the context of a constitutional vision characterized by the struggle to break through the shackles of gender stereotypes and guarantee an equal citizenship, Section 497 entrenches stereotypes and existing structures of discrimination and has no place in a constitutional order.

x x x x

192. *The right to privacy depends on the exercise of autonomy and agency by individuals. In situations where citizens are disabled from exercising these essential attributes, Courts must step in to ensure that dignity is realised in the fullest sense. Familial structures cannot be regarded as private spaces where constitutional rights are violated. To grant immunity in situations when rights of individuals are in siege, is to obstruct the unfolding vision of the Constitution.*

x x x x

195. *Control over women's sexuality is the key patriarchal assumption that underlies family and marriage. When it shifts to the 'public' as opposed to the 'private', the misogyny becomes even more pronounced. Section 497 embodies this. By the operation of the provision, women's sexuality is sought to be controlled in a number of ways. First, the husband and he alone is enabled to prosecute the man with whom his wife has sexual relations. Even in cases where the relationship is based on the consent of the woman, the law treats it as an offence, denying a woman who has voluntarily entered into a consensual relationship of her sexual agency. Second, such a relationship would be beyond the reach of penal law if her husband consents to it. The second condition is a telling reflection of the patriarchal assumption underlying the criminal provision: that the husband is the owner of the wife's sexual agency.*



CRWP-4660-2021
CRWP-149-2024 &
LPA-968-2021 (O&M)

-28-

2024:PHHC:118245-DB



x x x x

202. Section 497 seeks the preservation of a construct of marriage in which female fidelity is enforced by the letter of the law and by the coercive authority of the state. Such a conception goes against the spirit of the rights-based jurisprudence of this Court, which seeks to protect the dignity of an individual and her "intimate personal choices". It cannot be held that these rights cease to exist once the woman enters into a marriage.

x x x x

207. In *Navtej*, one of us (Chandrachud J) held that the right to sexual privacy is a natural right, fundamental to liberty and a soulmate of dignity. The application of Section 497 is a blatant violation of these enunciated rights. Will a trial to prove adultery lead the wife to tender proof of her fidelity" In *Navtej*, the principle was elucidated thus:

"613....In protecting consensual intimacies, the Constitution adopts a simple principle: the state has no business to intrude into these personal matters."

In so far as two individuals engage in acts based on consent, the law cannot intervene. Any intrusion in this private sphere would amount to deprivation of autonomy and sexual agency, which every individual is imbued with.

x x x x

210. This judgment has dwelt on the importance of sexual autonomy as a value which is integral to life and personal liberty under Article 21. Individuals in a relationship, whether within or outside marriage, have a legitimate expectation that each will provide to the other the same element of companionship and respect for choices. Respect for sexual autonomy, it must be emphasized is founded on the equality between spouses and partners and the recognition by each of them of the dignity of the other. Control over sexuality attaches to the human element in each individual. Marriage - whether it be a sacrament or contract does not result in ceding of the autonomy of one spouse to another.

211. Recognition of sexual autonomy as inhering in each individual and of the elements of privacy and dignity have a bearing on the role of the state in regulating the conditions and consequences of marital



CRWP-4660-2021
CRWP-149-2024 &
LPA-968-2021 (O&M)

-29-

2024:PHHC:118245-DB



relationships. There is a fundamental reason which militates against criminalization of adultery. Its genesis lies in the fact that criminalizing an act is not a valid constitutional response to a sexual relationship outside the fold of marriage. Adultery in the course of a subsisting marital relationship may, and very often does question the commitment of the spouse to the relationship. In many cases, a sexual relationship of one of the spouses outside of the marriage may lead to the end of the marital relationship. But in other cases, such a relationship may not be the cause but the consequence of a pre-existing disruption of the marital tie. All too often, spouses who have drifted apart irrevocably may be compelled for reasons personal to them to continue with the veneer of a marriage which has ended for all intents and purposes. The interminably long delay of the law in the resolution of matrimonial conflicts is an aspect which cannot be ignored. The realities of human existence are too complex to place them in closed categories of right and wrong and to subject all that is considered wrong with the sanctions of penal law. Just as all conduct which is not criminal may not necessarily be ethically just, all conduct which is inappropriate does not justify being elevated to a criminal wrongdoing.

x x x x

218. *This Court has recognised sexual privacy as a natural right, protected under the Constitution. To shackle the sexual freedom of a woman and allow the criminalization of consensual relationships is a denial of this right. Section 497 denudes a married woman of her agency and identity, employing the force of law to preserve a patriarchal conception of marriage which is at odds with constitutional morality:*

"Infidelity was born on the day that natural flows of sexual desire were bound into the legal and formal permanence of marriage; in the process of ensuring male control over progeny and property, women were chained within the fetters of fidelity."

Constitutional protections and freedoms permeate every aspect of a citizen's life - the delineation of private or public spheres become irrelevant as far as the enforcement of constitutional rights is concerned. Therefore, even the intimate personal sphere of marital relations is not exempt from constitutional scrutiny. The enforcement of forced female fidelity by curtailing sexual autonomy is an affront to



CRWP-4660-2021
CRWP-149-2024 &
LPA-968-2021 (O&M)

-30-

2024:PHHC:118245-DB



the fundamental right to dignity and equality.

219. *Criminal law must be in consonance with constitutional morality. The law on adultery enforces a construct of marriage where one partner is to cede her sexual autonomy to the other. Being antithetical to the constitutional guarantees of liberty, dignity and equality, Section 497 does not pass constitutional muster.*

x x x x

278. *The Petitioners have contended that the right to privacy under Article 21 would include the right of two adults to enter into a sexual relationship outside marriage. The right to privacy and personal liberty is, however, not an absolute one; it is subject to reasonable restrictions when legitimate public interest is involved. It is true that the boundaries of personal liberty are difficult to be identified in black and white; however, such liberty must accommodate public interest. The freedom to have a consensual sexual relationship outside marriage by a married person, does not warrant protection under Article 21.”*

17. The above extracted paragraphs, do earmark, that thereby the Apex Court has balanced the right to live with dignity as endowed upon a person through the mandate of Article 21 of the Constitution of India, with the criminality, if any, as arise from both or one, thus indulging in infidelity with his or her married partner, thus thereby adultery becoming committed.

18. The inter se balancing ultimately led the Apex Court to with accentuated emphasis pronounce qua, “that to live is to live with dignity”. Further in the above extracted paragraphs, the Apex Court has also pronounced, that privacy of an individual, is an essential aspect of dignity, and, that “dignity” has both an intrinsic and instrumental value. As an intrinsic value, human dignity is an entitlement or a constitutionally protected interest in itself. Moreover, it is also stated therein, that in its instrumental facet, dignity and freedom are inseparably inter-twined, each being a facilitative tool to achieve the other. Furthermore, it has been



CRWP-4660-2021
CRWP-149-2024 &
LPA-968-2021 (O&M)

-31-

2024:PHHC:118245-DB



delineated therein, that Section 497 IPC effectively does the same by creating invidious distinctions based on gender stereotypes which creates a dent in the individual dignity of women, besides the emphasis on the element of connivance or consent of the husband, thus tantamounts to subordination of women. As such, the said provision became declared to be offending Article 21 of the Constitution of India.

19. Moreover, though therein it has been stated that adultery may be a ground for any kind of civil wrong including dissolution of marriage, but yet to treat adultery, as an offence but would tantamount to the State entering into a real private realm, inasmuch as, thereby the command of law, to the marital partners to remain loyal and to throughout maintain fidelity, whereby the adulterers are made culprits, rather becomes declared to be making ill-intrusions to the core of privacy, besides becomes declared to be a discriminatory command, and, also only a socio-moral one.

20. While further dwelling upon Section 497 IPC, the Apex Court in the verdict (supra) has declared that to make adultery punishable would tantamount to punishing the people who are unhappy in a marital relationship, and, thereby would lead to punishments being made both in respect of those marital couples whose marriages have been broken down as well as qua those persons whose marriages are not broken down. Therefore, any law punishing adultery as a crime cannot make distinction between these two types of marriages, whereby such a law has been declared to fall within the sphere of manifest arbitrariness.

21. A more incisive reading of the above extracted paragraphs unfolds, that family, marriage, procreation and sexual orientation are all integral to the dignity of an individual, and, that the right to exercise



CRWP-4660-2021
CRWP-149-2024 &
LPA-968-2021 (O&M)

-32-

2024:PHHC:118245-DB



freedom is an inviolable right inhering in an individual. The expressions of freedom are distinct to every individual and such expressions of freedom are sacrosanctly endeared constitutional values. Therefore, if freedom of a married man or a married woman is expressed through either one or both outside the respective valid marriages, rather entering into a live-in relationship, thereby the said live-in relationship partakes the rubric of well expressions qua the right to sexual autonomy rather therethrough becoming echoed, besides thereby the constitutionally granted right to privacy also becoming enlivened.

22. The Apex Court also while addressing that though on abolition of any penal consequence may result in "chaos in sexual morality" or an increase in divorce petitions arising from adultery becoming filed, but the Court concluded that there was no data at all to support these claims in countries where adultery is repealed, while stating-

“Rather, the degree of social condemnation for adultery has been reduced due to the social trend to value the right to sexual self-determination and the changed recognition on sex, despite of the punishment of adultery. Accordingly, it is hard to anticipate a general and special deterrence effect for adultery from the perspective of criminal policy as it loses the function of regulating behaviour.

23. Therefore, obviously the said appears to become the underpinning for decriminalizing adultery, besides for negating the presumption qua thereby it would lead to chaos in sexual morality. Therefore, the purported chaos to sexual morality, thus becomes declared to be an ill generated consequence of decriminalizing adultery.



CRWP-4660-2021
CRWP-149-2024 &
LPA-968-2021 (O&M)

-33-

2024:PHHC:118245-DB



24. The expressions in the verdict (supra) made by Justice D.Y.Chandrachud, are that the right to sexual privacy is a natural right, fundamental to liberty and a soulmate of dignity. Consequently, the application of Section 497 IPC is a blatant violation of these enunciated rights. The essence of the above expostulation of law whereby balances or reconciliations are done inter se socio-moral fabric becoming purportedly eroded, through a live-in relationship becoming entered into by the partners where one of whom is married, thus with the (supra) constitutionally granted right of privacy, besides the concomitant thereto freedom to express hence being an inviolable right of autonomy of body, through the entering into of a live-in relationship, thus coaxes this Court to make the hereinafter inferences.

(i) That when one of the live-in partners is married, thus upon tangible threats becoming purveyed to the live-in couple by any of their respective family members or by any moral vigilant, thus thereby the said live-in couple becoming entitled to claim protection, vis-a-vis their relationship becoming as such obstructed.

(ii) The apposite assault mental or physical, as may stem from either the family members of the live-in couple or from moral vigilants concerned, do obviously truncate the above principles of law (supra) borne in verdict (supra) made by the Apex Court. If so, the autonomy to express endowed upon any living person, which also includes the autonomy of body but would be the casualty, if the assaults public, private, mental or physical becoming evidently openly proclaimed or theirs also becoming permitted to become potentialized, therefore, protection is to be granted to the above



CRWP-4660-2021
CRWP-149-2024 &
LPA-968-2021 (O&M)

-34-

2024:PHHC:118245-DB



genre of relationship.

(iii) Therefore, irrespective of socio-moral effect of such live-in relationships rather the preemptions of apposite assaults of any nature, befalling the live-in couple concerned, is the cornerstone of the structure laid by the Apex Court, whereby, self autonomy in its various dynamic forms has been endowed upon the live-in couple, even if one of them is married, and, even if thereby thus decriminalized adultery does erupt. Therefore, thereby the protection to the above genre of relationship is to be granted.

(iv) Be that as it may, if any of the partners in a live-in relationship has minor children, thus none of the partners in the live-in relationship is required to be abandoning his/her duty to provide optimum care and protection to the minor children. Though, there are remedies under law whereby the maintenance amounts can become adjudged vis-a-vis the minor children. However, that may not be sufficient to ensure the best nourishing of the personality of a minor child which would rather occur only when the father besides providing maintenance also gives fatherly love, and/or when the mother gives motherly love to the minor child. As such, the live-in couple, one of whom is a major, though may in the manner directed hereinafter seek protection but the granting of protection by Courts of law, thus as *parens patriae* of minor children, may be conditioned upon the well being, best care takings, and, nourishing of the personality of the minor child being undertaken to be purveyed by the parent concerned.

(b) Moreover, children born out of legitimate wedlocks who would but be the sufferers of the live-in relationship of the above genre, thereupon their well being naturally requires becoming addressed. In case one of the partners in the above genre of live-in relationship is married, and, is a male,



CRWP-4660-2021
CRWP-149-2024 &
LPA-968-2021 (O&M)

-35-

2024:PHHC:118245-DB



thereupon the minor children whom he fathers are expected to be maintained by him. Though, directions in the above regard can be passed by the Courts of competent jurisdiction, but as a moral obligation the male partner in the live-in relationship, who fathers minor children, but is expected to discharge his moral duty as a father towards his minor children. Therefore, as a pre-condition, the well recourse to the hereafter evolved mechanism, thus requires that the male partner in the live-in relationship who has fathered the minor children, does become encumbered with the apposite parental obligations towards his minor children, rather than the de facto custodians of the minor children, who may be either the mother or the close relatives of any of the partners in live-in relationship, being led to avail the Civil Court remedies.

25. Be that as it may, to avoid the emergence of a spate of litigations relating to purveying of protection to the above genre of live-in relationship, therebys the mechanisms other than the live-in couple accessing the writ Courts, but are required to be devised, as therebys there would be some ebbing of the flood of litigations appertaining to the above genre of live-in relationships claiming for grantings of apposite protection.

26. The police agencies are already over burdened, and, in case there is evident tangible threat emanating from any concerned, therebys the deployment of police escorts with the married couples, would cause an ill-encumbrance upon the already over burdened police force. Consequently, some other mechanism is required to be devised for warding off perceived threats by a live-in couple of the above genre. The mechanisms in the above regard, to the considered mind of this Court are-

(a) Initially the couples accessing the jurisdictional District Legal



CRWP-4660-2021
CRWP-149-2024 &
LPA-968-2021 (O&M)

-36-

2024:PHHC:118245-DB



Services Authority concerned, so that the therein array of para legal volunteers or the array of counsellors become deployed to counsel both the live-in couple as well as the persons or agencies concerned, wherefrom whom threats emanate.

(b) The State Human Rights Commission also becoming accessed by the live-in couples of the above genre, so that thereby there can be easing of the threats, as stem from the moral vigilants or from the relatives of the live-in couples of the above nature. However, as stated (supra), the well advised effective warding offs may be made subject to the condition, that the live-in couples ensuring the optimum care givings to the minor children concerned, but only after the married persons' concerned, thus outside the live-in relationship also being consulted, and, becoming joined in the counsellings, respectively undertaken by the para legal volunteers or by the counsellors concerned, besides by the Human Rights Commission.

27. Subsequently, in case the mechanisms as are well considered to be effectively deployed by the above (supra) thus for warding off the threats, as become purveyed to the above genre of live-in couples, thereupon, the live-in couples may not access the writ Courts, unless the mechanisms (supra), as become employed are evidently rather a complete failure.

28. Consequently, the verdicts (supra) whereby protection became granted to the live-in couples where one of them is married, are respectfully affirmed. On the other hand, the verdicts (supra) taking postures contrary to the above, whereby protection to live-in couples where one of them is married, has been declined, are respectfully disagreed with.



CRWP-4660-2021
CRWP-149-2024 &
LPA-968-2021 (O&M)

-37-

2024:PHHC:118245-DB



Cases where protection to the persons living together in a live-in relationship has been declined

29. This Court in **CRWP No. 488 of 2020** titled as **Sunita and another versus State of Haryana and others**, has declined protection to the petitioners, who were living in a live-in relationship. The relevant paragraphs of the judgment (supra) are extracted hereinafter.

“x x x x

As a matter of fact, by way of filing the present petition, the petitioners want a seal of approval from this Court on their live-in relationship, which cannot be allowed.

The petition stands dismissed accordingly.

However, respondent No. 2–Commissioner of Police, Panchkula may evaluate the threat perception to the petitioners and if found necessary he may ensure that no physical harm is caused to the petitioners at the hands of private respondents or persons claiming under them. Though the petitioners would remain liable for any civil or criminal action as per law.”

30. Similar view has been taken by this Court in **CRWP-2421-2021** titled as **Moyna Khatun and another versus State of Punjab and others**, in **CRWP-4199-2021** titled as **Gulza Kumari and another versus State of Punjab and others**, and in **CRWP-4268-2021** titled as **Ujjawal and another versus State of Haryana and others**.

“x x x x

Petitioner no.1 is barely 18 years old whereas petitioner no.2 is 21 years old. They claim to be residing together in a live-in relationship and claim protection of their life and liberty from the relatives of petitioner no.1.

In the considered view of this Bench, if such protection as claimed is granted, the entire social fabric of the society would get disturbed. Hence, no ground to grant the protection is made out.

Dismissed.”



CRWP-4660-2021
CRWP-149-2024 &
LPA-968-2021 (O&M)

-38-

2024:PHHC:118245-DB



Cases where protection to the persons living together in a live-in relationship has been granted

31. To the contrary, this Court in ***CRWP-7659-2020 titled Banshi Lal and another versus State of Haryana and others***, has granted protection to the petitioners, who were living in a live-in relationship. The relevant paragraphs are of the said judgment are extracted hereinafter.

“x x x x

8. *I am conscious of the fact that the girl is not of marriageable age. Assuming they get married as per Hindu Rites, the same would be in violation of Section 5 (iii) of the Hindu Marriage Act. Section 5, ibid envisages statutory pre-requisites for the consenting parties to solemnize marriage between them. Sub Section (iii) thereof stipulates the minimum ages of a bridegroom and a bride. However, at the same time, Section 11 of the Hindu Marriage Act declares certain marriages, being in contravention of Section 5 (supra), to be void, but precludes a marriage solemnized in contravention of Sub Section (iii) of Section 5, ibid from the purview of being regarded as void or invalid.*

9. *I find support to my above sentiments from a Division Bench judgment rendered by Delhi High Court in case titled as Jitender Kumar Sharma Vs. State and Another reported as 2001 (7) AD (Delhi) 785.*

10. *Reverting to the present case, issue in hand is not marriage or their live in relationship, but the deprivation of fundamental right of seeking protection of life and liberty. Fundamental Right under Article 21 of Constitution of India stands on a much higher pedestal. Being sacrosanct under the Constitutional Scheme it must be protected, regardless of the solemnization of an invalid or void marriage or even the absence of any marriage between the parties.*

12. *It is the bounden duty of the State as per the Constitutional obligations casted upon it to protect the life and liberty of every citizen. Right to human life is to be treated on much higher pedestal, regardless of a citizen being minor or a major. The mere fact that the petitioners are not of marriageable age in the present case*



CRWP-4660-2021
CRWP-149-2024 &
LPA-968-2021 (O&M)

-39-

2024:PHHC:118245-DB



would not deprive them of their fundamental right as envisaged in Constitution of India, being citizens of India.

13. In the premise, without commenting on the legitimacy of the relationship between the petitioners, the writ petition is disposed of with a direction to respondent No.2 i.e Superintendent of Police, Hisar, to verify the contents of the petition, particularly the threat perception of the petitioners and complaints/representation (Annexure P-3) and if deemed fit, to take appropriate steps to provide necessary protection qua their life and liberty in accordance with law.

14. It is clarified that this order shall neither be treated as a stamp of this Court qua legitimacy of the relationship between petitioners nor any reflection on the merits of the contentions raised by them in the present petition.

15. The criminal writ petition is, accordingly, disposed of .”

32. Similar view has been taken by this Court in **CRWP No. 10828 of 2020** titled as **Priyapreet Kaur and another versus State of Punjab and others**, in **CRWP No. 4521 of 2010** titled as **Pardeep Singh and another versus State of Haryana and others** and in **CRWP No. 4533 of 2021** titled as **Soniya and another versus State of Haryana and others**.

Cases where protection of life and liberty to the adults, living in live-in relationship has been granted by the Apex Court and by this Court

33. The judgments rendered by the Apex Court whereby protection of life and liberty to adults in a live-in relationship, became granted, become carried in case titled as (i) **S.Khushboo versus Kanniammal and another (2010) 5 Supreme Court Cases 600**, (ii) **Nandakumar and another versus State of Karala and others (2018) 16 Supreme Court Cases 602**, (iii) **Shafin Jahan versus Ashokan K.M. and others (2018) 16 Supreme Court Cases 368** and (iv) **Soni Gerry versus Gerry Douglas (2018) 2 Supreme Court Cases 197**. The relevant paragraphs of the judgments (supra) rendered by the Apex Court



CRWP-4660-2021
CRWP-149-2024 &
LPA-968-2021 (O&M)

-40-

2024:PHHC:118245-DB



become reproduced as under.

(1) S.Khushboo versus Kanniammal and another (2010) 5 Supreme Court Cases 600

x x x x

31. While it is true that the mainstream view in our society is that sexual contact should take place only between marital partners, there is no statutory offence that takes place when adults willingly engage in sexual relations outside the marital setting, with the exception of 'adultery' as defined under Section 497 IPC. At this juncture, we may refer to the decision given by this Court in Lata Singh Vs. State of U.P. & Anr., AIR 2006 SC 2522, wherein it was observed that a live-in relationship between two consenting adults of heterogenic sex does not amount to any offence (with the obvious exception of 'adultery'), even though it may be perceived as immoral. A major girl is free to marry anyone she likes or "live with anyone she likes". In that case, the petitioner was a woman who had married a man belonging to another caste and had begun cohabitation with him. The petitioner's brother had filed a criminal complaint accusing her husband of offences under Sections 366 and 368 IPC, thereby leading to the commencement of trial proceedings. This Court had entertained a writ petition and granted relief by quashing the criminal trial. Furthermore, the Court had noted that 'no offence was committed by any of the accused and the whole criminal case in question is an abuse of the process of the Court'.

x x x x

45. Even though the constitutional freedom of speech and expression is not absolute and can be subjected to reasonable restrictions on grounds such as 'decency and morality' among others, we must lay stress on the need to tolerate unpopular views in the socio-cultural space. The framers of our Constitution recognised the importance of safeguarding this right since the free flow of opinions and ideas is essential to sustain the collective life of the citizenry. While an informed citizenry is a pre-condition for meaningful governance in the political sense, we must also promote a culture of open dialogue when it comes to societal attitudes.

46. Admittedly, the appellant's remarks did provoke a controversy



CRWP-4660-2021
CRWP-149-2024 &
LPA-968-2021 (O&M)

-41-

2024:PHHC:118245-DB



since the acceptance of premarital sex and live-in relationships is viewed by some as an attack on the centrality of marriage. While there can be no doubt that in India, marriage is an important social institution, we must also keep our minds open to the fact that there are certain individuals or groups who do not hold the same view. To be sure, there are some indigenous groups within our country wherein sexual relations outside the marital setting are accepted as a normal occurrence. Even in the societal mainstream, there are a significant number of people who see nothing wrong in engaging in premarital sex. Notions of social morality are inherently subjective and the criminal law cannot be used as a means to unduly interfere with the domain of personal autonomy. Morality and Criminality are not co-extensive.”

(2) Nandakumar and another versus State of Karala and others (2018) 16 Supreme Court Cases 602

x x x x

10. *We need not go into this aspect in detail. For our purposes, it is sufficient to note that both appellant No. 1 and Thushara are major. Even if they were not competent to enter into wedlock (which position itself is disputed), they have right to live together even outside wedlock. It would not be out of place to mention that ‘live-in relationship’ is now recognized by the Legislature itself which has found its place under the provisions of the [Protection of Women from Domestic Violence Act, 2005](#).*

x x x x

14. *It may be significant to note that insofar as Thushara is concerned, she has expressed her desire to be with appellant No. 1”.*

(3) Shafin Jahan versus Ashokan K.M. and others (2018) 16 Supreme Court Cases 368

x x x x

53. *Non-acceptance of her choice would simply mean creating discomfort to the constitutional right by a constitutional court which is meant to be the protector of fundamental rights. Such a situation cannot remotely be conceived. The duty of the court is to uphold the right and not to abridge the sphere of the right unless there is a*



CRWP-4660-2021
CRWP-149-2024 &
LPA-968-2021 (O&M)

-42-

2024:PHHC:118245-DB



valid authority of law. Sans lawful sanction, the centripodal value of liberty should allow an individual to write his/her script. The individual signature is the insgnia of the concept.

x x x x

84. 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. Deprivation of marital status is a matter of serious import and must be strictly in accordance with law. The High Court in the exercise of its jurisdiction under Article 226 ought not to have embarked on the course of annulling the marriage. The Constitution recognises the liberty and autonomy which inheres in each individual. This includes the ability to take decisions on aspects which define one's personhood and identity. The choice of a partner whether within or outside marriage lies within the exclusive domain of each individual. Intimacies of marriage lie within a core zone of privacy, which is inviolable. The absolute right of an individual to choose a life partner is not in the least affected by matters of faith. The Constitution guarantees to each individual the right freely to practise, 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 law prescribes conditions for a valid marriage. It provides remedies when relationships run aground. Neither the State nor the law can dictate a choice of partners or limit the free ability of every person to decide on these matters. They form the essence of personal liberty under the Constitution. In deciding whether Shafin Jahan is a fit person for Hadiya to marry, the High Court has entered into prohibited terrain. Our choices are respected because they are ours. Social approval for intimate personal decisions is not the basis for recognising them. Indeed, the Constitution protects personal liberty from disapproving audiences.

x x x x

86. The right to marry a person of one's choice is integral to Article 21 of the Constitution. The Constitution guarantees the right to life. This right cannot be taken away except through a



CRWP-4660-2021
CRWP-149-2024 &
LPA-968-2021 (O&M)

-43-

2024:PHHC:118245-DB



law which is substantively and procedurally fair, just and reasonable. Intrinsic to the liberty which the Constitution guarantees as a fundamental right is the ability of each individual to take decisions on matters central to the pursuit of happiness. Matters of belief and faith, including whether to believe 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. Matters of dress and of food, of ideas and ideologies, of love and partnership are within the central aspects of identity. 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.”

(4) *Soni Gerry versus Gerry Douglas (2018) 2 Supreme Court Cases 197*

x x x x

10. It needs no special emphasis to state that attaining the age of majority in an individual's life has its own significance. She/he is entitled to make her/his choice. The Courts cannot, as long as the choice remains, assume the role of parens patriae. The daughter is entitled to enjoy her freedom as the law permits and the Court should not assume the role of a super guardian being moved by any kind of sentiment of the mother or the egotism of the father. We say so without any reservation.”

34. The judgments rendered by this Court whereby protection of life and liberty to adults living in live-in relationships, became granted, become carried in (i) ***LPA No. 1678 of 2014*** titled as ***Rajwinder Kaur and another versus State of Punjab and other*** and (ii) ***LPA No. 769 of 2021*** titled as ***Ishrat Bano and another versus State of Punjab and others***. The relevant



CRWP-4660-2021
CRWP-149-2024 &
LPA-968-2021 (O&M)

-44-

2024:PHHC:118245-DB



paragraphs of the judgments (supra) rendered by this Court become reproduced as under.

(1) LPA No. 1678 of 2014 titled as ***Rajwinder Kaur and another versus State of Punjab and others***

“x x x x

We have no reason to doubt that the fundamental right to life and liberty is so sacrosanct and stands at such a high pedestal that it must be protected even in the absence of an incident like solemnization of a valid marriage between the parties. While the appellants might be required to satisfy an appropriate forum regarding the validity of their marriage but even in the absence of such validation, the State is obligated to protect their life and liberty. We, thus, modify the order passed by the learned Single Judge and dispose of this appeal with a direction to the respondent-police-authorities to ensure that no harm is caused by anyone to the life and liberty of the appellants. The police-authorities shall, however, verify the age of the appellants and if any further remedial action is required to be taken on such verification, the same shall be taken forthwith.”

(2) LPA No. 769 of 2021 titled as ***Ishrat Bano and another versus State of Punjab and others***

“x x x x

The aspect which we are considering and dealing with is with regard to the threat to the life and liberty to the appellants as has been asserted by them. No doubt, in case a criminal case is registered against any of the parties, the law should take its own course, however, the life and liberty of any person who has approached the Court with such a grievance need to be taken care of and the protection be provided as permissible in law. No person can be permitted or allowed to take law in his hands and therefore, keeping in view the said aspect, we dispose of the present appeal by observing that the Senior Superintendent of Police, Maler Kotla, shall take into consideration the representation dated 17.08.2021 (Annexure P-5) submitted by the appellants and if some substance is found therein, take appropriate steps in accordance with law to ensure that the life and liberty is not jeopardized of the appellants at



CRWP-4660-2021
CRWP-149-2024 &
LPA-968-2021 (O&M)

-45-

2024:PHHC:118245-DB



the hands of the private respondents. This direction shall not be construed in any manner to restrain the official respondents to proceed against the appellants in case there is some criminal case registered against them. The law shall take its own course and it shall be open to the authorities/investigating agency to proceed against the appellants, if required in law and in accordance thereto.”

35. Similar view has been taken by this Court in **CRWP-10302-2021** titled as ***Sarabjit Kaur and another versus State of Punjab and others***, in **CRWP-9380-2022** titled as ***Rajvinder Kaur and another versus State of Punjab and others***, in **CRWP-5898-2023** titled as ***Saranjeet Kaur and another versus The State of Punjab and others***, in **CRWP-5872-2024** titled as ***Sonia Rani and another versus State of Punjab and others*** and in **CRWP-9020-2023** titled as ***Jaspreet Kaur and another versus State of Punjab and others***.

36. For the reasons to be assigned hereinafter the judgments (supra) rendered by the Apex Court, and, the judgments rendered by Full Benches of this Court in LPA No. 1678 of 2014 and in LPA No. 769 of 2021, besides the verdicts (supra) rendered by this Court, whereby qua adults in a live-in relationship, thus the espoused protection but for warding off threats arising from moral vigilants or from the close relatives of any of them, has been granted, thus are required to be affirmed. On the other hand, the verdicts (supra) whereby the espoused claim for protection to the adults in a live-in relationship, has been denied, thus are respectfully disagreed with.

37. The trite reason for concluding so is embedded in the hereinabove underlined expressions, as become carried in the judgments rendered by the Apex Court in ***S.Khushboo***'s case (supra) and, in ***Shafin Jahan***'s case (supra).



CRWP-4660-2021
CRWP-149-2024 &
LPA-968-2021 (O&M)

-46-

2024:PHHC:118245-DB



38. A reading of the above underlined expressions (supra), as become borne in the verdicts (supra) do manifest the trite proposition of law that the freedom of choice to live with a partner of his or her choice, thus donning the mantle of a constitutionally endowed right vis-a-vis the adults (supra) to live in a live-in relationship, irrespective of the fact that they do not perform any valid marriage. The said endowed right is anviiled upon Article 21 of the Constitution of India.

39. Therefore, the underlined expressions (supra), as become borne in the verdict (supra), do require deference thereto becoming meted. Resultantly, the view taken by the Apex Court in the verdict (supra) is naturally required to be holding overwhelming sway and clout, over those judgments rendered by this Court, wherebys, to the adults in a live-in relationship, who do not prefer to enter into a marriage, rather express their freedom of choice to live together only in a live-in relationship, thus the espoused protection has been declined. In sequel, the socio-moral fabric of society becoming the sufferer becomes inconsequential. Contrarily, the right endowed upon the live in-couple, who prefer to live in a live-in relationship, is required to be fully protected, wherebys emergence of any tangible threat or obstruction being made to the continuity of such live-in relationship, does require theirs being ensured to be warded off, through adoption of the mechanisms, as become evolved in sub-clause (a) and (b) of paragraph 26, and, the one evolved in paragraph 27 (supra) of this verdict.

Protection of life and liberty to the persons when one of them is a minor

40. In a judgment rendered by this Court in **CRWP No. 2139 of 2022** titled as **P..... Minor through Vikram** versus **State of Haryana and another and other connected petitions**, this Court examined the issue of



CRWP-4660-2021
CRWP-149-2024 &
LPA-968-2021 (O&M)

-47-

2024:PHHC:118245-DB



protection being granted to the minor. The relevant paragraphs of the judgment (supra) are extracted hereinafter.

“x x x x

16. *In addition to the from above legislations dealing with minor, it would also be pertinent to refer to the relevant provision under the Juvenile Justice (Care and Protection of Children) Act, 2015. The aforesaid Act had been promulgated to consolidate the law relating to children alleged and found to be in conflict with law and/or in need of care and protection by catering to their basic needs through proper care, protection, development, treatment and social reintegration in the adjudication and disposal of matters, in the best interest of children.*

x x x x

19. *The Court is thus required to ensure protection of a minor/child as per the different statutes while also ensuring the safety and security of such person. The aim and object of the provisions enshrined under the Juvenile Justice (Care and Protection of Children) Act 2015 and Protection of Children from Sexual Offences Act 2012 is intended to protect the person of a minor from being subjected to any such act, which is deemed penal by law. The Hindu Minority and Guardianship Act, 1956 declares the guardian of a minor Hindu and their duties, obligations viz-a-viz the minor. The provisions of Guardians and Wards Act stipulates the procedure for appointment of a guardian in the case of a ward (minor).*

x x x x

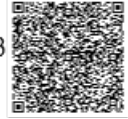
24. *The enunciation of statutory framework in the nature of Juvenile Justice (Care and Protection of Children) Act 2015 and Protection of Children from Sexual Offences Act does not run contrary to the provisions enshrined under Article 21 of the Constitution of India. Protection of life and liberty guaranteed to a citizen necessarily ensures that the Court of law, when approached, would step into the shoes as a guardian of such minor and take all such steps as are essential to protect the life and liberty of such a minor. It would be incomprehensible to contend or to suggest that the protective scheme and procedure formulated under the Juvenile*



CRWP-4660-2021
CRWP-149-2024 &
LPA-968-2021 (O&M)

-48-

2024:PHHC:118245-DB



Justice (Care and Protection of Children) Act 2015 is not in furtherance of protection enshrined under Article 21 of the Constitution of India. The said Acts are intended to ensure advancement of Article 21. The Court of law, while issuing any directions to follow the procedure provided for under the Juvenile Justice (Care and Protection of Children) Act 2015, does so with an object to ensure safety and protection of a minor, who the law does not recognise as having acquired the wisdom and knowledge to take best decisions for himself/herself. The decision so taken by the competent authority with respect to the minor as per the procedure prescribed in law, cannot be deemed as violative of Article 21 of the Constitution of India with on a ground that such a decision will not be in conformity with the interest which such a minor conceives to be in his/her best interest. The Court cannot be oblivious to the duty cast upon it as a repository of the best interest of the minor and there can be no presumption that once a minor conveys his/her desire to stay with any person and that such person claims to be the next friend/de facto guardian, the same would actually and in reality be in furtherance of the best interest of the minor. Determination of what would be in the best interest of the minor has to be done by the Court as per the procedure known to law. 25. The Court, thus, has to take upon itself the responsibility to ensure that the fundamental right of such a minor to claim protection of his/her life and liberty is made available and also to ensure that in the said process, the protection of the statute is not violated.”

41. Similar view has been taken by this Court in **CRWP-6040-2022** titled as ***Khushpreet Singh and another versus State of Punjab and others***, in **CRWP-8838-2023** titled as ***Vikram Kumar and another versus State of U.T., Chandigarh and others***, in **CRWP-5412-2024** titled as ***Akbari Khatil (minor) through Suraj Kumar versus State of Punjab and others***, in **CRWP-2539-2024** titled as ***Vicky Kumar and another versus State of Punjab and others*** and in **CRWP-7609-2023** titled as ***Sulakhan Masih and another versus State of Punjab and others***.



CRWP-4660-2021
CRWP-149-2024 &
LPA-968-2021 (O&M)

-49-

2024:PHHC:118245-DB



42. A minor in a live-in relationship with an adult or where the live-in relationship is partnered only by minors, thereby the concerned cannot seek the protection from Courts of law. The reason for making the said conclusion becomes firmly embedded in the factum, that a minor belonging to any religious denomination, thus is incompetent to contract. If so, he/she has no capacity even to make choices or to express his/her freedom. Contrarily the freedom to make choices by the minors are ably fettered, by the statutes respectively nomenclatured as The Hindu Minority and Guardianship Act, 1956, and, as nomenclatured as Guardians and Wards Act, 1890.

43. Furthermore, in respect of religious communities other than the Hindus, the Indian Majority Act, thus prescribing the age of majority, therebys becomes the regimen wherebys, there is a bar against a minor entering into a contract. The effect thereof, is that, the said disability encumbered upon a minor belonging to a religious denomination other than the Hindus, thus therebys also concomitantly preempting the minor from making any choices, disability whereof also covers the makings of ill choices qua the entering into a live-in relationship either with a minor or with an adult.

44. If protection is provided to minor partners, who are in a live-in relationship where only one of them is a minor, or where both are minors, therebys the granting of the espoused protection, rather would run counter, vis-a-vis, well statutory crampings of discretions of a minor. Moreover therebys this Court would be avoiding to perform its duty as a *parens patriae* towards the minors wherebys rather this Court is required to be ensuring the welfare of the minor concerned. Therefore, the said solemn



**CRWP-4660-2021
CRWP-149-2024 &
LPA-968-2021 (O&M)**

-50-

2024:PHHC:118245-DB



duty cast upon Courts of law, naturally requires that the minor concerned, rather than being permitted to be a partner in a live-in relationship either with a minor or with an adult, thus his/her custody is required to be ensured to be retrieved to his/her parents, and, natural guardian. However, in the above endeavour if the Court perceives that there would be an imminent threat to the life of the minor, therebys, the Courts are required to be proceeding to recourse the relevant provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015, inasmuch, as directing the minor to till his or her attaining majority, thus staying comfortably at Children Home or at a Nari Niketan, as the case may be.

Final order

45. In view of the directions (supra) and in the light of the mechanisms (supra), CRWP No. 4660 of 2021 and CRWP No. 149 of 2024 are allowed, whereas in view of the observations (supra), LPA No. 968 of 2021 stands dismissed.

46. Reference is answered accordingly.

47. The miscellaneous application(s), if any, is/are also disposed of.

**(SURESHWAR THAKUR)
JUDGE**

**(SUDEEPTI SHARMA)
JUDGE**

**September 09, 2024
Gurpreet**

**Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No**