

2023 LiveLaw (SC) 143

**IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION**

DR. DHANANJAYA Y. CHANDRACHUD; CJI., PAMIDIGHANTAM SRI NARASIMHA; J., J.B. PARDIWALA; J.
Transferred Case (Civil) No 3 of 2023; February 20, 2023

Ashwini Kumar Upadhyay *versus* Union of India and Another

Constitution of India, 1950; Article 32 - It is trite law that this Court in the exercise of its jurisdiction under Article 32 of the Constitution cannot issue a mandamus to Parliament to legislate nor does it legislate. The constitutional power to legislate is entrusted to Parliament or, as the case may, the State Legislatures under Articles 245 and 246 of the Constitution - Supreme Court refuses to entertain pleas to increase age of marriage for women as 21 years.

(Arising out of impugned final judgment and order dated 13-01-2023 in T.P.(C) No.1249/2020 passed by the Supreme Court of India)

For Petitioner(s) Mr. Ashwani Kumar Dubey, AOR WPC 551/2021 Ms. Vandana Sharma, AOR WPC 584/2022 Petitioner-in-person

For Respondent(s) Mr. Tushar Mehta, SG Mr. Gurmeet Singh Makker, AOR Dr. Arun Kumar Yadav, Adv. Mr. Rajat Nair, Adv. Mr. Rooh-e-hind Dua, Adv. Mr. Digvijay Dam, Adv. Mr. Pratyush Shrivastava, Adv. Mr. Tushar Mehta, Solicitor General Mr. Rajat Nair, Adv. Mrs. Deepabali Dutta, Adv. Mr. Digvijay Dam, Adv. Mrs. Rooh E Hina Dua, Adv. Mr. Arvind Kumar Sharma, AOR

ORDER

1 The reliefs which have been claimed by the petitioner in the writ petition which was instituted before the High Court of Delhi, which has been transferred to this Court, are set out below:

“a) direct and declare that the words "and the age of the woman intending to be married shall not be under eighteen years", occurring in Section 60(1) of the Indian Christian Marriage Act, 1872, are contrary to Articles 14, 15 and 21 of the Constitution of India, and hence void and inoperative;

(b) direct and declare that the words "and if a female, has not completed eighteen years of age" occurring in Section 3(1)(c) of the Parsi Marriage and Divorce Act, 1936, are contrary to Articles 14, 15 and 21 of the Constitution of India, and hence void and inoperative;

(c) direct and declare that the words "and the female, the age of eighteen years" occurring in Section 4(c) of the Special Marriage Act, 1954, are contrary to Articles 14, 15 and 21 of the Constitution, and hence void and inoperative;

(d) direct and declare that the words "and the bride, the age of eighteen years" occurring in Section 5(iii) of the Hindu Marriage Act, 1955, are contrary to Articles 14, 15 and 21 of the Constitution, and hence void and inoperative;

(e) direct and declare that the words "and if a female, has not completed eighteen years of age" occurring in Section 2(a) of the Prohibition of Child Marriage Act, 2006, are contrary to Articles 14, 15 and 21 of the Constitution of India, and hence void and inoperative.”

2 The petitioner urges that the distinction between the minimum age of marriage for men (21 years) and women (18 years) is arbitrary and, therefore, violative of Articles 14, 15 and 21 of the Constitution.

3 What the petitioner seeks in essence is that the age of marriage which is 18 years for women in the above legislations should be enhanced to 21 years so as to be at par with the minimum age of marriage for men. The mere striking down of the provision by which the age of marriage for women has been fixed at 18 years would not serve the purpose since striking out the provision will result in there being no minimum age of marriage for women. What the petitioner seeks is a legislative amendment to increase the minimum age of marriage for women to 21 years.

4 It is trite law that this Court in the exercise of its jurisdiction under Article 32 of the Constitution cannot issue a mandamus to Parliament to legislate nor does it legislate. The constitutional power to legislate is entrusted to Parliament or, as the case may, the State Legislatures under Articles 245 and 246 of the Constitution.

5 We therefore decline to entertain the case on the above ground.

6 The Transferred Case is dismissed.

7 Pending applications, if any, stand disposed of.

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