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INTER-FAITH MARRIAGES IN INDIA: LEGAL ASPECTS AND CHALLENGES

~Divanshu Rani

INTRODUCTION

Marriage is one of the most important institutions in India and it is very closely linked with people's religion and faith. Pre planned marriages are regarded as socially acceptable which happens between people of similar faith. However, when we come to talk about marriages in India, the country which is incredibly diverse. Marriage between people of different faith is inevitable. The inter faith marriages that happen in India are not because of planning but something which is referred to as Love marriage.

Marrying outside the social structure of one's community is seen as a threat that is why only 2.1% of all marriages are inter-religious in India.¹ However, to cater to the needs of people who want to do interfaith marriage, India has an act called Special Marriage Act, 1954², because of the act there has been an increase in the number of mixed marriages. It allows anyone in India to marry under that Act, regardless of his or her religious beliefs. However, is it enough to just be able to register marriages? Despite inter-religion marriage being legal in India there are various challenges that they face. Are the laws enough? This article aims to delve into these facets of these questions.

LEGAL ASPECTS

Inter-faith marriages primarily happen either through the special marriage act or through conversion. SMA,1954 allows couples to marry irrespective of their caste or religious identity.

¹ Vallari Kapoor & Prajwal Dwivedi, Special Marriage Act & Anti Conversion Laws of India, 5 Int'l J. L. Mgmt. & Human. 1627-28 (2022)

² Special Marriage Act, 1954, No. 43, Acts of Parliament, 1954 (India)

Any 2 people of the opposite sex can marry under the Sec 4. If these conditions are met at the time of the marriage, any two people can get married.

(a) Neither party has a spouse/wife living.

(b) neither party—(i) is incompetent or unable of giving legal permission to it due to mental infirmity; or (ii) although being capable of giving lawful consent, has been suffering from a mental condition of such a nature or degree that he or she is unsuited for marriage and child procreation; or (iii) has been subject to persistent attacks of insanity

(c) Males have reached the age of twenty-one, while females have reached the age of eighteen;

(d) At the moment of marriage, the parties are not in any degree of unlawful relationship.³

Conversion of religion when marrying is something very prominent in India. But oftentimes it is rather misused. Forceful conversions, conversion to perform bigamy. Conversion to perform bigamy, it is considered an offense under sec 494 of IPC,1860⁴. However, there is a lack of anti conversion law, these laws primarily focus on stopping the conversions performed by coercion. While every resident of India has the constitutional right to profess, practice, and spread their religion, this freedom is subject to fair limitations, including the prevention of coercive conversions. There is no national legislation against forceful conversion however, some states have made, for instance Uttar Pradesh Prohibition of Unlawful Religious Conversion Ordinance, 2020, it imposes a reverse presumption, typically used in severe cases, where the accused is presumed guilty until proven innocent. Acc. to the USCIRF 2017 report there are rare instances of prosecution under these laws leading to fear among interfaith couples to marry.⁵

CHALLENGES

One of the most prominent problems that arise because of interfaith marriages is honor killings. When people marry outside their faith they are continuously condemned for such acts. These acts are mostly reported in states of Haryana, Punjab, Rajasthan, U.P and Bihar. Marriages with members of other religions or the couple leaving the parental home to live together and marry provoke the harmful acts against the couple and immediate family members.⁶

³ Special Marriage Act, 1954, § 4, No. 43, Acts of Parliament, 1954 (India)

⁴ Indian Penal Code, 1860, § 494, No. 45, Acts of Parliament, 1860 (India)

⁵ Vallari Kapoor & Prajwal Dwivedi, Special Marriage Act & Anti Conversion Laws of India, 5 Int'l J. L. Mgmt. & Human. 1627-28 (2022)

⁶ Dr. Dharmendra Kumar Singh, Inter-Caste or Inter-Religious Marriages and Honour Related Violence in India, 6 Int'l J. Human. & Soc. Sci. Invention 49 (2017)

Moreover, there are various sections in SMA, 1954 that hinder the actual purpose of the laws. For instance, Sec 5 requires a continuous 30-day residency in the district prior to giving notice to the Marriage Office.⁷ Further, if one of the parties does not reside permanently in a district, Section 6 mandates that the notice needs to be transferred to the district's Marriage Officer to ensure proper publication of the same.⁸ Sec 7 gives everyone the chance to object to marriage within 30 days of the receiving order.⁹ The Marriage Officer must address these objections in accordance with Section 8 to ensure that they do not impede the marriage.¹⁰ Lastly, one of the most surprising sections, Sec 19 of the act enforces punitive measures, stating that any marriage under this Act involving a Hindu, Buddhist, Sikh, or Jain could result in the individual's removal from their family, highlighting the societal pressures and potential ostracism faced by those who choose inter-religious marriages under this Act.¹¹

SOLUTION

Marriages between different faiths can present significant social, legal, and cultural challenges. Solutions for promoting and facilitating interfaith marriages include:

1. Major updates are needed in the statutes of India that govern these marriages in order to reduce the bureaucratic hurdles and protect couples from societal backlash.
2. Promoting awareness and education among people that there exists to marry without forceful conversions through public campaigns, highlighting the importance of mutual respect, understanding, and legal rights.
3. Encouraging media representation, government initiatives and interfaith dialogues to normalize this act of mixed marriages.
4. Sec 5 of the SMA, provides a prolonged period for prospective weddings which might lead harassers to trace down the couple and cause violence. The period though though necessary must be reduced.

⁷ Special Marriage Act, 1954, § 5, No. 43, Acts of Parliament, 1954 (India)

⁸ Special Marriage Act, 1954, § 6, No. 43, Acts of Parliament, 1954 (India)

⁹ Special Marriage Act, 1954, § 7, No. 43, Acts of Parliament, 1954 (India)

¹⁰ Special Marriage Act, 1954, § 8, No. 43, Acts of Parliament, 1954 (India)

¹¹ Special Marriage Act, 1954, § 19, No. 43, Acts of Parliament, 1954 (India)

5. Sec 19 of the SMA, when someone marries outside of their religion, they frequently lose their inheritance due to this law. As a result, repealing this clause is critical, because marriage should not deprive someone of their rightful place within their own family.

CONCLUSION

Interfaith marriages are a sensitive topic even today. Even though there are certain laws that cater to these marriages. However, there still exists a lot of struggle with societal pressure, faulty and lack of legislation that hinders people to exercise their freedom to choose their partner and their freedom of religion.