

Rewriting *Asokan K.M. v. The Superintendent of Police*: Hadiya's Fight for Agency in a Parental State

By *Sandhya PR* and *Urmila Pullat**

Asokan K.M. v. The Superintendent of Police & Ors.

Criminal Writ Petition No. 297 of 2016 (S)

2017 2 KLJ 974

Delivered on: May 24, 2017

Sandhya PR and Urmila Pullat, JJ. (dissenting)

Brief facts and background

1. This habeas corpus petition has been filed by Asokan K.M., the father of 24-year-old Hadiya, alleging that his daughter has been brainwashed into converting to Islam and he is apprehensive that she will be forced to marry and leave the country.

2. A short summary of the facts is important to set the context for deciding this case. Hadiya is a 24-year-old woman, with a degree in Homeopathic medicine and surgery. While pursuing her degree, she started residing in a rented house with four other friends. She became close to two of them, Faseena and Jaseena. This friendship resonated with Hadiya, who began exploring her religious identity during this time. Her inclination to pursue a different religion became a point of contention between her and her family. This difference of opinion about her choice of religion accentuated when she expressed unwillingness to participate in the rituals surrounding her grandfather's death, as they did not resonate with her evolving religious identity.

3. The Petitioner, unsettled by Hadiya's need to embrace a different religious identity, started harassing Hadiya by filing police complaints and writ petitions alleging that Hadiya was missing and should be produced. Despite the various legal actions taken by the Petitioner, Hadiya continued her efforts to officially embrace Islam and approached institutions that would enable her to do so. She pursued embracing her new religious identity relentlessly, even when the Petitioner tried to pressure her by threatening to die by suicide. She made consistent efforts to declare that her new religious identity is a decision she made by utilising her agency and that she is fully aware of her legal and religious rights as an adult citizen. To make this factual scenario clear, she also sent letters to the Petitioner and the

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Director General of Police. Unable to manage the Petitioner's various attempts to dissuade her from pursuing her religious identity, she also filed a writ petition seeking relief from further police harassment induced by the Petitioner's complaints.

4. This present case arises from the second writ petition filed by the Petitioner, Hadiya's father. The first petition W.P.(Crl.) 25 of 2016 was filed praying for a writ of habeas corpus seeking the production of Hadiya. That petition was disposed of by another Division Bench of this Court, permitting Hadiya to continue her residence with the 7th Respondent herein (Smt. Sainaba, a social worker), after noting that Hadiya was not under illegal confinement and was residing with the 7th Respondent out of her own free will. It is pertinent to note that Hadiya has asserted before this Court in the previous writ petition, as well as in the present hearings, that she is not under illegal confinement. It is the Petitioner's case that his daughter has been 'brainwashed' into converting to Islam by several people acquainted with her.

5. Our colleagues have decided that Hadiya's *custody* should be with the Petitioner, while ordering police protection for the Petitioner's family and surveillance over the family. Apart from this, the judgment also declares Hadiya's marriage as null and void, while ordering a comprehensive investigation over what they term as a 'forcible conversion' to Islam by Hadiya. This investigation has been ordered to be undertaken by the office of the Director General of Police (Trivandrum) and is to be completed as expeditiously as possible.

6. Further, we must reiterate that despite the immense pressure exerted by her parents and from the constant surveillance and monitoring imposed on her, over the course of two writ petitions Hadiya has continued to assert that she is exercising her free will to stay away from her parents. The reasoning adopted in the judgment by our colleagues unfortunately ignores Hadiya's constitutional rights, especially her agency to be the decision-maker in her life. It is amply clear that Hadiya has chosen a religious path out of her own free will, yet our colleagues remain unwilling to respect her agency.

7. We disagree with the judgment and conclusions reached by our colleague judges. We have analysed the facts placed before us and have considered the constitutional rights of Hadiya, the role of the court in a petition of this nature and other related legal issues. While our colleagues believe that Hadiya's constitutional rights deserve to be taken away, we believe otherwise and have laid out our reasons herein below.

8. Before we examine the legal issues in this case, we would like to point out that the Petitioner's submissions paint Hadiya as a helpless and unthinking 'young girl', incapable of free thought. These submissions strip Hadiya of all individual freedom and demonstrate a lack of basic respect accorded to Hadiya when she is not even referred to by her chosen name. Hadiya's infantilization and the erasure of her identity begins when our colleagues refer to her by her birth name of 'Akhila'. We recognize the need to recognise Hadiya's chosen identity – with the simple act of referring to her by her chosen name 'Hadiya'.

On the habeas corpus writ jurisdiction of this Court

9. This Court, while hearing a habeas corpus petition, has a duty that is restricted to deciding whether a person is placed under illegal confinement and to order production of the person. The nature and application of habeas corpus has been highlighted by the Supreme Court of India time and again.

10. In *Kanu Sanyal v. District Magistrate, Darjeeling and Others* [(1973) 2 SCC 674], while elaborating upon the nature of the writ of habeas corpus, the Supreme Court noted the following (para 4):

"It will be seen from this brief history of the writ of habeas corpus that it is essentially a procedural writ. It deals with the machinery of justice, not the substantive law. The object of the writ is to secure release of a person who is illegally restrained of his liberty. The writ is, no doubt, a command addressed to a person who is alleged to have another person unlawfully in his custody requiring him to bring the body of such person before the court, but the production of the body of the person detained is directed in order that the circumstances of his detention may be inquired into, or to put it differently, "in order that appropriate judgment be rendered on judicial enquiry into the alleged unlawful restraint"."

11. The Supreme Court went on to state (in the same para) that:

"... the writ is primarily designed to give a person restrained of his liberty a speedy and effective remedy for having the legality of his detention enquired into and determined and if the detention is found to be unlawful, having himself discharged and freed from such restraint."

12. While deciding on whether a person has been placed under illegal confinement, the role of the court is best encapsulated in *Girish v. Radhamony K* [(2009) 16 SCC 360], where the Honourable Supreme Court stated that:

"All that is required is to find out and produce in court the person who is stated to be missing. Once the person appeared and she had stated that she had gone of her own free will, the High Court had no further jurisdiction to pass the impugned order in exercise of its writ jurisdiction under Article 226 of the Constitution."

13. Far back in 1976, in *Gian Devi v. Superintendent, Nari Niketan, Delhi* [(1976) 3 SCC 234], the Supreme Court was presented with the question of a young woman's choice to decide who to stay with and where to stay, in a Habeas Corpus writ petition. While elaborating on the freedom of choice of a young woman, the Court held as follows (para 7):

"As the petitioner is sui juris no fetters can be placed upon her choice of the person with whom she is to stay, nor can any restriction be imposed regarding the place where she should stay. The court or the relatives of the petitioner can also not substitute their opinion or preference for that of the petitioner in such a matter."

14. Thus, the court hearing a habeas corpus petition can order the production of the person who is alleged to be illegally detained. Upon such production, the High Court is to enquire into whether the person has acted of their own free will or is being held against their will by any person. Relying on these judgments of the Supreme Court, this Court has a duty in a writ of this nature to restrict itself to identifying whether Hadiya had left on her own free will or is being detained against her will.

15. We have considered the various submissions made vide the affidavits as well as our interaction with Hadiya. We also note that Hadiya's stance has remained consistent before this Court in this petition as well as the previous one. Considering the principles laid down in the above judgments and the facts of this case, it is clear to us that Hadiya has intentionally and willfully stayed away from her parents and her home, exercising her free will in making that choice.

16. On the other hand, the Petitioner contends that Hadiya is operating, not out of her free will, but under the undue influence of others. Our colleagues agree however, we disagree with this conclusion.

17. We note that habeas corpus petitions are often used to allow parents or relatives to try and exert control and pressure over the choices made by their adult children, particularly women. Pratiksha Baxi, while tracing the use of the writ of habeas corpus in India finds that this writ has long been used within the family to control women's choices of marital or romantic partners.¹ She further notes the misuse of the writ to suit private agendas. Baxi's succinct summarization of the misuse of the writ is not lost on us.

18. In examining the impact of the writ of habeas corpus on an adult woman's autonomy, we would like to reiterate the Supreme Court's stance in *Lata Singh v. State of U.P. and Others* [(2006) 5 SCC 475]. This was a case concerning intimidation of a young couple by family members, and the Court in para 17 noted as follows:

"This is a free and democratic country, and once a person becomes a major he or she can marry whosoever he/she likes. If the parents of the boy or girl do not approve of such inter-caste or inter religious marriage the maximum they can do is that they can cut-off social relations with the son or the daughter, but they cannot give threats or commit or instigate acts of violence and cannot harass the person who undergoes such inter-caste or inter-religious marriage. We, therefore, direct that the administration/police authorities throughout the country will see to it that if any boy or girl who is a major undergoes inter-caste or inter religious marriage with a woman or man who is a major, the couple is not harassed by anyone nor subjected to threats or acts of violence, and anyone who gives such threats or harasses or commits acts of violence either himself or at his instigation, is taken to task by instituting criminal proceedings by the police against such persons and further stern action is taken against such persons as provided by law."

¹ *Pratiksha Baxi*, Habeas Corpus in the Realm of Love: Litigating Marriages of Choice in India, Australian Feminist Law Journal 25 (2006), pp. 59-78.

19. Hadiya has a fundamental right to freedom of conscience and the right to freely profess, practice and propagate religion, as per Article 25 of the Constitution of India, and she has repeatedly stated before this Court that she has converted to Islam freely and of her own will.

20. On such a factual backdrop, the *modus operandi* of the Petitioner to maneuver the legal machinery and leverage access to the courts to impose a control over a woman's agency is extremely troubling. Writs of this nature should be dismissed, and the courts should not shy away from recognizing this capture of the constitutional mechanism to prevent women from living a full life of freedom – of choice, movement, and personal liberty. Filing habeas corpus petitions in cases such as these to obtain 'custody' of adult women is a gross and violent abuse of the legal machinery and courts of justice.

21. We hold that Hadiya is not under illegal detention and therefore there is no basis whatsoever to issue a writ of habeas corpus. We see no reason whatsoever in dealing with affiliated facts surrounding Hadiya's life in this writ petition.

22. In coming to such a conclusion, we therefore dissent and disagree with the judgment of our colleagues, who are of the view that Hadiya is operating under the influence of others, and who have therefore not only granted Hadiya's custody to the Petitioner, but have also declared her marriage null and void, in the exercise of the Court's *parens patriae* jurisdiction. We find that this reasoning infantilizes Hadiya and strips her of her constitutionally protected agency, and ignores the intersection of identities - Hadiya converting to a minority religion, belonging to the female gender, and being a young woman from a small town in Kerala. Below, we record our reasons for why the reasoning of our colleagues does not stand up to constitutional scrutiny.

On the question of the High Court's *parens patriae* jurisdiction:

23. Our colleagues, Justices Mohan and Mathew, have invoked the *parens patriae* jurisdiction² of the court, stating that there is anxiety and concern about the "safety of the detenu and her well-being". In the interim order dated 21.12.2016, they stated that:

*"This Court exercising *parens patriae* jurisdiction has a duty to ensure that young girls like the detenu are not exploited or transported out of the country. Though the learned Senior Counsel has vociferously contended that the detenu is a person who has attained majority, it is necessary to bear in mind the fact that the detenu who is a female in her twenties is at a vulnerable age. As per Indian tradition, the custody of an unmarried daughter is with the parents, until she is properly married. We consider it the duty of this Court to ensure that a person under such a vulnerable state is not exposed to further danger, especially in the circumstances noticed above where even her marriage is stated to have been performed with another person, in accordance*

2 A Latin phrase that means *parent of the nation/country*.

with Islamic religious rites. That too, with the connivance of the 7th respondent with whom she was permitted to reside, by this Court.”

24. This opinion of our colleagues is patently erroneous and violates her right to life with dignity and personal liberty under Article 21 of the Constitution of India. Hadiya is a 24-year-old woman who has stated repeatedly that she converted to Islam of her own volition. She married Shefin Jahan with the help of the 7th respondent and the validity of the marriage is not in question or challenge before this Court. Whether Shefin Jahan is accused of a criminal offence or harbours ‘radical inclinations’ (which according to our colleagues is evidenced by his Facebook posts), is not a legal or factual ground on which to decide whether Hadiya was indoctrinated or that her consent to the marriage was vitiated. There is no legal basis whatsoever for our colleagues to have reached the subsequent conclusion that:

“The marriage which is alleged to have been performed is a sham and is of no consequence in the eye of law. The 7th respondent and her husband had no authority or competence to act as the guardian of Ms. Akhila (sic) and to give her in marriage. Therefore, the alleged marriage is null and void. It is declared to be so.”

25. The judgment of our colleagues further infantilizes Hadiya while stating as follows: “In the above factual background, we are not satisfied that it is safe to let Ms. Akhila (sic) free to decide what she wants in her life. She requires the care, protection and guidance of her parents.”

26. To better engage with it, we are quoting below the reasoning that leads our colleagues to conclude that Hadiya is in need of the care and protection of this Court:

“49. Ms. Akhila (sic) is the only child of her parents. There are no other persons in this world, who would consider the welfare and well-being of their daughter to be of paramount importance than her parents. The nature provides numerous examples of even animals taking care of and protecting their progeny sacrificing their very lives for the purpose. The homo sapien is no exception. The forces operating from behind the curtains have succeeded in creating a hostility in the mind of Ms. Akhila (sic) towards her parents. During our interactions, we have seen the anguish and sorrow of the father, who was pleading with his daughter to return home. The petitioner has in his reply affidavit dated 24.10.2016 (paragraph 7) stated that he has no objection in Ms. Akhila (sic) carrying on worship and following religious practices in accordance with her Islamic beliefs. He also stated that he would afford necessary facilities for her to perform all the rituals of Islam in her house. Therefore, Ms. Akhila (sic) can have no complaint against her parents. She would be safe only with her parents taking into account the fact that she is a girl aged 24 years.

50. A girl aged 24 years is weak and vulnerable, capable of being exploited in many ways. This Court exercising parens patriae jurisdiction is concerned with the welfare of a girl of her age. The duty cast on this Court to ensure the safety of at least the

girls who are brought before it can be discharged only by ensuring that Ms.Akhila (sic) is in safe hands. The 7th respondent has proved that she is unworthy of the trust reposed in her, by her conduct in weaning Ms.Akhila (sic) away from her parents and by having a sham of a marriage ceremony performed with a person like Sri. Shafin Jahan who is an accused in a criminal case, apart from being associated with persons having extremist links. Another Division Bench of this Court has in Lal Parameswar v. Ullas (supra) recognized parental authority over even a female who has attained majority. We are in respectful agreement with the said dictum. A Single Bench of this Court has in Shahan Sha A v. State of Kerala taken note of the functioning of radical organizations pursuing activities of converting young girls of Hindu religion to Islam on the pretext of love. The fact remains that such activities are going on around us in our society. Therefore, it is only appropriate that the petitioner and his wife, who are the parents, are given custody of Ms.Akhila (sic). She shall be cared for, permitted to complete her House Surgeoncy Course and made professionally qualified so that she would be in a position to stand independently on her own two legs. Her marriage being the most important decision in her life, can also be taken only with the active involvement of her parents. The marriage which is alleged to have been performed is a sham and is of no consequence in the eye of law. The 7th respondent and her husband had no authority or competence to act as the guardian of Ms.Akhila (sic) and to give her in marriage. Therefore, the alleged marriage is null and void. It is declared to be so."

27. Our colleagues have also cast serious aspersions that Hadiya's monetary resources for fighting the case emanates from organisations that they believe are responsible for indoctrinating Hadiya. Despite Hadiya's insistence that she is acting of her own free will, they have refused to consider Hadiya's right to make the choices that would define the course of her life, and her religious life in particular, as guaranteed by Article 25 of the Constitution of India.

28. The judgment by our colleagues, Justices Mohan and Mathew, dealt with the issue of Hadiya's conversion to Islam, and subsequent marriage, by constantly questioning her capacity and capability to take decisions, and prescribing the standards to which a young woman should conform. Our colleagues insist that Hadiya's interest in Islam does not conform to what is considered as 'normal behaviour' for a person of her age group, and thus have completely disregarded her fundamental right under Article 25 to pursue a religion of her choice. Our colleagues establish and reiterate standards for what constitutes age-based and gendered normalcy as well as intent to pursue a religion, only to eventually admit that they will not interfere with Hadiya's religious freedom. This religious freedom is later relegated to an issue of secondary importance in the judgment and the judges proclaim that their main concern is one that pertains to Hadiya's continuous refusal to live with her parents.

29. The reasoning and the consequent conclusion arrived at by our colleagues denies Hadiya her agency to make choices and decisions in her own life and fails to recognize that natal families can be sites of violence, coercion, and abuse. This expectation of a protectionist family and inherent considerations of paternalism are also reflected by earlier decisions of this Court involving adult women, where the *parens patriae* jurisdiction was invoked. In the case of *Dr. Parameswar Lal v. N.N. Ullas and Ors* [(2014) Cri. LJ 1921], the Kerala HC stated:

"The parents are entitled to have the custody of their children and in no circumstances, it can be said to be illegal, especially in the case of a girl. The parents have a duty to put their children in a correct pathway in their life. True that the third respondent has become major. But that does not mean that no duty is cast upon the parents to advise her on important matters"

30. An adult woman cannot be given in 'custody' to anyone. She has the right to freedom of movement, which includes the freedom to reside anywhere in the country and with anyone she pleases. An adult woman belongs to no one and is not chattel, to be handed over for safe keeping to her parents. It is not the court's duty or within its jurisdiction to ensure that a woman stays with her parents, according to 'Indian tradition' - Indian tradition is not a ground that can form the basis of depriving a person of their right to freedom of movement, and the right to life and personal liberty under Article 19(1)(d) and Article 21 respectively.

31. In *Kharak Singh v. The State of U.P. and Ors.* [AIR 1963 SC 1295], the Supreme Court noted as follows,

"Indeed, nothing is more deleterious to a man's physical happiness and health than a calculated interference with his privacy. We would, therefore, define the right of personal liberty in Article 21 as a right of an individual to be free from restrictions or encroachments on his person, whether those restrictions or encroachments are directly imposed or indirectly brought about by calculated measures."

32. The *Parameshwar Lal* judgment (above) relies on other similar judgments of the Kerala High Court to conclude that parents can put restraints on the freedom of a daughter, even if the daughter has attained majority. This gravely erroneous position that finds place in the judgments of this High Court and allows parental authority to violate the rights of an adult woman under Articles 14,15,19,21 and 25 of the Constitution of India by invoking the Court's *parens patriae* jurisdiction, must be overturned and the dangerous trend stopped in its tracks.

33. Our colleagues exercised their *parens patriae* jurisdiction, relying on faulty reasoning to put Hadiya under veritable house arrest at her parent's home. She was under surveillance by police officers and her parents, her constitutional rights curtailed due to patriarchal notions of woman's place in society and of her diminished capacity to take her own decisions.

34. The adjectives used to describe Hadiya are reflective of these notions. On interacting with Hadiya, our colleagues categorize Hadiya as someone who is an ‘ordinary girl of moderate intellectual capacity’ and someone who is ‘not possessed of her faculties’. The judges’ disagreement with Hadiya’s choices leads them to disrespect and disavow her agency and refuse to acknowledge Hadiya’s legal and constitutional rights. Given the standards of normalcy already prescribed by them, they also establish the contours of what constitutes female intelligence and independence in India, apart from underlining that marriage is the most important decision of a woman’s life, yet one that must be accomplished with the permission and authority of her parents.

35. The phrasing used to describe Hadiya as a “weak and vulnerable” 24-year-old ‘girl’; who is incapable of exercising free choice, be it religious or life decisions is troubling. As discussed above, the use of *parens patriae* jurisdiction to enforce what is expected from a ‘girl’ of Hadiya’s age is a gross misuse of judicial power. This defective approach has resulted in our colleagues asking Hadiya to continue her education and reiterating that her parents will have a decisive say in her marital decisions. The blatant disregard for the individuality and personhood of a young citizen is reiterated further by insisting that the guardianship of a woman who is a major still vests with the parents, denying Hadiya her right to self-determination and agency.

Article 21, Article 19 and Hadiya’s right to free movement

36. The judgment by our colleagues ordered police protection to Hadiya and her parents and continued surveillance over Hadiya ostensibly for her own safety.

37. We are of the view that restricting Hadiya’s movement is a gross violation of her right to life and personal liberty as guaranteed under Article 21 and Article 19(1)(a) and (d) of the Constitution of India. In *Francis Coralie v. Delhi* [(1981) 1 SCC 608], while elaborating upon the scope of the right to life under Article 21, Justice Bhagawati of the Supreme Court of India, observed as follows (para 8):

“We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing one-self in diverse forms, freely moving about and mixing and commingling with fellow human beings.”

“...Every act which offends against or impairs human dignity would constitute deprivation protanto of this right to live and it would have to be in accordance with reasonable, fair and just procedure established by law which stands the test of other fundamental rights.”

38. Courts in India have time and again reiterated the importance of upholding the right to life and personal liberty as enshrined in the Constitution. In *R. Rajagopal & Ors. v. State of*

Tamil Nadu & Ors. [(1994) 6 SCC 632], Justice B. Jeevan Reddy of the Apex Court held, in summary, *inter alia*, that:

"The right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. It is a "right to be let alone". A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education among other matters."

39. The Apex Court in *Anuj Garg & Ors. v. Hotel Association of India & Ors.* [(2008) 3 SCC 1], while discussing the conundrum between the right to employment and security, stated,

"The fundamental tension between autonomy and security is difficult to resolve. It is also a tricky jurisprudential issue. Right to Self Determination is an important off-shoot of Gender Justice discourse. At the same time, security and protection to carry out such choice or option specifically, and state of violence-free being generally is another tenet of the same movement. In fact, the latter is apparently a more basic value in comparison to rights to options in the feminist matrix."

40. The Supreme Court further stated in *Anuj Garg (supra)* that:

"Instead of putting curbs on women's freedom, empowerment would be a more tenable and socially wise approach. This empowerment should reflect in the law enforcement strategies of the state as well as law modeling done in this behalf."

41. We are deeply concerned about the scant regard to Hadiya's right to movement and privacy throughout the proceedings in the present case. This Court has passed numerous orders during the course of the proceedings restricting her right to movement, interaction, and communication. Hadiya was required to keep the Court informed about her movements including by providing her phone number and her residence details. The judges restricted her access to a mobile phone, and she was permitted to interact only with her parents at one point of time, completely barred from speaking to or seeing her husband. These sweeping orders passed at various points during the proceedings culminated with the observation that the investigation conducted by the authorities are lacking in so far as they did not examine all of Hadiya's call logs, underlining the extent of surveillance the Court would have allowed without substantiating the need for the same, and irrespective of the facts of the case and the applicable legal provisions.

42. We find no lawful ground exists or has been urged to impose any surveillance on Hadiya. The scant regard displayed with respect to Hadiya's right to privacy and right to movement ignores the ethos of Article 21 and Article 19 of the Constitution of India, as detailed by the Supreme Court in *Kharak Singh v. State of UP* [AIR 1963 SC 1295] and *Gobind v. State of MP* [AIR 1975 SC 1378]. Any restriction on the fundamental rights guaranteed under Article 19(1)(d) have to be reasonable and within the limits imposed by clause (5) of Article 19. Further, as the Supreme Court has stated in *Kharak Singh v. State of UP* [AIR 1963 SC 1295], restrictions must be based in law. The restrictions placed on

Hadiya are arbitrary and unreasonable, and not based on any legal provision or law in force. When we are of the view that this Writ Petition should be dismissed, we have no hesitation in holding that any kind of interference with Hadiya's life, especially the imposition of surveillance and constant monitoring, is an unconstitutional restriction on her freedoms, that derives from a protectionist understanding of women's safety and security and will be a gross infringement of her fundamental rights under Article 21 and Article 19.

The role of the court in entertaining majoritarian mass hysteria and phobia

43. We also place on record our concern and fear that the judgment of our colleagues and its presumptions about Shefin Jahan, has the potential to further existing societal narratives that stereotype, demonize, and otherize the entire Muslim community, and exacerbate Islamophobia and the proliferation of mass hysteria with respect to issues of radicalization and forced marriages. Every case or instance of conversion from one religion to another cannot be viewed as a case of indoctrination or radicalization. Every inter-religious marriage cannot be treated with suspicion, proceeding on the basis that the marriage is a sham one, intended to proselytize or reflective of a hidden agenda.

44. India is a country of a rich and deep diversity. People fall in love. People get married or choose not to. People decide to change their beliefs or have none at all. None of this is the concern of a court of law until and unless such behavior violates the rights enshrined in the Constitution or other legal rights or obligations. If a marriage needs to be annulled, this must be done in the court which is vested with the jurisdiction to annul the same on grounds recognized in the law. To declare Hadiya and Shafin Jahan's marriage null and void is beyond the jurisdiction of this Court in a petition to issue a writ of Habeas Corpus.

Conclusion

45. In conclusion, we dismiss the Writ Petition filed by the Petitioner, on the ground that this is not a fit case for issuing a writ of Habeas corpus, as Hadiya is not in illegal confinement, and further, cannot be ordered to be in the custody of anyone, be it the Petitioner, the 7th Respondent, or her husband. Hadiya is an adult woman, free to do as she pleases with her life and must not be prevented from enjoying the fundamental rights guaranteed to her under the Constitution of India.

46. We award costs of Rs.5,00,000 to be paid by the Petitioner to Hadiya towards legal costs and exemplary damages. This amount shall be deposited within one month from the date of this judgment.



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