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Protest Against Inter Faith Marriage - An Infringement on Right to Choice

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Marriage can be defined as a sacred union, legally permissible, of two healthy bodies of opposite sexes. It is a mental, psychological and physical Union and one of the basic civil rights of man/women, which is voluntarily undertaken by the parties in public in a formal way, and once concluded, recognizes the parties as husband and wife. Similarly, interfaith marriages can be defined as mixed marriages or a matrimonial relationship between two individuals having different religious faiths. Marrying into another religion is legally acceptable under the Special Marriages Act, 1954, an act that applies to all apart from their religious laws, it is one of the major endeavours towards the Uniform Civil Code (Article 44) that considers Marriages, divorces, inheritance are secular. “An Adult individual’s right to marry a person of his or her choice is a fundamental right that cannot be denied on the basis of caste or religion by anybody”, according to an observation made by a division bench of the Karnataka High Court. This article analyses the issue of interfaith marriage with subsequent Laws.

Keywords: *marriage, interfaith, choice.*

INTRODUCTION

“Marriages are settled in heaven but celebrated on earth, sacred unity of two unknown souls are written right from birth”¹

But society doesn't happen to accept a match made in heaven if a girl and boy are from different religions or castes.

India is a diverse country with different castes and religious affirmation since ancient years and the alignment towards cultural beliefs is much more than western Nations So Let us look into the **Manu smriti**, a very famous ancient text also upheld as the ultimate guide to lead a moral life, covers all aspects of the life of people from different social strata has to say about interfaith marriages.

When it comes to marriages Manu Smriti and Vedas have divided marriages into 8 types though these types of marriage are not specified in the central legislation of the Hindu Marriage Act, 1955² but are regarded as customs without legal permissibility under section 3 (a) of the Act. One of the types of Marriage is Gandharva, according to which Boy and a girl get married with mutual consent without involvement in choosing the partner by their parents. A passage in the Atharvaveda suggests that parents usually left the daughter free in the selection of her lover and directly encouraged her in being forward in love affairs.^{3 4}

Gandharva marriages were cited as an example of marriages out of love and free spirit by scholars but There is, however, no exact theory as to why Gandharan marriages declined but apparently, they faced a lot of criticism, and kids out of the marriage were sought to be impure and it was also categorized under the unapproved marriages practised by Kshatriya, Vaishya, and shudra and was considered as unsuitable for the Brahmin (priests) families. One of the theories behind the declination of Gandharva marriages was the increase in child marriage

¹ Jayshree Khandare, 'The Concept of Marriage and its form: Indian and western perspective' (2015) 4(12) IJSR

² Hindu Marriage Act 1955

³ Dignath Raj Sehgal, 'Forms of Marriage in Hindu Religion' (*iPleaders*, 24 June 2020) <<https://blog.iPLEADERS.in/forms-marriage-hindu-religion/>> accessed 12 June 2021

⁴ Hindu Marriage Act 1955, s 3(a)

and the increased possibilities of interfaith marriages and thus the fear of losing the continuity of once lineage was also there.⁵

Though there have been re-emergence of such marriages considered as Love marriages of the modern era where people are preferring partners of their choice but the deviant nature of society towards Interfaith marriage has still not changed, Not only protests and criticism take place from time to time in different regions of India but this stigma has a major impact on the psychology of persons who are taught or made to believe to marry only into their religion with the fear that they might get disowned by their social circles and face the boycott by the society and even by their own family in some cases if they ever go against the pre-settled norms of the society.

But doesn't it question the free will and choice of a person to choose a life partner? Yes, these notions invite a lot of questions and thus, **this article will explore the Protests and widespread stigma on interfaith marriages and what is the exact problems for interfaith marriages, and whether it is an infringement on an individual's fundamental rights.**

ISSUES WITH INTERFAITH MARRIAGES

Some of the major issues with inter-faith marriages are -

- Interfaith marriages are believed to be a forced conversion of one of the spouses (generally women), and this issue revolves around a myth that women are forced to convert to Islam to increase the numbers of the population, and this also gaslight the rage between the two communities.
- As per Muslim personal law, to get married to a non-Muslim, conversion of religion is the only way. Similarly, under Hindu laws to get married to a non- Hindu, conversion is required.⁶

⁵ 'Customs of Gandharva Marriage' (*Saral marriage*, 30 march 2018) <<https://blog.saralmarriage.com/customs-gandharva-marriage/>>accessed 13 June 2021

⁶ Muslim Personal Law (Shariat) Application Act 1937

- There is no provision regarding the caste determination of children born out of interfaith marriages.
- Special Marriage Act, 1954 seems incompatible with the backwardness of society.

Apart from factual issues as it is known Family plays a vital role in the lives of Indian people, Parents have more power with their children as compared to the western culture and are usually involved in all major spheres and decisions of life of their children. To Marry into other religions is seen as deviant activity and bringing shame to society. There have been cases where panchayats and whole village boycotted such couples and they had to leave their home towns and sometimes even violence and brutality is witnessed and a lot of chaos and conflict is caused by religious groups and even family members to stop the marriage. So, not only the couple goes through these issues but has to also deal with the emotional turmoil on an individual level.⁷

FAITH, CHOICE, AND MARRIAGE

The major concern around interfaith marriages is the conversion of religion It leads to a perception that Marriage between inter-religious couples is forced but also women being manipulated by their male partner for conversion. These perceptions not only question an individual's right to religion and choice but also promotes a false impression about religions and a narrative about a woman being naïve to make their choices.

A demand for laws to ban interfaith marriages was sought when Tanishq, a renowned jewelers' chain of Indian released an advertisement which showcased a Hindu woman getting married in a Muslim family, after that Tanishq faced severe backlash, and the advertisement

⁷ Samarth trigunayat, 'Inter caste and Inter religious marriages; Social and Legal issues' (*Lawoctopus*, 21 August 2014) <<https://www.lawctopus.com/academike/inter-caste-inter-religious-marriages-social-legal-issues/>> accessed 16 June 2021

was withdrawn by the company but it gaslighted the narrative of love jihad and protests were witnessed by the people demanding for Ban of love jihad and laws on anti-conversion.⁸

One of the instances when this demand was highlighted when **the Uttar Pradesh government passed an ordinance on the Unlawful religious prohibition conversion act, 2020** and some other States showed similar instincts to pass the law, Some of the provisions which were criticized and raised debates and pertained the act to carry its essence form patriarchy and communalism were-

- The ordinance made religious conversions for marriage a non-bailable offence and the onus was on the defendant to prove that the conversion was not forced and was not for the sole purpose of the marriage.
- The notice period for the religious conversions should be given before 2 months and in case, the conversion by the women is only for marriage then it would be declared null and void.
- Violations of the provisions of the law invited a jail term up to one and extendable to 5 years with a fine of Rs 15,000

The anti-conversion laws and the protest against inter-religion marriage revolves around the concern of identity and honour of oneself but it also raises a lot of questions on individuals- faith, choice, and marriage so let us look into the constitutional interlinkage between these three.⁹

In the world of globalization Marrying into different religion or castes is ascertained to be a natural phenomenon or a choice per se and as It a modern era where people from all castes and religions share their lives, they come together for the benefiting of the environment, economy and most importantly the development of the nation.

⁸ 'Tanishq: Jewellery ad on interfaith couples withdrawn after outrage' (*BBC.com*, 13 October 2020)

<<https://www.bbc.com/news/world-asia-india-54520390>> accessed 16 June 2021

⁹ 'Uttar Pradesh's "love-jihad" law and why it could be implemented vigorously' (*Indian Express*, 5 December 2020)

<<https://indianexpress.com/article/explained/explained-uttar-pradeshs-love-jihad-law-and-why-it-could-be-implemented-vigorously-7066156/>> accessed 16 June 2021

With choice comes free will and as it is known, the Right to choice falls intrinsically **under article 21** which declares that no person shall be deprived of his life or personal liberty except according to the procedure established by law.¹⁰

And it was also well established in **Shafin Jahan v Ashok KM (2018)**¹¹ that the right to marry a person of one's choice is a part of Article 21.

Further, what is Faith or religion and how does it play such a major role?

According to Merriam Webster dictionary, "*Religion is an organized system of faith and worship, a personal set of religious belief and practice, a cause, principle or belief held to with faith and order*" It is a guiding path for an individual when making different choices in their lives even while choosing a life partner.

Religion and marriage are interlinked together and comes into the picture when an individual starts to seek a life partner and usually as per their religious affirmations.

In Indra V. Raj Narayan 1975 AIR, S.C 2299,¹² defined the basic feature of secularism as all persons of the country are entitled to the freedom of their conscience and right to freely profess, practice, and propagate any religion as guaranteed under **article 25**¹³ of the constitution And, **If marriage is a personal choice then so is religion and Conversion should be a choice as well**, therefore, instead of bringing a law against the conversion of religion (Love Jihad), the proposition of certain improvements and flexibilities are needed in the special marriage act, 1956 considering individuals who wish to marry in other religion should not have to go through conversion out of emotional connectivity and will to marry his/her partner because of the impositions and difficulties in marrying with SMA,1954. This is a

¹⁰ Constitution of India, art 21

¹¹ *Shafin Jahan v KM Ashokan & Ors* AIR 2018 SC 357

¹² *Indra Gandhi v Raj Narayan* AIR 1975 SC 2299

¹³ Constitution of India, art 25

recurring issue for many years and interfaith couples preferring personal laws over SMA should not go unnoticed.¹⁴

THE ISSUES WITH THE SPECIAL MARRIAGES ACT, 1954

Special marriages act, 1954¹⁵ was designed to establish a uniform civil code and is deemed as a safe way out and make marrying more assessable, easy, and secular. But certain provisions in the act are considered as an infringement on the right to privacy and couples hence preferred to convert and marry in their marriage laws, as they thought the special marriages act, 1954 was a difficult route due to certain section are those are-

Section 5-

When marriage is intended to be solemnized under the Act, the parties to the marriage need to submit a notice to the Marriage officer of that district in which at least one of the parties has resided for 30 days.¹⁶

Section 6-

The marriage officer shall keep all the notices as given in section 5 of the act and must have all the true copies of the notice for the marriage recorded in the marriage Notebook and this book is open for inspection without any fee by any desirous person at any time.

Also under subsection 2 and subsection 3, The Marriage Officer shall cause every such notice to be published by affixing a copy and transmitting it to a conspicuous place in his office and if either of the parties to an intended marriage is not permanently residing within the local limits of the district of the Marriage Officer to whom the notice has been given under section 5, the

¹⁴ Anushree Jairath, 'How Special marriage act act is condemning Interfaith couples to UP's anti conversion laws' (*The Print*, 29 December 2020) <<https://theprint.in/opinion/how-special-marriage-act-is-condemning-interfaith-couples-to-up-style-anti-conversion-laws/575625/>> accessed 17 June 2021

¹⁵ Special Marriages Act 1954

¹⁶ *Ibid* s 5

marriage officer shall cause a copy of such notice transmitted to the district where the couple is of permanent residence.¹⁷

Section 7-

Any person before the expiration of 30 days from the date, the notice has been published under subsection 2 of section 6 can object or interfere on the grounds of reasons not being fulfilled by the couple under the act. After the expiration of thirty days from the date the marriage may be solemnized, unless it has been previously objected to under sub-section (1).

The requirement of notice by the couple and the same notice open for publication and interference made it easy for the society, panchayats, family against marriage to interfere and Also, Nowhere in the personal laws under which the majority of marriages take place, the requirement or interference is entertained and even for consent, the couples accept each other verbally, Therefore, the Special Marriage act, 1954 already seemed less in favour of the interfaith couples and that might have been the reason why many preferred conversion and get married as per personal laws.¹⁸

The Allahabad High court verdict in *Safia Sultana v State of Uttar Pradesh*,¹⁹ 2020 was a habeas corpus notice regarding the detention of Safia by her father who converted to Hinduism to marry her partner against her father's wish and thus the court noticed the arbitrariness of the special marriages act and delivered much laudable judgement that held the Section 6 that is the publication of notice by the marriage officer and section 7 that is inviting of the inferences as not mandatory but optional. The decision of the court was based on the upholding fundamental right to choose a partner (*Hadiya Judgment 2017*), right to privacy as held in the *Aadhar case (2017)*, and the right to profess religion.²⁰

¹⁷ *Ibid* s 6

¹⁸ *Ibid* s 7

¹⁹ *Safia Sultana v State of Uttar Pradesh* (2021) 2 All LJ 363

²⁰ Devika Sharma, 'HC rules publication of notice of intended marriage under special marriages act as not mandatory' (SCC Online, 14 January 2021) <<https://www.sconline.com/blog/post/2021/01/14/all-hc-cruel-unethical-to-force-present-generation-to-follow-150-yrs-old-customs-traditions-which-violate-fundamental-rights-hc-rules-publication-of-notice-of-intended-marriage-under-special/>> accessed 18 June 2021

Now, let us dive into the Supreme Court's point of view and certain case laws on interfaith marriages.

RECENT JUDGEMENTS - SUPREME COURT ON INTERFAITH MARRIAGES

Hadiya Judgement 2017: The matters of food and dress, of love and partnership, are within the aspects of a person's identity and neither the state nor the Law can come in and limit the free will of an individual. The Supreme Court held that the Right to choice of a life partner comes under article 21 and violation of the same is the infringement of the fundamental right to life.²¹

K.S. Puttuswamy or 'privacy' Judgment 2017: The KS Puttuswamy (2017) declared privacy as a constitutionally protected right and secured the autonomy of an individual's ability to make decisions concerning vital matters of their life.²²

CONCLUSION

"Religion must mainly be a matter of principles only. It cannot be a matter of rules. The moment it degenerates into rules, it ceases to be a religion, as it kills responsibility which is an essence of the true religious act." - **Dr. Br Ambedkar**

Interfaith marriages are still a stigma to the society and the alignment of the state in assisting such stigmas is not desirable. India's Unity in diversity is known all over the world and this unity doesn't come from the country's religious affirmations but secularism Hence, it should be recognized that a better implementation of laws is needed to secure the flexibility of interfaith marriages and a better mechanism need to be established so that the fundamental rights of an individual are not infringed.²³

²¹ *Shafin Jahan v KM Ashokan & Ors* AIR 2018 SC 357

²² *KS Puttaswamy v UOI* (2017) 1 SCC 4161

²³ Anurag Bhaskar, 'Justice Chandrachud judgment on right to privacy' (*The wire*, 27 august 2017) <<https://thewire.in/law/justice-chandrachud-judgment-right-to-privacy>> accessed 19 June 2021