

Agreements in restraint of marriage- legal provisions in India

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Abstract

Many rights has been given to citizens as well as non- citizens by the government of India. Right to life is a fundamental right which has been guaranteed by the Constitution of India to every person. Although it is not specifically mentioned in the Constitution, the right to marry becomes integral part of right to life. It is also stated under the Human Rights Charter within the meaning of the right to start a family. This means every person has a right to marry and liberty to marry with a person of his/her choice and nobody can restrain a person from marrying. Researcher here wants to study various legal provisions relating to the agreements in restraint of marriage in India. Researcher also wants to know what will be the effect of an agreement in restraint of marriage. For this purpose researcher has used secondary method of data collection.

Keywords Agreement, Marriage, Restraint, Valid, Void

Introduction

Right to Marry

Marriage in India, in layman's language is a union of two persons of opposite sex. Through the religious ceremonies the two different persons of opposite sex unites and starts living together as husband and wife. The concept of marriage is to establish a relationship between husband and wife. According to Hindu law, the marriage is a sacrament, according to Muslim law, the marriage is a contract. So different religions have different concepts about marriage, but one thing is common that it is the right of every person irrespective of religion to get marry to the person of one's own choice and lead a happy life.

The Constitution of India guarantees the Right to Life in Article 21; this article also encompasses the right to marry. So the right to marry someone of own choice is an integral part of Article 21 of Constitution of India. One of the earliest cases which dealt with this issue was **Lata Singh v. State of UP**, delivered in 2006, concerning an inter-caste marriage. The Supreme Court held that since the petitioner was a major, she was at liberty to marry whoever she wanted and that no law bars an inter-caste marriage.¹

The case of Lata Singh v. State of Uttar Pradesh is a landmark decision in the legal history of India. In this case the Hon'ble Justice Ashok Bhan and Markandey Katju, JJ. allowed the writ petition under Article 32 filed by a woman named Lata Singh for enforcement of her right, to marry a person of her choice with her own will. The Supreme Court gave a judgment in her favour and also ordered for her police protection as well.²

Though right to marry is a fundamental right of every person irrespective of gender, it is not an absolute right. This means it is subject to some conditions. Like a minor, means a person who has not completed 18 years of age can be restricted from marrying. In India under Hindu law, for marriage a girl should have completed 18 years of age and boy should have completed 21 years of age.

¹ <https://www.barandbench.com/columns/the-fundamental-right-to-marry-in-india-and-its-application-to-same-sex-marriages>

² <https://blog.ipleaders.in/case-summary-lata-singh-v-state-uttar-pradesh/>

Agreement in restraint of marriage

An agreement is a promise between two or more persons to do or not to do something. It is defined in Section 2 (e) the Indian Contract Act 1872, as “Every promise and every set of promises, forming the consideration for each other, is an agreement.”³

Also section 10 of Indian Contract Act, 1872 provides that “all agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.”

If all these essential conditions are fulfilled then an agreement becomes a valid contract. After entering into a valid contract, the parties to the contract are bound by contractual relationships. But there are certain exceptional cases in which even though an agreement is complying with all the essentials of a valid contract, it becomes void. One of such agreement is an agreement in restraint of marriage.

According to section 26 of Indian contract act 1872 “Agreement in restraint of marriage, void.—every agreement in restraint of the marriage of any person, other than a minor, is void.”

This means that if there is an agreement between two persons for restraining any one of them from marrying, such an agreement is void and not enforceable in the courts of India. No one can restrain the liberty of other to marry as per their wish. The central idea behind this provision was to make sure that the citizens are not denied of their right to marry as per their choice, which is a vital part of a civil society having both personal and social significance, due to some contractual obligation entered into at any point of time.

There is no difference between absolute restraint and partial restraint on the liberty of marriage under section 26 of Indian Contract Act 1872. This has also been followed by the judiciary in various cases. However there is one case of **Air India and Others v. Nergesh Meerza and Others** in which you can see a departure from this interpretation. Air Hostesses working at Air India and Indian Airlines has filed a suit against Air India Employees Service Regulations, Regulations 46 and 47, and Indian Airline Service Regulation, Regulation 12.

These regulations contained that; Air Hostesses will retire from service in the following circumstances.

1. On completing the age of 35 years;
2. On getting married within four years of service, and
3. On first pregnancy.

In this case the Supreme Court directed the companies to change their regulations to bring parity in the age of retirement of the two subsidiaries and also ordered to struck down the rule against first pregnancy as court finds it in violation of **Article 14** of the Constitution, it however, upheld the restriction on marriage for the first four years of service keeping in mind the practical needs of the business as well as the society in general.

Such an agreement of service is not considered as a restraint at all because it gives freedom to employee to marry on leaving the job. On the other hand, if the agreement is between X and Y and X would promise not to marry till the age of, say, 40 years in return for a job under Y, it would be considered a restraint on marriage and would be void.

In case of **Rao Rani v. Gulab Rani**, two parties were the widows of the same man. After the death of their husband, a dispute arose between the two widows as to who will inherit a zamindari land; a division bench of the Allahabad High Court looked into this matter.

However, the dispute was amicably settled by both the parties by signing a deed of compromise wherein it was stated that both of them would inherit property equally but if anyone of them would re-marry in future, the entire right over the property would transfer to the other. Later, Gulab Rani remarried and the property came under the total control of Rao Rani.

³ <https://legislative.gov.in/sites/default/files/A1872-09.pdf>

Few years later, Gulab Rani filed a civil suit to get back ownership of part of that property and, amongst other contentions; she claimed that the compromise deed which was contractual in nature was void under Section 26 of the Indian Contract Act 1872 as it was in restraint of marriage.

The Allahabad High Court expressed its serious doubt on whether section 26 of the Contract Act 1872 encompassed partial or indirect restraint on marriage and it was not persuaded by this argument. Chief Justice Ahmad delivered the judgment stating-

“All that was provided was that if a widow voluntarily elected to re-marry, she would be deprived of her rights given to her by the compromise. In other words, no direct ban to re-marry was imposed by the compromise and the compromise between the parties was arrived at in order to preserve the family properties and to ensure their proper administration.”⁴

A similar stand was also taken in case of **A. Suryanarayana Murthi v. P. Krishna Murthy** in which co-widows had made an agreement to surrender their share on deceased husband's property if they remarried and this was held a valid contract as the agreement did not directly put any restraint on marriage.

EXCEPTION

Section 26 is a provision of the Indian Contract Act 1872 with only one important exception. It does not make void any agreement made in restraint, either partial or absolute, of the marriage of a minor. This exception is provided as it is against public policy in general to marry a minor and by imposing restraint on such marriages, the agreement restraining such marriages can be said to promote public policy instead. This has also been provided in Child marriage restraint Act 1929. According to this Act "Child" means a person who, if a male, has not completed twenty one year of age, and if a female, has not completed eighteen years of age as defined under section 2 (a) of the Act.⁵ In Section 5 of Child marriage restraint Act 1929 Punishment for solemnising a child marriage is provided. This means that marriage of a minor is not valid and therefore if any person by agreement prevents a minor from marrying then such an agreement is not void.

Apart from this if there is an agreement restraining a person who is suffering from some venereal disease until it gets cured, is a valid agreement.

Law Commission's 13th Report, September 1958:

The Commission has vision to restrict the purview of the section by terming void any agreement in complete restraint of marriage while allowing partial restraint if the restraint so agreed upon is found to be reasonable by the court under the given circumstance. This would allow several agreements which could be better for an individual as well as the society's interest.

For example, in the present day world of competition, higher education often stretches far after arriving at the age of majority. Now, if the suggestion of the Commission was abided by, a parent may enter an agreement with their child to not marry till they achieve their educational goal. This would not only help in attaining full education but would also allow marriages to be held at a later stage where the parties would be more mature and capable of handling things in a better way; the chances of a stable marriage would rise.

An additional kind of restraint could have been imposed by allowing marriage only after the person has started earning their own living. This would ensure that the person is capable of bearing the responsibility of a family when marriage is entered into, thus, reducing the burden on the parents of the parties, and the society at large.

⁴ <https://www.lawctopus.com/academike/agreements-restraint-marriage/>

⁵ <https://wcd.nic.in/child-marriage-restraint-act-1929-19-1929>

Conclusion

Marriage is “the legal union of a couple as husband and wife”. The right to marry is a component of right to life under Art 21 of Constitution of India which says, “No person shall be deprived of his life and personal liberty except according to procedure established by law. According to section 26 of Indian contract act 1872 “Agreement in restraint of marriage is void.—every agreement in restraint of the marriage of any person, other than a minor, is void.” There is no difference between absolute restraint and partial restraint on the liberty of marriage under section 26 of Indian Contract Act 1872. However there are certain situations in which a person can be restricted from marrying if it is in the interest of that person himself or other party of marriage or such restraint can be included in some service agreements, which are perfectly valid. A minor can also be prevented from getting married and any such agreement restraining minor from marrying is valid and hence enforceable in courts of Law. Section 26 of the Indian Contract Act 1872 is a provision with only one important exception. It does not make void any agreement made in restraint, either partial or absolute, of the marriage of a minor. Lawfully; every young person has right to marry and to enter into a marriage contract.

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