



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2024 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

Case Comment: Shafin Jahan v Asokan K. M. and Ors

Xara Behzaad^a

^aAlliance University, Bengaluru, India

Received 19 July 2024; *Accepted* 22 August 2024; *Published* 27 August 2024

INTRODUCTION

The case of *Shafin Jahan v Asokan K. M. and Ors*¹ was a landmark case that highlighted the interplay between personal liberty and the state's intervention in it. The case was alleged to be a case of 'love jihad'. Love Jihad is a conspiracy theory propagated by right-wing Hindutva activists in which they claim that Muslim men target Hindu women through the means of love, deception, kidnapping, etc, and get the women converted to Islam to create a greater demographic of the Islamic religion across the globe.² In this particular case, a similar incident happened wherein the marriage of Shafin Jahan and Akhila Asokan aka Hadiya was questioned not only by her father but also by the court and the nation. The case sparked debate between Hadiya's liberty to marry a person of choice and profess a religion as a part of Fundamental Rights and the court's role in such a personal matter.

¹ *Shafin Jahan v Asokan KM* (2018) 16 SCC 368

² Soutik Biswas, 'Love jihad: The Indian law threatening interfaith love' *BBC News* (8 December 2020) <<https://www.bbc.com/news/world-asia-india-55158684>> accessed 19 June 2024

FACTS OF THE CASE

Ms. Akhila Asokan or Hadiya was a student of homoeopathic medicine at Shivraj Homeopathic Medical College, Salem, Tamil Nadu. She is the daughter of Sh. Asokan K.M., the respondent and Smt. Ponnamma. Initially, she lived in the college hostel but later moved to a rented house and lived with five other students, two of whom were Jaseena and Faseena, daughters of Aboobacker. On 6th December 2015, Hadiya's grandfather died, and she came back home. It was claimed by her family members and relatives that she depicted reluctance to the rituals of the funeral of her grandfather. She left to go back for her internship and was in constant touch with her family until 5th January 2016. On 6th January 2016, her father was informed by one of her friends that she had gone to college wearing a 'Pardah' and was further informed that someone had inspired her to change her faith. Her father fell ill after hearing this information. After hearing this information from her mother, Hadiya, along with Jaseena left for Salem at 8 pm on the very same day but never reached her father's house. While searching for his daughter, Asokan was informed by Ms. Archana that she was at Aboobacker's house. Although Aboobacker claimed that he would bring Hadiya to Archana's house, he later informed Asokan that she had escaped from his house. Frustrated, Asokan filed a Habeas Corpus petition (W. P. (Criminal) No. 25 of 2016) before the High Court of Kerala. On 19th January 2016, Hadiya appeared in court with the help of her lawyer and filed an application (I.A. No. 792 of 2016) to be added as a party to the case. The application was approved, and she became a respondent to the case. Hadiya, through an affidavit submitted on 26th November 2016, explained the reasons and circumstances under which she left the house and informed her father and Director General of Police about her situation through a letter. She further, along with one Sainaba, filed a Writ Petition to seek protection from police harassment. She refused to go back with her father and instead pleaded with the court to let her stay in the 'Satyasarani' institution. After all the necessary documents were provided by Hadiya's counsel, the Division Bench on 25th January 2016, in its judgment, disposed of the writ petition as it was confirmed that Hadiya was not illegally confined. Sometime later her father filed another writ petition in which he claimed that his daughter was 'likely to be transported out of the country'³ to Syria. She was later granted a

³ *Shafin Jahan v Asokan KM* (2018) 16 SCC 368

stay with Smt. A.S. Sainaba but the court also noted her incompleteness in her studies and directed her to shift back to the college hostel to complete her education with her expenses being covered by her father. On 21st December 2016, Hadiya informed the High Court in her appearance that she had entered into marriage with Shafin Jahan, the appellant herein. The court expressed distress over the circumstances of the marriage and the nature of the marriage. It ordered a background check and investigation into Shafin Jahan and directed Hadiya to stay at the college hostel until then. The court also restricted her use of her mobile phone and was only allowed to meet her parents. The Secretary of Othukkungal Grama Panchayat was directed by the court to not issue a marriage certificate to the couple. Hadiya met Shafin Jahan through an online website, Way to Nikah. The marriage took place on 19th December 2016 and the court suspected it to be a sham to keep Hadiya out of court's reach and not a sincere union. The court considered it unacceptable behaviour as the parties did not inform the court before performing the act of union. The court also questioned the authenticity of the union given the social media posts of Shafin Jahan which hint at a radical inclination. The court expressed its dissatisfaction with her marriage and despite her being an adult, called her a female of vulnerable age under the *Parrens Patriae* jurisdiction.⁴ The High Court said that it is their duty to ensure that young girls like Hadiya are not exploited and transported out of the country. The court, through *parrens patriae* jurisdiction directed Hadiya to move back with her parents and declared the marriage null and void. Shafin Jahan appealed in the Supreme Court of India.⁵

ISSUES OF THE CASE

1. Whether the High Court of Kerala overstepped its jurisdiction by annulling the marriage of Hadiya and Shafin Jahan while hearing the Habeas Corpus petition.
2. Whether the decision of the High Court of Kerala to declare the marriage of Shafin Jahan and Hadiya annulled violate the fundamental rights of both parties, particularly Article 21 of the Indian Constitution⁶ which guarantees the right to life and personal liberty?

⁴ *Ibid*

⁵ *Ibid*

⁶ Constitution of India 1950, art 21

OBSERVATION OF SUPREME COURT

The Supreme Court of India, represented by the three-judge bench of Chief Justice Dipak Misra, Justice A.M. Khanwilkar, and Justice D.Y. Chandrachud, observed that Hadiya is an adult according to the Indian Majority Act, 1875⁷ as she was of twenty-four years of age and has the right to make her own decisions. During the proceedings of the initial Habeas Corpus petition by her father, Hadiya appeared before the court and established the fact that she had accepted Islam as a choice of faith. The court asserted that the fundamental rights of an adult must be protected and cannot be hindered by parental authority. The court highlighted that Hadiya had the fundamental right to marry a person of choice and accept any faith in her own discretion under Article 21⁸ of the Indian Constitution which guarantees the 'Right to Life and Personal Liberty' and the court has no role in interfering with the union of marriage among two adults. Justice D. Y. Chandrachud expressed that the High Court of Kerala has committed an error in its jurisdiction. The months that Hadiya lost in her father's custody against her will cannot be brought back. The judgment must ensure that Hadiya's constitutional right must be upheld rather than it being a reflection of a 'paternalistic social structure'.⁹ The annulment announced by the High Court of Kerala was criticized by the Supreme Court of India as an infringement of personal liberty. The Supreme Court said that the High Court of Kerala had overstepped its jurisdiction while addressing the Habeas Corpus petition under Article 226 of the Indian Constitution.¹⁰

JUDGEMENT

The decision of the High Court of Kerala was overturned by the Supreme Court of India. The Supreme Court of India had directed the National Investigating Agency to carry out an investigation but clarified that the marriage of Shafin Jahan and Hadiya shall not be invalid and will not be considered as the subject matter of investigation. The court directed the National

⁷ Indian Majority Act 1875

⁸ Constitution of India 1950, art 21

⁹ *Shafin Jahan v Asokan KM* (2018) 16 SCC 368

¹⁰ Constitution of India 1950, art 226

Investigating Agency to not interfere with the lives of the married couple and let them live as law-abiding citizens.¹¹

ANALYSIS

This case was prone to an extreme amount of controversy and debate wherein the people against the judgment of the Supreme Court of India criticized it for neglecting the actual well-being of Hadiya. The court was criticized for not conducting a thorough investigation into the allegations of forced conversions and being transported out of the country before pronouncing its judgment. The court has also been condemned by the people claiming that this judgement can set a wrong precedent which would further make way for more forced conversions.

A marriage in Islam is a marriage by contract and there are some prerequisite conditions that need to be fulfilled for the marriage to be valid including free consent. According to Section 14 of the Indian Contract Act of 1872¹² consent is not said to be free if it is obtained through coercion, undue influence, fraud, misrepresentation, or mistake. Therefore, when the Supreme Court of India directed that Hadiya is an adult and is free to make her own decisions, including giving her consent, the court neglected the conditions under which she might have given the consent. In the case of *Sayad Mohiuddin Sayad Nasiruddin v Khatijabibi* (1939),¹³ the court held that a marriage can be annulled if the consent by either of the parties is obtained through unlawful means.

The Supreme Court of India thoroughly acknowledged the allegations of forced marriage and conversion and the possibility of the consent being obtained through unlawful means; however, it held that no concrete evidence was found based on which it could annul the marriage of Shafin Jahan and Hadiya. The Supreme Court of India claimed that throughout the court proceedings, Hadiya, herself, had constantly asserted the fact that she had given her free consent to her marriage and acceptance of Islam as her faith. She also asserted the fact that the claims of her being transported out of the country were negative.

¹¹ *Shafin Jahan v Asokan KM* (2018) 16 SCC 368

¹² Indian Contract Act 1872, s 14

¹³ *Sayad Mohiuddin Sayad Nasiruddin v Khatijabi* (1939) 41 BOM LR 1020

Therefore, it was concluded that the present matter is that of between two consenting adults and the court cannot exercise its *parens patriae* jurisdiction to restrict the lawful union between the two adults. The Supreme Court of India recognized this marriage under the Special Marriage Act of 1954¹⁴ which permits marriage between people of different faiths or different castes or same sex.

CONCLUSION

The judgment reaffirms the role of the Supreme Court of India in protecting the fundamental rights of the citizens even if it comes at the expense of going against the social values of the Indian landscape. Hadiya's right to individual autonomy was given more importance as compared to the will of her father. The Supreme Court of India emphasized that Hadiya is an adult, and her decisions should be free from any parental authority. The High Court of Kerala's *parens patriae* jurisdiction is essential for the well-being of the citizens but should not be hindering with the freedom of the individual. The case has set a precedent that is used while addressing interfaith marriages and women's rights against the rigid patriarchal structure.

¹⁴ Special Marriage Act 1954