

INTERNATIONAL JOURNAL OF LEGAL STUDIES AND SOCIAL SCIENCES [IJLSSS]

ISSN: 2584-1513 (Online)

Volume 2 | Issue 3 [2024] | Page 73- 81

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ARTICLE 16 OF THE UDHR: A PILLAR OF HUMAN RIGHTS AND PERSONAL FREEDOM

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ABSTRACT

This paper critically examines the application of Article 16 of the Universal Declaration of Human Rights (UDHR) within the legal framework of India. Article 16 pertains to fundamental rights related to marriage and family, a topic of substantial relevance in India due to its intricate and diverse cultural, religious, and social landscape. Although India is a signatory to the UDHR, aligning its provisions with national legal frameworks presents distinct challenges due to this diversity.

In this study, we undertake a detailed analysis of how Article 16 is reflected in the Indian Constitution and other legal instruments. By scrutinizing the relevant constitutional provisions and legal statutes, we assess their compatibility with the rights enshrined in Article 16. Additionally, the paper explores significant judicial decisions that have interpreted and applied these rights within the Indian context. Through this examination, we aim to understand how the Indian judiciary has navigated the principles of Article 16 in its rulings.

Our findings indicate that while there have been notable advancements in acknowledging and safeguarding the rights specified in Article 16, there remain considerable gaps and inconsistencies, particularly concerning personal and religious laws. These inconsistencies highlight the complexities of harmonizing international human rights standards with the multifaceted nature of Indian personal and religious practices.

The paper concludes with a series of recommendations designed to enhance the effective implementation and realization of Article 16 rights in India. These recommendations aim to address the identified gaps and promote greater alignment between international human rights norms and domestic legal frameworks.

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Keywords: Universal Declaration of Human Rights, Article 16, marriage and family rights, Indian legal framework, constitutional analysis, landmark case laws, personal and religious laws, human rights implementation.

INTRODUCTION

Established in the aftermath of the World War II horrors, the Universal Declaration of Human Rights (UDHR) represents a ground-breaking international commitment to safeguarding the fundamental rights and freedoms of every individual². Adopted by the United Nations General Assembly in 1948, the UDHR, comprised of 30 articles, encapsulates a shared global vision for human dignity, equality, and liberty. Its significance is palpable not only in its universal acceptance but also in how it has influenced countless national constitutions, treaties, and laws across the world.

Central to this study is Article 16 of the UDHR, which champions the rights related to marriage and family³. This article emphasizes that every individual has the right to marry and start a family, that marriage should be entered into with free and full consent, and that both partners, regardless of gender, should have equal rights during the marriage and at its dissolution. In societies where marriage holds immense cultural, social, and legal significance, the tenets of Article 16 are pivotal in ensuring that this institution remains just, equitable, and free from coercion.

India, with its rich tapestry of traditions, religions, and customs, presents an intriguing case for the study of UDHR implementation. As one of the founding members of the United Nations, India has consistently shown commitment to the ideals enshrined in the UDHR. The Indian Constitution, adopted in 1950, mirrors several UDHR provisions, underscoring the nation's aspiration to create a just, inclusive, and rights-driven society. However, translating these global human rights norms into domestic realities, especially in the domain of personal and familial relationships governed by a mosaic of laws, presents its own set of challenges and complexities. This paper delves into the interplay between Article 16 of the UDHR and India's legal framework, examining the synergies, gaps, and the nuanced interplay of global standards with indigenous contexts.

² Amnesty International. "Universal Declaration of Human Rights - Amnesty International," September 18, 2023. <[https://www.amnesty.org/en/what-we-do/universal-declaration-of-human-rights/#:~:text=The%20UDHR%20was%20adopted%20by,for%20freedom%2C%20justice%20and%20peace](https://www.amnesty.org/en/what-we-do/universal-declaration-of-human-rights/#:~:text=The%20UDHR%20was%20adopted%20by,for%20freedom%2C%20justice%20and%20peace>)> (accessed on 29/09/2023).

³ "Universal Declaration of Human Rights | United Nations," n.d. <<https://www.un.org/en/about-us/universal-declaration-of-human-rights>>. (accessed on 29/09/2023)

INDIAN CONSTITUTION AND UDHR

India's relationship with the Universal Declaration of Human Rights (UDHR) is rooted in its foundational commitment to upholding and promoting human rights, dignity, and equality. As an active participant in the drafting of the UDHR and being one of the founding members of the United Nations, India played a significant role in shaping the declaration and subsequently endorsed it wholeheartedly. This endorsement was not merely symbolic; the principles enshrined in the UDHR found their way into the Indian Constitution, which was adopted in 1950, a mere two years after the UDHR's proclamation.

The Preamble to the Indian Constitution itself reflects the UDHR's spirit, committing to secure for its citizens justice, liberty, equality, and fraternity. More pertinently, when we examine the provisions relevant to Article 16 of the UDHR, we see a clear resonance in the fundamental rights and directive principles laid down in the Indian Constitution. For instance, Article 21 of the Indian Constitution guarantees the right to life and personal liberty, which the judiciary has expansively interpreted to encompass the right to marry a person of one's choice⁴. Similarly, Article 15 prohibits discrimination on the grounds of religion, race, caste, sex, or place of birth, which aligns with Article 16's emphasis on non-discrimination in the context of marriage. The directive principles, although not justiciable, further emphasize creating a just social order, with Articles 39 and 42 calling for ensuring that men and women equally have the right to an adequate means of livelihood and provision for just and humane conditions of work, respectively⁵. While the Indian Constitution does not explicitly delineate every tenet of Article 16, its broader ethos, combined with its specific provisions, embodies the essence of the rights enshrined in the UDHR, especially with regards to marriage and family.

KEY PROVISIONS OF ARTICLE 16

1. RIGHT TO MARRY AND FOUND A FAMILY

At the heart of Article 16 is the acknowledgment that every adult individual, irrespective of race, nationality, or religion, possesses an inherent right to marry and establish a family. This provision emphasizes the universal nature of this right, transcending boundaries, cultures, and socio-political constructs⁶. In essence, marriage and the establishment of a family unit are recognized not just as legal constructs but as

⁴ "Right to Equality: Article 16, 17 & 18 of the Constitution." iPleaders, September 23, 2023. <<https://blog.ipleaders.in/right-to-equality-article-16/>>. (accessed on 30/09/2023)

⁵ <<https://blog.ipleaders.in/directive-principles-state-policy/>> (accessed on 30/09/2023)

⁶ "In India, the Right to Marry," n.d. <<https://www.legalserviceindia.com/legal/article-7769-in-india-the-right-to-marry.html>>. (accessed on 30/09/2023)

fundamental human rights, anchoring individuals in societal structures and offering emotional, psychological, and often, economic stability.

2. RIGHT TO FREE AND FULL CONSENT IN MARRIAGE

Another critical facet of Article 16 is the emphasis on "free and full consent" in the context of marriage. This provision acts as a bulwark against practices such as forced, child, or arranged marriages without consent⁷. It recognizes the paramount importance of individual agency, ensuring that both parties entering into the marital bond do so willingly and without any form of coercion, deception, or undue pressure. This provision thus underscores the personal autonomy and self-determination inherent in the act of marrying.

3. EQUAL RIGHTS IN MARRIAGE, DURING MARRIAGE, AND AT ITS DISSOLUTION

Equality within the marital bond is a cornerstone of Article 16. This means that irrespective of gender, both partners have equal rights at the time of marriage, throughout its duration, and if the marriage were to be dissolved. This provision challenges traditional patriarchal structures and practices that have, in many cultures, subordinated one partner, often women, to the other. In practice, this calls for equal decision-making powers, equal rights to property, and equal rights in matters relating to the custody of children, among others, during and post the marital relationship.

4. THE RIGHTS OF CHILDREN

The last vital provision of Article 16 pertains to the rights of children. It indirectly emphasizes that children, as products of the marital union or otherwise, should be treated with dignity, care, and fairness⁸. While Article 16 does not expound on these rights in detail, the recognition of the family as the "natural and fundamental group unit of society" alludes to the essential role families play in nurturing, caring for, and providing for children. By extension, it highlights the importance of safeguarding children's rights within this fundamental societal unit.

Each of these provisions forms the bedrock of a progressive, rights-centric approach to marriage and family, challenging historical injustices and advocating for a more equitable societal framework

⁷ In India, the Right to Marry," n.d.< <https://www.legalserviceindia.com/legal/article-7769-in-india-the-right-to-marry.html>>. (accessed on 30/09/2023)

⁸< <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities>> (accessed on 30/09/2023)

COMPARATIVE ANALYSIS: ARTICLE 16 OF UDHR AND INDIAN LEGAL INSTRUMENTS

Article 16 of the Universal Declaration of Human Rights (UDHR) serves as a global benchmark, asserting rights associated with marriage and family. When juxtaposed with Indian legal instruments, we observe both harmonization and divergence in principles and application.

To begin with, the right to marry and found a family as endorsed by Article 16 finds echoes in the Indian legal landscape. The Indian Constitution, through its Fundamental Rights, implicitly upholds this right. While the Constitution doesn't explicitly state the right to marry, Article 21, which guarantees the right to life and personal liberty, has been expansively interpreted by the Indian judiciary to encompass the right to marry a person of one's choice. This was evident in the landmark judgment of the Supreme Court in the *Shafin Jahan vs. Asokan K.M.* case, which reinforced the right to marry as a facet of individual liberty⁹.

The emphasis on free and full consent in Article 16 has its parallels in India. The Special Marriage Act, 1954, for instance, necessitates both parties' consent, highlighting that they should be competent to give valid consent at the time of marriage. The Prohibition of Child Marriage Act, 2006 further underscores this principle by criminalizing marriages without free and valid consent, particularly concerning minors.

Equal rights during marriage, its duration, and at its dissolution is a principle central to Article 16. While the Indian Constitution, in Article 14, guarantees equality before the law and equal protection of laws to all, the application in the context of marriage is intricate due to India's diverse personal laws. For instance, under the Hindu Marriage Act, 1955, both spouses have equal rights to seek divorce on specific grounds¹⁰. However, controversies arise in the realm of Muslim personal law, especially with practices like "Triple Talaq," which, until its recent outlawing by the Indian judiciary, had been a contentious issue regarding gender equality in marital rights.

Lastly, the rights of children and their protection, as alluded to in Article 16, are enshrined in various Indian statutes. The Indian Constitution, in its Directive Principles (Article 39(f)), mandates that children be given opportunities and facilities to develop healthily and that their childhood and youth are protected against exploitation¹¹. The Juvenile Justice (Care and Protection of Children) Act, 2015, and the aforementioned

⁹ "Shafin Jahan vs. Asokan K.M. and Ors.," n.d.< [¹⁰ Times of India Blog. "Grounds for Divorce in India," July 25, 2021. <<https://timesofindia.indiatimes.com/readersblog/lawpedia/grounds-for-divorce-in-india-35652/>>](https://privacylibrary.ccgmlud.org/case/shafin-jahan-vs-asokankmandors#:~:text=The%20Court%20held%20that%20the,determining%20our%20choice%20of%20partners%E2%80%9D>.(accessed on 30/09/2023)</p></div><div data-bbox=)

¹¹Article 39 of the Constitution," n.d.< <https://evaw-global-database.unwomen.org/en/countries/asia/india/2014/article-39-of-the->

Prohibition of Child Marriage Act, 2006, further bolster the rights and welfare of children in the context of family and society.

In summation, while the principles of Article 16 of the UDHR find significant resonance in Indian legal instruments, the application and interpretation, especially given India's diverse cultural and religious tapestry, present a multifaceted tableau. The challenge lies not just in harmonizing the global standards of the UDHR with indigenous laws but also in navigating the complexities of a pluralistic society to ensure the universal ideals of human rights.

This comparative analysis brings forth the similarities and variances between the global standards set by the UDHR and the Indian legal provisions, emphasizing the complexities in their application within the Indian context

CHALLENGES IN IMPLEMENTATION OF ARTICLE 16 IN INDIA

The ambitious ideals embedded in Article 16 of the Universal Declaration of Human Rights (UDHR), when contextualized within the Indian socio-cultural landscape, encounter a series of challenges. To begin with, deeply entrenched cultural and societal factors play a significant role. Despite legal provisions advocating free and full consent in marriages, the practice of arranged marriages — where family elders often have a decisive role — is predominant. These arrangements can sometimes border on coercive, infringing on the principles of free consent. Furthermore, societal norms and traditions, such as dowry or the stigma attached to divorce, can compromise the principles of equality enshrined in Article 16.

Simultaneously, the kaleidoscope of personal and religious laws in India often conflicts with the universal tenets of Article 16. Given that India is home to diverse religions, each with its own set of marital and familial regulations, the challenge lies in reconciling these varied laws with the UDHR's universal standards. For instance, issues like polygamy, permitted in certain religious interpretations, stand at odds with the UDHR's ideals of equality within marriage.

Lastly, the interplay between the judicial and legislative realms further complicates the implementation landscape. While the Indian judiciary has, at times, been proactive in upholding the spirit of the UDHR — as seen in landmark judgments outlawing practices contrary to Article 16 principles — there remain legislative gaps and inconsistencies. The coexistence of secular civil laws with religious personal laws can sometimes lead to ambiguous legal interpretations, muddying the waters of rights and protections. Moreover, the pace of legislative reforms, often slowed down by political considerations and societal

constitution#:~:text=Brief%20Description&text=(f)%20that%20children%20are%20given,against%20moral%20and%20material%20abandonment>.(accessed on 1/10/2023)

sensitivities, can lag behind the evolving understanding of human rights, creating a chasm between global standards and ground realities.

In essence, while India's constitutional and legal framework resonates with the principles of Article 16, the intricate maze of cultural nuances, religious doctrines, and legislative-judicial dynamics poses significant challenges to its holistic implementation.

RECOMMENDATIONS FOR BETTER IMPLEMENTATION

1. REFORMS IN PERSONAL LAWS

While India's diverse religious tapestry is a mark of its rich cultural heritage, it also poses challenges when religious personal laws come into conflict with universal human rights principles¹². There's an urgent need for a thorough review and reform of these personal laws to ensure they align with the tenets of Article 16. Such reforms should be driven by extensive consultations with stakeholders, including religious leaders, legal experts, and community representatives. Unifying diverse personal laws into a comprehensive, secular family law code, which upholds the principles of consent, equality, and protection in marriage, could be a progressive step forward. While this is a challenging endeavour given the complexities of religious sentiments, it's essential for ensuring that all citizens, irrespective of their religious backgrounds, are granted equal marital rights.

2. SENSITIZATION AND AWARENESS CAMPAIGNS

Deep-rooted cultural norms and practices, which sometimes run counter to Article 16's principles, cannot be changed overnight or by legal edicts alone. A multipronged approach involving sensitization and awareness campaigns is crucial. Government agencies, NGOs, and community organizations should collaborate to conduct workshops, seminars, and community dialogues that educate people about the importance of free consent in marriages, gender equality, and children's rights. Media, both traditional and digital, can play a pivotal role in amplifying these messages, using relatable narratives and testimonials to effect change from the grassroots level.

3. JUDICIAL INTERVENTIONS AND PROACTIVE ROLES

The Indian judiciary has historically played a transformative role in upholding and expanding human rights. It's essential for the judiciary to continue taking proactive stances, interpreting the Constitution and other legal provisions in ways that resonate with Article 16's ideals. Courts should expedite cases related to marital

¹² <<https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-right-and-responsibility-individuals-groups-and>> (accessed on 10/10/2023)

rights violations, ensuring speedy justice. Additionally, setting up special courts or tribunals to handle such cases might streamline the process further. Judicial activism, combined with regular training programs for judges to acquaint them with international human rights standards, can serve as a robust mechanism to bridge the gap between global norms and domestic practices

CONCLUSION

The principles encapsulated in Article 16 of the Universal Declaration of Human Rights (UDHR) highlight a vision of marriage and family anchored in consent, equality, and the overarching ideals of human dignity. As India grapples with the interplay between these universal standards and its multifaceted socio-cultural and legal landscape, the journey towards full realization remains intricate. While the country's constitution and various legal instruments echo the ethos of Article 16, the challenges posed by deeply entrenched cultural norms, diverse personal laws, and legislative-judicial dynamics cannot be overlooked. Nevertheless, with a commitment to legal reforms, societal sensitization, and robust judicial interventions, India possesses the potential to bridge the existing gaps. By embracing the core tenets of Article 16, India stands not just to full-fill its international commitments but also to reinforce its own constitutional promise of justice, liberty, and equality for all its citizens, paving the way for a more inclusive and harmonious future.

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