2026:AHC:100410

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 469 of 2026

Shajiya Parveen and another

.....Petitioner(s)

Versus

State of U.P. and 3 others

.....Respondent(s)

Counsel for Petitioner(s) : Mahipal Singh
Counsel for Respondent(s) : C.S.C.

AFR

In Chamber

HON'BLE GARIMA PRASHAD, J.

1. Heard Sri Mahipal Singh, learned counsel for the petitioners and Sri Ashwani Kumar Tripathi, learned Additional Chief Standing Counsel for the State-respondents.

2. The present petition has been filed by the petitioners asserting that they are residing together as a couple in a live-in relationship. Petitioner no.1 is a woman aged about 20 years and petitioner no.2 is a male aged about 19 years. It is pleaded that petitioner no.1 belongs to the Muslim community whereas petitioner no.2 belongs to a Scheduled Caste Hindu family.

3. It is stated that the father of petitioner no.1 has been threatening them and pressuring them to sever their relationship, though the parents of the petitioner No.2 have no objection to such a relationship. Hence, by means of the present writ petition, the petitioners seek directions to the respondent police authorities to restrain their family members not to interfere in their cohabitation as a live-in relationship, further to ensure

protection of their life and liberty, as guaranteed under Article 21 of the Constitution of India.

4. Learned counsel for the petitioners submitted that the parties cannot solemnize marriage under the provisions of the Special Marriage Act, 1954 since the Petitioner no.2 boy is only 19 years old and has not yet completed the age of 21 years as required by law to marry.

5. Learned counsel for the petitioners relied upon the orders passed by this Court in similar matters wherein protection has been granted to couples who were living in a live-in relationship and that no one can interfere in their peaceful living. It is submitted that the petitioners are majors and they have the right to live-in with a person of their own choice with or without marriage.

6. Per contra, learned Additional Chief Standing Counsel opposed the prayer placing reliance upon the provisions of the Special Marraige Act, 1954, Hindu Marriage Act, 1955 and the Prohibition of Child Marriage Act, 2006 (hereinafter referred to as "the 2006 Act"). It is contended that the petitioner No.2, being below the age of 21 years, falls within the definition of "Child" thus he cannot solemnise marriage under any of the above laws. It was urged that where the legislature itself has treated a male below the age of 21 years as lacking legal capacity to enter into marriage, the Court ought not to indirectly permit a marriage-like relationship under the rubric of a live-in arrangement. It was further submitted that statutory policy concerning age, maturity and legal capacity cannot be neutralised through a broad invocation of Article 21. It is argued that permitting such a relationship would defeat the legislative intent underlying the statutory framework governing marriageable age.

7. Upon hearing learned counsel for the parties and perusing the material brought on record, the core issue which arises for consideration is:

> *Whether this Court, in exercise of its writ jurisdiction, can grant protection to a live-in relationship where*

one of the parties (male) is below 21 years of age and is statutorily classified as a "child" for the purposes of marriage, and whether, in such circumstances, this Court can restrain parents or guardians from interfering or from taking lawful steps under the applicable statutory framework.

8. At the outset, it is necessary to examine the legislative scheme governing marriage in the country. The field is principally occupied by three enactments, namely, the Hindu Marriage Act, 1955, the Special Marriage Act, 1954, and the Prohibition of Child Marriage Act, 2006. Each of these statutes, though operating in different spheres, uniformly prescribe conditions relating to the legal capacity to marry, including the minimum age requirement.

9. **The Prohibition of Child Marriage Act, 2006** (hereinafter referred to as the '2006 Act') is the primary enactment which defines the capacity of parties to enter into a marital relationship and prescribes consequences where such capacity is absent.

10. Section 2(a) of the 2006 Act defines a "child" to mean a person who, if male, has not completed twenty-one years of age, and if female, has not completed eighteen years of age. Section 2(b) defines a "child marriage" as a marriage to which either of the contracting parties is a child.

11. Section 3 provides that every child marriage shall be voidable at the option of the contracting party who was a child at the time of the marriage. The proviso stipulates that a petition for annulment may be filed only by such contracting party. Parliament thus preserved to the child party the option to later avoid such a marriage.

12. Sections 4 to 7 deal with the consequences arising out of such marriages. These provisions empower the district court to pass orders relating to maintenance, residence, custody of children, legitimacy of children born out of such marriages, and modification of such orders.

13. Section 11 provides for punishment in cases where a child marriage is promoted or permitted. It specifically provides that any person having charge of the child, including a parent or guardian, who promotes, permits, or negligently fails to prevent such marriage, shall be punishable. The section further incorporates a statutory presumption that, where a minor has contracted a marriage, the person having charge has failed to prevent it, unless the contrary is proved.

14. Section 13 empowers the Judicial Magistrate of the first class or Metropolitan Magistrate to issue an injunction where a child marriage in contravention of the Act has been arranged or is about to be solemnised. Parliament therefore did not intend the law to remain helpless until the event was complete. It expressly created a preventive power to stop the prohibited union before solemnisation.

15. Section 15 declares that offences under the Act are cognizable and non-bailable.

16. Section 16 requires the State Government to appoint Child Marriage Prohibition Officers and places upon them duties to prevent solemnisation of child marriages, collect evidence, counsel individuals and communities, create awareness, and discharge such other functions as may be assigned.

17. The 2006 Act thus creates a full enforcement structure. It does not leave the matter to private morality or family pressure. It institutionalises prevention. Thus, the Parliament did not intend merely to classify child marriages after they occur. It intended to prevent them, discourage them, penalise those who facilitate them, protect those affected by them, and regulate the consequences where they nevertheless take place. The statute is, in substance, a complete code for prevention and intervention in this field.

18. The 2006 Act establishes a marriage-specific incapacity. A male may be an adult under the law of majority upon completing eighteen years of age, but the Parliament has still chosen to treat him as a “child” for marriage until the age of twenty-one. This distinction reflects a

conscious legislative judgment that marriage requires a higher level of maturity than many other civil acts.

19. The need for such child marriage restriction legislation is also clear from the structure and purpose of the Act itself. These laws exist because Parliament has recognised that premature unions often involve lack of maturity, lack of financial and emotional readiness, interruption of education, gendered vulnerability, and serious social and long-term consequences. The statute is not an obsolete formality. It is a modern welfare enactment responding to conditions that Parliament considered serious enough to warrant prevention, punishment and institutional oversight.

20. The provisions of the **Hindu Marriage Act, 1955** may now be examined. Section 5 of that Act lays down the conditions for a Hindu marriage. Clause (iii) expressly states that the bridegroom must have completed the age of twenty-one years and the bride the age of eighteen years at the time of marriage. The wording of the section shows that the age requirement is a basic condition for the solemnisation of a Hindu marriage.

21. It is true that under the Hindu Marriage Act not every violation of Section 5 automatically renders the marriage void under Section 11. However, that does not reduce the importance of the age condition. Section 18 specifically provides punishment for contravention of certain conditions of marriage, including the age condition in Section 5(iii). Therefore, even under Hindu personal law, Parliament treated the age requirement seriously and attached penal consequences to its breach.

22. The provisions of the **Special Marriage Act, 1954** now require consideration. It gives the secular and religion-neutral framework. Section 4 begins with a non-obstante clause and states that, notwithstanding anything contained in any other law relating to the solemnisation of marriages, a marriage between any two persons may be solemnised under the Act only if the conditions listed therein are fulfilled. Clause (c) specifically states that the male must have completed

the age of twenty-one years and the female the age of eighteen years. Section 24 then provides that any marriage solemnised under the Act shall be null and void if any of the conditions specified in clauses (a), (b), (c) and (d) of Section 4 has not been fulfilled. Thus, under the secular civil framework, the age condition is not merely procedural. It directly affects the validity of the marriage.

23. A conjoint reading of the aforesaid enactments leaves no manner of doubt that, across both personal and secular law, as well as under the special preventive legislation, a uniform legislative policy has been adopted. A male who has not completed twenty-one years of age is not regarded as possessing the requisite legal capacity to enter into a marital relationship, and any union involving such a person falls within the zone of statutory restriction.

24. The position under Muslim personal law also requires notice. Petitioner no.1 belongs to the Muslim community. The petitioners do not claim that they have solemnised a *nikah*. As per their own case, they are in a live-in relationship outside marriage. Even if some schools of Muslim personal law may recognise marriage on puberty, that concerns marriage and not a live-in arrangement outside marriage. In the present case, the petitioners do not assert a Muslim marriage at all. Therefore, Muslim personal law does not come to their assistance. At the same time, even if a more permissive rule existed in any personal law, the secular statutes presently in force prescribe the higher threshold that this Court is bound to enforce. Thus, what cannot be achieved either as a valid secular marriage or as a pleaded lawful marriage under the applicable personal-law framework cannot be judicially reconstituted as a sanctioned live-in arrangement.

25. The petitioners themselves stated that they are in a live-in relationship because the law does not currently allow them to marry. In this context, the live-in arrangement is being used as an alternative to marriage, which affects the legal character of the case.

26. A live-in relationship involving cohabitation, shared domestic life, emotional and physical intimacy, and mutual dependency is, in practical substance, a relationship in the nature of marriage. If such a relationship is consciously adopted because the law withholds the right to marry until a later age, then a court order protecting its continuance does not remain a bare protection order. It begins to operate as an indirect sanction for a presently impermissible marriage-like arrangement.

27. The doctrine that what cannot be done directly cannot be permitted to be done indirectly applies with full force here. If a court cannot permit the parties to marry because the law withholds that permission until the male completes twenty-one years, the court cannot achieve substantially the same result by treating the functional equivalent of that marriage as entitled to judicial support simply because it is described as a live-in relationship.

28. This position becomes clearer on a proper reading of Section 3 of the 2006 Act. The provision preserves to the child party the right later to avoid the marriage. If, in the meantime, a court permits a male child under the Act to continue in a marriage-like live-in relationship with an adult female, the woman may be exposed to serious legal and social insecurity. She may alter her entire life in reliance on the relationship, while the law still preserves to the male child a later option of repudiation or annulment. A welfare statute cannot be read in a way that increases the vulnerability of the woman while purporting to protect the child male.

29. The argument of parity also deserves consideration. Where a girl is below eighteen years of age, the law does not recognise her ‘consent’ to enter into a marriage or even a marriage-like relationship. In such cases, even if the relationship is claimed to be consensual, the law treats it as impermissible, and stringent provisions such as those under the Protection of Children from Sexual Offences Act, 2012 are attracted. The boy is not exonerated merely on the ground of consent.

30. On the same principle, where a male is below twenty-one years of age and is treated as a ‘child’ for the purposes of marriage under the statutory framework, the concept of ‘consent’ cannot be used to bypass the legal restriction. A relationship cannot be permitted merely because it is described as consensual, when the law itself treats one of the parties as lacking the capacity to enter into such a union.

31. The legislative threshold is intended to be protective and controlling, and cannot be applied selectively. What is not permitted in the case of a minor girl on the ground of consent cannot be indirectly permitted in the case of a male child merely because the relationship is described as voluntary cohabitation.

32. The issue of parental intervention also requires careful consideration. It would be too broad to hold that no writ can ever be issued against parents. Where parents resort to threats, violence, illegal confinement, abduction, or any act outside the bounds of law, the Court is bound to restrain such conduct. However, the position cannot be taken to the other extreme. Where the statute itself places responsibility upon parents and guardians to prevent child marriage, the Court cannot pass an order which, in effect, restrains them from taking lawful steps in discharge of that duty.

33. Section 11 of the 2006 Act makes it clear that persons having charge of the child may be held liable for promoting, permitting, or failing to prevent such marriage. Section 13 further empowers the Magistrate to intervene and prevent such marriages through injunctions. These provisions indicate that the law expects active responsibility on the part of parents and guardian family members to take preventive steps, and not remain passive. Accordingly, while parents or family members cannot resort to threats, violence, coercion, or illegal confinement, they cannot be restrained from taking lawful steps such as approaching the police, informing the Child Marriage Prohibition Officer, or initiating proceedings before the competent Magistrate under the statute.

34. It is now necessary to examine the precedents relied upon by the parties.

35. In ***Nandakumar v. State of Kerala*** **(2018) 16 SCC 602**, the Supreme Court, in a habeas corpus proceeding, held that an adult woman cannot be detained or separated from a person of her choice merely because the parties are not competent to marry. The judgment thus restrains unlawful interference with personal liberty. It does not restrain the operation of the statutory framework governing capacity to marry, nor does it require courts to extend protection in a manner that defeats such law.

36. In ***Lata Singh v. State of U.P. (2006) 5 SCC 475***, the Supreme Court held that once a person becomes a major, he or she can marry whosoever he or she likes, and directed protection for major inter-caste or inter-religious couples against threats and violence. That decision is an important affirmation of adult autonomy. But its premise is that the parties are legally competent adults for marriage. It does not answer a case where one party is, by express statutory definition, still a child for marriage purposes. The ratio of *Lata Singh* cannot be detached from its foundation and applied in disregard of a marriage-specific legal disability created by Parliament.

37. In ***Shafin Jahan v. Asokan K.M. (2018) 16 SCC 368***, the Supreme Court emphasised that the right to choose a partner is integral to Article 21 and that courts must not annul a valid marriage in habeas corpus jurisdiction merely because others disapprove of that choice. That case dealt with an adult woman whose valid marriage had been set aside in habeas corpus proceedings. It stands for autonomy in accordance with law. It does not hold that Article 21 allows courts to disregard statutory conditions of marital capacity or to convert a legally disabled relationship into a sanctioned one. The autonomy recognised there cannot be extended into a power to bypass legislative age thresholds.

38. In ***Indra Sarma v. V.K.V. Sarma (2013) 15 SCC 755***, the Supreme Court accepted that the Protection of Women from Domestic Violence

Act can cover a "relationship in the nature of marriage," but it also laid down limiting features and made clear that not every cohabitation qualifies. The Court was concerned with identifying a carefully bounded category capable of specific statutory protection. It was not authorising all live-in relationships irrespective of legality. Legal recognition depends upon the relationship being of a kind that law can accept. A relationship that collides with express statutory restrictions cannot automatically be elevated into a protected quasi-marital arrangement.

39. In ***S. Khushboo v. Kanniammal (2010) 5 SCC 600***, the Supreme Court held that living together by adults is not, by itself, an offence and that social morality cannot by itself trigger criminal prosecution. That judgment was directed against moral policing through criminal law. It did not involve the question whether writ jurisdiction may be used to neutralise the scheme of the statutory framework discussed above, where one party remains under a marriage-specific disability. It therefore cannot be read as authority for the proposition that every live-in arrangement, regardless of its conflict with statutory policy, is entitled to judicial support.

40. The decision of this Court in ***Smt. Varsha and Another v. State of U.P.***, Writ-C No. 38648 of 2025, decided on 16.01.2026, may also be noticed. In that case, this Court granted protection to the parties, where the female petitioner was major and the male petitioner had not attained twenty-one years, while expressly recording that it was not adjudicating upon the validity of the relationship. The relief was confined to protection of life and liberty. The judgment does not examine or decide the question of legality or permissibility of such a relationship under the statutory framework, and therefore does not conclude the issue which arises for consideration in the present case.

41. On the other hand, reliance was placed by the learned counsel for the State on ***Independent Thought v. Union of India*** **(2017) 10 SCC 800**, wherein the Supreme Court recognised the serious consequences of child marriage and emphasised that child-protective statutes must be

interpreted in a manner that advances their object. The Court took note of the adverse physical, social and psychological effects associated with such early unions and adopted an interpretation that strengthened statutory safeguards for children. In doing so, it did not dilute the legislative restrictions governing child marriage, but affirmed the necessity of strictly enforcing them in order to protect minors.

42. In view of the foregoing discussion, the issue framed is answered in the following terms:

(i) This Court, in exercise of its writ jurisdiction, cannot grant protection to a live-in relationship in a manner that confers legitimacy upon, or facilitates the continuation of, a relationship which, in substance, operates as a substitute for a marriage that is presently impermissible under the statutory framework governing capacity to marry.

(ii) At the same time, the constitutional guarantee under Article 21 must be preserved. Even if such a relationship does not receive legal recognition, the individuals concerned remain entitled to protection against harm, illegal detention, abduction, or coercion.

(iii) It is further held that neither parents, guardians, nor statutory authorities including the Child Marriage Prohibition Officers can be restrained from taking lawful steps in accordance with the Prohibition of Child Marriage Act, 2006 and other applicable laws, provided that such action remains within the bounds of law.

43. Applying the above principles to the facts of the present case, it is evident that petitioner no.2, being below twenty-one years of age, is statutorily classified as a “child” for the purposes of marriage. The writ petition does not disclose any specific incident, date, time or identifiable act of threat, abduction, detention or coercion attributable to the parents or guardians of the petitioners. No contemporaneous complaint to the police or any competent authority alleging such acts has been placed on record. The pleadings are wholly general and unsupported by particulars. Such vague and omnibus allegations do not warrant the issuance of any

general order of restraint against the parents or guardians of the petitioners in exercise of writ jurisdiction.

44. The petitioners are always at liberty to approach the police authorities with a complaint in respect of any specific unlawful acts such as threats, violence, coercion or illegal restraint, whereupon the authorities shall act in an expeditious manner in terms of the Government Order dated 31.08.2019, as noticed in ***Smt. Samiya and Another v. State of U.P.,*** Writ-C No. 41804 of 2025. However, such protection cannot extend to restraining parents, guardians or statutory authorities from taking lawful steps under the applicable statutory framework.

45. The writ jurisdiction of this Court cannot be invoked to dilute or circumvent the operation of the statute.

46. In view of the above, no case is made out for grant of the reliefs as prayed, and the writ petition is accordingly dismissed.

(Garima Prashad,J.)

May 4, 2026
Kuldeep