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# Special Marriage Act & Anti Conversion Laws of India

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## ABSTRACT

*There are a vast number of religious differences and problems for a nation that prides itself on being secular and tolerant. This paper examines interfaith marriages in India. Though interfaith marriages are a relatively limited proportion of all marriages in India, it involves many individuals when we consider the sheer population of India. Being an interfaith couple in India is getting more difficult by the day, apart from the social pressure that wells up, couples also face difficulties posed to them by complex and rigid laws. These problems make it increasingly difficult for our secular country to be truly harmonious. This paper takes a close look at how individuals who practice different religions tend to get married, while also focusing on the problems and roadblocks they face. In this paper, we study how there are multiple ways in which interfaith couples can get married, first of all, through The Special Marriage Act. We then look at how interfaith marriage is solemnized under the Special Marriage Act and also highlight that when married through The Special Marriage Act, couples face different difficulties and obstacles, and thus prefer to opt for the other ways to solemnize a marriage. The other fairly easy way requires the conversion of one of the parties to the marriage, and post-conversion, the marriage is solemnized under the personal laws of the couple. This paper then comes across laws that have just been introduced, which put additional checks or barriers in the couple's way.*

**Keywords:** *Interfaith Marriage; Anti-Conversion Laws; Unlawful Conversion; Religion.*

## I. INTERFAITH MARRIAGES IN INDIA

India has always been a place with a rigid social structure, across religions and even among sects within particular religions. There has been in many instances a sense of hostilities on religious lines in a country that prides itself on being secular. And even today when marrying inter-caste is frowned upon, marrying across different religions brings with it even more difficulties for the couple. Although there does not exist data by the Central or State Government on statistics about inter-religious or inter-caste marriage the number itself is not that large. It was further found in a study in Dynamics of interreligious and inter-caste

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marriages that only 2.1% of all marriages in India are inter-religious. This only highlights the rigid social structure surrounding interfaith marriages in India. Marrying outside of their religion subjected an individual to problems both at the family and community level. There have been instances in India where families of couples who were against interfaith marriage resorted to violence. Many communities and private actors also have been harmful to couples in inter-religious and inter-caste marriages through violence, boycotts on a community level, and through, “Honour Killings”. There does a lack of a record on the number of interfaith marriages in India, government both at Centre and State have failed to conduct surveys on interfaith marriages although various surveys have been conducted by individual researchers which are in consonance and state that inter-faith marriages have significant yet limited impact on the society at large. A study conducted suggested that 2.21% of women under the scope of study and between the age of 15-and 49 were married outside of their religion. With 3.5 percent of women holding mixed marriages, Christians have the highest rate of women marrying outside their religion. Sikhs are in second place with 3.2 percent, Hindus have 1.5 percent, and Muslims have 0.6 percent. The details, on the other hand, do not reveal what religion the women are marrying into. Punjab has the highest rate of interfaith marriages, at 7.8%. This high number can be because Sikhism and Hinduism have common religious traditions and rituals. Mixed marriages are also prevalent in Jharkhand (5.7 percent) and Andhra Pradesh (4.9 percent). Bengal has the lowest number of mixed marriages, at 0.3 percent, and Chhattisgarh has the highest, at 0.6 percent<sup>3</sup>.

## **II. SPECIAL MARRIAGE ACT**

By the Special Marriage Act, 1954, anyone in India can marry under that Act, regardless of his or her religious beliefs. The Special Marriages Act, of 1954<sup>4</sup> has seen a dramatic rise in the number of marriages in Bengaluru in recent years, according to research there. Inter-caste and inter-religious weddings are on the rise because of the statute, which allows for secular marriages, unlike the religious regulations that are verbalized in the religion itself. More than ten times as many marriage licenses were issued in 2014-15 as in 2013-14, according to data gathered from the Department of Stamps and Registration. Until January of this year, the number had risen by 306 percent, to 8,391. Many interreligious and intercaste marriages are now taking place, most of which are outside of the purview of traditional religion-based

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<sup>3</sup> Shaikh, explained: What a study in 2013 revealed about interfaith marriages in India., *The Indian Express*, (Oct. 22, 2020), <https://indianexpress.com/article/explained/explained-what-a-2013-study-revealed-about-interfaith-marriages-6742991/>.

<sup>4</sup> The Special Marriage Act, 1954, No.43 of 1954, Act of Parliament of India, §15, (1954

marriage rules. The Special Marriage Act, 1954, allows couples to marry by the Constitution. The Special Marriage Act has seen an increase in the number of persons from different faiths getting married. The Special Marriage Act does not require all weddings to be inter-caste or inter-religious.

There have been times when adults from two different religions have married, with the permission of their families, following the rules of either one religion or both. In other words, if they want to register their marriage, they<sup>5</sup> have to do it under the Special Marriage Act. Special marriages are becoming more popular, but some people prefer to follow a religious marriage law, no matter how far apart they are from each other in terms of region or caste.

Under the Special Marriage Act, there are no religious ceremonies. The marriage is notarized and solemnized by a government-appointed Marriage Officer, who must be notified in the correct format by the people who are getting married. It is important for the Marriage Officer to write this down in the Marriage Officer's Register and put up a public notice for people to object. For the union to happen, it must happen after 30 days and be done within two months of the public notice being made. The applicants, along with three witnesses, must sign a statement in the way that is required. This is what happens after the marriage officer signs off on and registers the marriage. Only then does the Marriage Certificate book get filled in with the marriage. It's important to point out that the spouses must live in the area where the marriage counselor's office is for at least 30 days before they can meet with him or her. According to a lot of authors, interfaith couples often have to deal with problems because of the sensitive nature of their relationship and because their families don't want them to get married. People who are married or in a relationship can be harassed by some of the main things that can happen. Section 5 is the first obstacle that the couple faces. This section deals with where the couple wants to get married. At least one of them must have lived in the district for at least 30 days before the notification is sent to the district's Marriage Office. Section 6: When the marriage office gets notice for marriage, it must put it in a "Conspicuous place in the office" with all the information about the marriage. This section was put in place so that valid objection can be made about a living spouse or about the spouse being in a relationship that isn't OK. It's because some people in society are so extreme that this section, which shows private information about the spouses of an interfaith marriage, has become a source of worry and fear. A person can object to the marriage until 30 days after the notification was sent if one or more of the requirements set out in section 4 are not met, such as either party has a living partner,

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<sup>5</sup> Law Commission of India, Prevention of Interference with the Freedom of Matrimonial Alliances, report No.242

one or both are insane, or one or both are at least 18 years old, and the marriage would not meet one or more of these requirements. Section 8: This section tells the Marriage Officer to look into the objection and make sure that it doesn't stop the marriage from being legally married. Anyone who is going to marry can file an appeal with the district court if the objection is upheld in 30 days or less. The district court's decision is final.

These portions have been used to harass interfaith couples, notwithstanding their original intent. Because many Special Marriage Act<sup>6</sup> couples have families who oppose their union, these sections encroach on the privacy of the parties. Objectors to interfaith marriage may use these clauses as an excuse to harass and abuse the couple planning to get married, which makes it difficult for the couple and makes it easier for the harassers. "The unwarranted exposure of matrimonial plans by two adults qualified to solemnize it may, in certain conditions, imperil the marriage itself," stated the court in the case of *Pranav Kumar Mishra v. Govt of NCT Delhi*<sup>7</sup>. In other cases, parental meddling may even put one or both parties in danger of losing their lives or limbs. A procedure like this would be utterly arbitrary and without legal authority in such a situation.

### **III. CONDITIONS OF ELIGIBILITY FOR SPECIAL MARRIAGE**

Before two people can get married, the Special Marriage Act of 1954 says that certain things must happen. This is Section 4 of the Act. It talks about how special marriages can be held. 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.

### **IV. CONVERSION IN INDIA**

practice of Conversion, which is when an individual changes the religion he practices, is not new in India and has been occurring for centuries. During the Mughal Empire, people either

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<sup>6</sup> *A and Another v. State of Haryana and others*, Punjab and Haryana High Court, CWP 15296 2018 20 07 2018, (July 20, 2018)

<sup>7</sup> *Pranav Kumar Mishra & Anr. vs Govt. Of Nct. Of Delhi & Anr.* on 8 Apr. 2009, Delhi High Court, WP(C) No.748/2009, (Apr.8, 2009 )

chose to practice Islam or were coerced into it. Later, during the rule of the East India Company, there were both instances of conversion to Christianity both with free consent and under coercion. Many kings, throughout the Indian Subcontinent, have subjected their citizens to conversion either by incentives or through arms. In contemporary India, all citizens have the right to practice any religion they want, but this right is often snatched away, sometimes by the state, sometimes by fellow citizens. There have been numerous instances in modern India where individuals or groups have been forced to convert to another religion by vigilante groups. There have been various attempts to bring in nationalized laws on conversion, they although have failed, have not stopped some states from proposing and implementing them. These conversion laws, aim to target those instances of conversion which occur without the free consent of the party. Many states have such laws which aim to provide “Freedom of Religion” these laws are in place to prohibit religious conversions by force, bribery, or inducement. Based on the studies conducted by the United States Commission on International Religious Freedom (USCIRF) in the period ranging from 2016 to 2018, the existence of the anti-conversion laws, construct a threatening, and at times abusive, climate for religious minority groups since they do not demand any evidence to justify allegations of misconduct. Apart from the other reasons one factor as discussed above which leads many individuals to convert is the ease of marriage offered, when amongst members of the same faith but at the same time a marriage is also declared invalid if it was solemnized for the primary intention of conversion, or if a conversion was performed exclusively for marriage, according to laws passed in Himachal Pradesh, Uttarakhand Uttar Pradesh. The laws of these states impose harsher restrictions along with stricter requirements on couples and individuals which gives more power to the state. Every resident of India has the freedom to profess, practice, and spread their religion under the Indian constitution. However, fair limitations are imposed on this freedom, including the coercive nature of religious conversion. An individual can indeed be enticed or lured to convert for material benefits. Coercive and deceptive conversion is a challenge to the country's social structure. Where there are rumors of forcible conversions, the other group reacts with outrage and intimidation. Events of forceful conversion have often eroded the trust of many members of religious groups another<sup>8</sup> But one must also consider that anti-conversion legislation maintains social hierarchies by depicting those socioeconomically vulnerable individuals as innately frail and gullible. Finally, by making it more difficult for individuals to alter their identity, the rules uphold traditional social categories. Converts must overcome practical

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<sup>8</sup> The True Picture, Why India Needs an Anti-Conversion Law, (Sept. 16, 2019), <https://www.thetruepicture.org/india-needs-anti-conversion-law/>.

obstacles when attempting to convert to another religion or even requesting permission to convert; realistically, the act of sending a notice and requesting permission to convert makes a private decision a public one. Conversion laws are part of a larger framework of "protective" regulations aimed at certain communities, most often women. These laws can provide security, but they also impose restrictions. There has traditionally been apprehension about conversions, but why has there been such a sudden uptick in anti-conversion legislation? Anti-conversion legislation can be said to be politically motivated and is partially a political calculation; rallying a majority by presenting a catchy social question with religious elements is a popular election tactic. In certain states, politicians who oppose conversion will attract a majority of voters while only polarising the minority groups<sup>9</sup>.

## **V. EFFECT OF ANTI-CONVERSION LAWS**

Several states have implemented the Anti Conversion Laws which ban conversions by fraud, force, allurements, or inducement, while Himachal Pradesh, Uttarakhand, and Uttar Pradesh laws even place a ban on conversion.

Uttar Pradesh Prohibition of Unlawful Religious Conversion Ordinance, 2020 even imposes the reverse presumption which is generally used in the cases of very severe and grave offenses. The government has justified the position by saying that only the accused can have special knowledge of facts and circumstances and reverse presumption is justified in case of Social Evil.

Data from the United States Commission on International Religious Freedom (USCIRF) of 2016 and 2018 provides that there are very rare instances of prosecution or arrest under anti-conversion laws but they create an atmosphere of fear amongst the couples willing to do interfaith marriage.

The year 2017 report by USCIRF shows some incidents of arrest, for instance, it provides an incident where some religious minority leaders faced arrest under these anti-conversion laws. In addition to that Pastor of the temple of God, the Church was killed due to suspicion of Conversion. The incident came into the limelight when Christians of Punjab started protesting Against the incident

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<sup>9</sup> Laura Dudley Jenkins, LEGAL LIMITS ON RELIGIOUS CONVERSION IN INDIA, (2008), available at <http://www.law.duke.edu/journals/lcp>

## **VI. UTTAR PRADESH PROHIBITION OF UNLAWFUL RELIGIOUS CONVERSION ACT, 2020**

There are rules in the Act. It doesn't matter that the country has had anti-conversion laws in place for a long time. The statute in question has caused both eyebrows and noises. This law was approved by the state cabinet of Uttar Pradesh on the 24th of November, 2021, and then approved by the governor on the 28th of the same month. Religious conversions for marriage in the state of Uttar Pradesh are now illegal and can be punished by up to ten years in prison if they were done through deception, coercion, allurement, or other dishonest means. If you want to get married in Uttar Pradesh, you have to get permission from the district magistrate. The bill also has harsh penalties for mass conversions, like the loss of a charity's membership if it converts a lot of people to a new religion. Any gift, gratification, easy money or benefit in cash or kind, job opportunities, free education at a good school run by a religious group, better living, divine pleasure, or anything else that makes you want to do something. This law says that religious conversions for marriage in the state of Uttar Pradesh must be approved by a district magistrate. In addition, the Uttar Pradesh Law Commission says that it doesn't have any rules about marrying people from different faiths. At the same time, many people say that the wording of the law makes it possible for police to question any interfaith marriage and harass people who are in interfaith marriages. Religious freedom and women's right to choose their husbands are the main issues that people are fighting about in this story. Another group is in favor of the law. They have said that the law applies to people of all faiths and allows for the supervision of conversions by a decree and notification to the authorities to stop illegal conversions from taking place. It says that marriages that are only for illegal conversion can be invalidated by the court system if one of the people in the marriage files an appeal.

## **VII. JUDGMENT BY ALLAHABAD HIGH COURT**

The Allahabad High Court decided on January 12 that is important in many different ways. As time went on, the *Special Marriage Act (SMA)*, 1954 became more and more uneven. This was the first case to address and try to fix this. It has made the SMA more in line with the times and also with recent decisions by the Supreme Court.

A habeas corpus petition is very limited in scope, but the Single Judge didn't let procedural rules get in the way of making a difficult decision about constitutional rights and the right to make personal choices without interference from the State.

Sections 6 and 7 of the SMA are only meant to be a guide for people who want to get married, the Court said in its decision. It will be up to couples to have their marriage announcements



published. If they don't want to put up a notice, the marriage officer will go ahead and marry them, the Court said.

Even the Supreme Court is interested in the same thing. A law student from Kerala filed a petition against Sections 6(2), 6(3), 7, 8, 9, and 10 of the Special Marriage Act. Nandini Praveen, a law student from Kerala, argued that these sections violate the right to privacy of marrying couples. On September 16, 2020, the court took notice of the petition.

Notice was given to the Supreme Court on January 6 in a case about whether the Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance and the Uttarakhand Freedom of Religion Act is constitutionally valid. However, it turned down a petition from the state of Uttar Pradesh to move cases from the Allahabad High Court to the state's courts because they were arguing against the Ordinance.

These laws were mostly put in place to stop people from getting married from different religions, according to the leaders of these states.

Even though SMA and the "love-jihad laws" seem to work in different fields, there is a strong connection between them. SMA is a secular law that allows any two people to marry, regardless of their caste or religion. However, the rules say that a marriage can only be held with the approval of both families. It gives parents and vigilante groups enough time to make sure that a marriage doesn't happen because of the publication of a notice to marry and a 30-day waiting period for people to speak out against the marriage. People can find out about private things about a couple when they make them public. The 30-day wait also takes a toll on the couple's life and freedom.

It can also happen if one partner agrees to change their religion, which means that they can get married in a few hours. This is a valid marriage, though. Because of the way the SMA is written, interfaith couples have almost no choice but to convert to get married. Now, the goal of the governments is to stop even this way of getting around by making these laws. The State of Himachal Pradesh already has a law like this one, and the States of Haryana and Madhya Pradesh are in the process of passing laws like this one.

## VIII. RIGHT TO PRIVACY AND RIGHT TO MARRY

In the case of *KS Puttaswamy v. Union of India*, a nine-judge panel of the Supreme Court said that the right to privacy is a fundamental right for citizens of India. This new Constitutional jurisprudence is called "constitutional law." Next year, the Supreme Court added even more rights to the right to privacy, making it even more important. *Navitej Singh Johar vs. Union*

*of India*<sup>10</sup>: It said that sex between two adults who agreed to it isn't against the law. The Indian Penal Code was changed in Joseph Shine vs. the Union of India. Section 497 of the Indian Penal Code was changed, and adultery was no longer a crime because of it. These decisions made people think that India has moved into a new era of personal freedom, where the State will have little say in what people do and don't do.

Additionally, in *Shakti Vahini v. Union of India*<sup>11</sup> (2018) and *Shafin Jahan v. Ashokan KM*<sup>12</sup> (2018), the Supreme Court concluded that Articles 19 and 21 of the Constitution acknowledge the right of two adults to marry.

### **Allahabad High Court judgment –**

People who are from different religions have to convert to get married. That's why the Allahabad High Court ruled against them. Political rhetoric doesn't matter. These young people are attracted to each other for reasons that have nothing to do with religion. If the directions in the judgment are followed correctly, the government's efforts to pass and enforce "love-jihad laws" will be pointless. Interfaith couples will be free from the trap the governments have set for them.

People in the state of Uttar Pradesh may not be able to let go of the things they have worked so hard for. There's a good chance that the Division Bench will try to change the decision, and the Supreme Court may have to decide what happens next.

It is in this context that Chief Justice of India SA Bobde's first impressions of Nandini Praveen's petition become important. "He told me."

*"This is breaking the privacy of the couples, which is why you want to stop it, you say. Then, what if their children ran away to get married. How would their parents know where their children were? He'd find out if his wife left.*

*Suppose one or both people who want to get married have run away from their spouses. The marriage officer has a legal duty to look into the legitimacy of the alliance by putting the information on the notice board, but should he or she keep it quiet? Taking away that provision could lead to people abusing marriages that are still in the process of being formed. You also need to come up with a solution.*

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<sup>10</sup> 2018 SCC OnLine SC 10

<sup>11</sup> 2018 SCC OnLine SC 275

<sup>12</sup> 2018 SCC OnLine SC 343

*Prima facie, the Bench didn't like what they saw. There could be a lot of reasons to disagree with the Bench. But a lawyer who has worked for a long time is used to answering questions from the bench.*

## **IX. CONCLUSION**

In this paper, we examine interfaith marriages in India and discover that, first and foremost, there is a dearth of official government data on the status of interfaith marriages in the country. We then examine the challenges encountered by interfaith couples who wish to marry. As addressed previously in the paper, one of the options, which is through the Special Marriage Act, introduces some obstacles for individuals, which when combined with social, creates unwarranted problems for the interfaith couple. This, we believe, is one of the primary reasons why many individuals convert their faith and marry under personal religious laws. The Special Marriage Act is written in such a way that it creates complications for the couple both directly and indirectly. One way to solve this is to streamline the process of marrying under the Special Marriage Act and to make interfaith marriages simpler. This would then lower the instances of religious conversions solely for marriage. We then address the scope and validity of Uttar Pradesh's Unlawful Conversion Act. Although the rationale given states that the legislation is in place to discourage conversion and is universal in scope, there is no data on the number of instances of forced conversion through or as a result of marriage. The power vested in the authority can and is dangerous and can be abused. The laws have been argued to violate the couple's privacy, and in addition to being extremely strong, they are also ambiguous, necessitating reconsideration if not repeal. While forceful conversion is a serious issue that needs to be tackled, the problems must be looked at through a bird's view and must be in a way that does not encroach upon the rights of individuals. While not meant to be, parts of The Special Marriage Act have been used to bully couples in interfaith marriages. These sections break the couples' right to privacy because many people who marry under the Special Marriage Acts are opposed by their families. Many people who don't like marriage might try to scare the couple into getting married to get them to change their minds. This makes it more difficult for people who marry people from different religions and encourages harassment of them. Using the Special Marriage Act must be enforced in a way that encourages interfaith marriages instead of "raising eyebrows and setting traps and land mines underfoot," the court said. "The state is not concerned with the marriage itself but with the procedure it adopts," the court said. Those who are in the majority are going to break the minority's right to privacy and the right to marry the person of their choice because they have a lot of power, which makes it more likely that the minority's rights will be broken by those who have a lot of power. It is important

to look at the Uttar Pradesh Unlawful Conversion Act again and change it so that it doesn't have any ambiguity. Also, as courts have said, marrying under the Special Marriage Act should be made easier so that there aren't any conflicts that might arise because of conversion and so that Interfaith couples don't have to deal with any unnecessary hardships.

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