

HC upholds woman's right to live with partner

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The Aurangabad bench of the Bombay High Court recently directed the Commissioner of Aurangabad to safeguard and protect a girl until she was able to join her transgender partner. In this context let us comprehend the various issues involved in Right to Choose life partner in India.

In news: HC upholds woman's right to live with partner

Placing it in syllabus: Law & Policy

Dimensions

- What is the issue?
- Ruling of the HC
- Previous judgements
- Importance of the present Ruling

Content:

What is the issue?

- A Division Bench of Justices Sunil Deshmukh and Nitin Suryawanshi was hearing a criminal petition filed on behalf of a 29-year-old **transgender who has chosen male as his gender**.
- He met a girl on social media in June 2019 and they had fallen in love.
- However, after the lockdown on the onset of the pandemic, the girl moved to Osmanabad to be with her family.
- As the girl was under pressure to get married, she contacted the person she loved and asked for his help to leave the house.
- Her parents filed a missing person report with the local

police and reached Allahabad the next day. She was then taken back home.

- The girl alleged that her parents subjected her to “mental torture” and made her undergo humiliating medical tests to “cure her sexual orientation”.
- In June 2021, a lawyer in Kota filed an application before a Chief Judicial Magistrate to set the girl at liberty according to her wishes.
- However, she was directed to go to her parents’ home by the court.

Ruling of the HC:

- The Aurangabad bench of the Bombay High Court directed the Commissioner of Aurangabad to **safeguard and protect a girl until she was able to join her transgender partner.**
- The High Court judges met the girl who said she did not want to go with her parents.
- The court then recorded that the girl is a major and appears to be resolute and is at liberty to act as per her wish.
- However, considering the apprehension expressed by the girl, HC directed the Commissioner of Police, Aurangabad, to safeguard and protect the girl up to the destination she wishes to go

Previous judgements:

Hadiya case (Shafin Jahan v. Asokan K.M), 2018

- The Supreme Court observed that, **Marital status is conferred through legislation or custom.**
- The High Court was **wrong in letting parental love and concern override the right of an adult** to choose who she wishes to marry.
- Moreover, the Constitution guarantees that the ability to take **such decisions as a part of liberty and**

individual autonomy.

- The **right to marry a person of one's choice is integral to Article 21.**
- Choice of a partner lies within the exclusive domain of an individual, and is a part of the core zone of privacy, which is inviolable.
- Thus, the **High Court was wrong in using its powers under Article 226 to annul** Hadiya's marriage with Shafin Jahan.

Allahabad HC Ruling on conversion and Marriage:

- In September 2020, Allahabad High Court in the **Priyadarshini Case** said that religious **conversion only for the purpose of marriage is unacceptable.**
- Court's ruling came on a petition filed by an interfaith couple seeking directions to police and the girl's father not to interfere in their married life.
- Dismissing the writ petition of Priyanshi, alias Samreen, and her partner, the HC said, "The court has... found the first petitioner (the woman) has converted her religion on June 29, 2020, and... solemnised marriage on July 31, which clearly reveals the conversion has taken place only for the purpose of marriage.
- Rejecting their plea saying the HC was **not inclined to interfere in the matter under Article 226 (writ jurisdiction)** of the Constitution of India,
- Justice Mahesh Chandra Tripathi relied upon a previous judgment given by the same court in the **Noor Jahan Begum case in 2014** in which it was **observed that conversion just for the purpose of marriage was unacceptable.**

However,

- In November 2020, another bench of the Allahabad High Court **contradicted the high court judgment in September and another in 2014 against marriages performed after alleged conversions,** saying that the two **rulings were**

not good in law.

- It ruled that the **right to choose a life partner “irrespective of religion” is intrinsic to the right to life and personal liberty**
- It said that **Interference in a personal relationship would constitute a serious encroachment into the right to freedom of choice** of the two individuals
- The bench also referred to the Priyanshi case in September 2020 and the Noor Jahan case in 2014, in which the court ruled that conversions for the purpose of marriage are unacceptable.
- It said there was no doubt that the women in the two past cases could not authenticate their alleged conversion as they were unable to show knowledge of the basic tenets of Islam.
- But the courts were still obliged to ascertain the desire of the women as they were above 18.
- The judges said the court had then not dealt with the issue of life and liberty of two mature individuals in choosing a partner or their right to freedom of choice about whom they would like to live with.

Importance of the present Ruling:

- The Ruling has upheld the right of an individual to choose a life partner, and neither the state nor society can interfere with it.
- The ruling people are entitled to their rights irrespective of their gender or sexual orientation
- It gives right to a woman to choose even a transgender partner, thereby legitimising such unions.

Mould your thought: The recent judicial pronouncements uphold the right of an individual to choose partners in India.

Comment **Approach to the answer:**

- Introduction
- Discuss Art 21 – and Right to Choose partners

- Discuss Hadiya case and Priyadarshini Case Rulings
- Discuss Latest Bombay HC ruling in Woman's right to choose Transgender Partner
- Conclusion