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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

"RIGHT TO MARRY IN THE INDIAN LEGAL LANDSCAPE"

AUTHORED BY - TANISHQ BIDHURI & DR ANMOL KAUR NAYAR

ABSTRACT

“This dissertation examines critically the evolving contours of the right to marry within the complicated fabric of laws and socio-cultures in India. It treats the central problem of the dissonance between the constitutional guarantees of equality and personal liberty and the restrictive interpretations ingrained in religious personal laws. Using a doctrinal and socio-legal methodology, this work analyzes landmark judicial pronouncements, statutory provisions, and scholarly literature to assess the extent to which the Indian legal regime protects the fundamental right to marry. This research investigates the challenges faced by needy communities, particularly same-sex couples and interfaith and intercaste couples, in exercising their marital choices. An extensive analysis of Articles 14, 21, and 25-28 of the Indian Constitution vis-a-vis the provisions of the Hindu Marriage Act, Muslim Personal Law, and Special Marriage Act find severe discrepancies along with practices of discrimination. Some significant findings suggest that while judicial activism has expanded the domain of personal liberty, there is an immediate need for legislative reforms that would guarantee inclusiveness and equality. The study has also illuminated the tension between individual rights and societal norms and shown how the current legal structure fails to cater to the varied needs of India's pluralistic society. The findings underlined the design need for a transformative constitutional approach since the comparative analysis failed to satisfy international human rights standards and that of other countries. The dissertation ends with recommendations for legislative reforms, policy changes, and social awareness campaigns to strengthen the right to marry such that the dignity and autonomy of all persons are upheld”.

KEYWORDS: Right to Marry, Indian Constitution, Same-Sex Marriage, LGBTQ+ Rights in India, Interfaith Marriages, Inter-caste Marriages, Uniform Civil Code (UCC), Gender Discrimination.

INTRODUCTION

So, from the historical point of view, marriage has been the foundation of Indian society and the destiny point of culture, religion, and legal traditions. Indeed, the rights and duties of spouses in the marriage under religious law have been an arena of heavy regulation; in fact, Hindus, Muslims, Christians, and other personal laws continue to regulate the marriage custom. Codification through acts: Hindu Marriage Act of 1955 and Muslim Personal Law (Shariat) Application Act of 1937 is based on the declaration of religious basis for that marriage. The post-constitutional development also gives consideration to individual rights as a harbinger of change in the milieu of marriage law in India. The Special Marriage Act of 1954, however, has gradually lost importance in allowing inter-caste and inter-religion marriages to be registered under secular law because of the heavy traffic poured along by the forces of modernity and social evils opposing it. With this in mind, moving further now from history, there have been discussions about whether same-sex couples and those united otherwise than by traditional marriage ceremony should be considered entitled to marriage, with arguments being made on the basis of personal laws, constitutional guarantees, and of course, evolving social norms.

Historical And Cultural Evolution of Marriage Laws in India

Though a secular state, India's culture has historically included many divergent religious traditions, and its marriage laws have changed in response to colonial law and the reforms that arose after independence. Historical evidence suggests that marriage in India was regulated by religious customs and age-old conventions, varying from the one given by caste and community types. Marriage among the Hindus in ancient times was construed as a sacrament and not in a contract sense; rather, it was put as in an association indissoluble in religious jurisprudence. One of the oldest texts of Hindu law, the Manu smriti, played a significant role in the development of early Hindu matrimonial norms with respect to topics like endogamy, caste-based restrictions on marriage, and gender roles pertaining to marriage. In the past, women were subordinate to men, who had limited freedom in choosing their mates and requesting divorce.

The families, on the other hand, generally arranged the marriage using social stratification, which entrenched patriarchal values. Nevertheless, the regional and customary practices would have interpreted Hindu marriage laws differently in various parts of the country. The present

paper seeks to provide a counterview on the Islamic marriage laws in India, which arose mainly due to Islamic campaigning and were applied on the idea that marriage was treated as a civil contract, not one under a sacrament. Marriage is based on a consensual agreement validly expressed through the nikah; thus, both spouses would be endowed with certain rights and obligations under Sharia law as a contract. Polygamy was allowed under the Islamic law framework where women were sufficiently provided for against divorce and could themselves initiate divorce by means of talaq, khula, or mutual consent. Though, to some extent, the same principles were injurious to women requiring protection in the context of divorce and maintenance. The interface of two personal law systems-Hindu and Islamic-merely nuanced the plural and complex legal system that made space for personal laws depending on religious identity. On the other hand, the period from the mid-18th to the late 19th century represents the time when British colonial rule across India further transformed the evolution of marriage laws. The initial British-based legal concepts then held that marriage affairs were untouched, leaving religious communities to rule marriages in accordance with their custom. However, colonial administrators began bringing along modernization with biblical laws by intervening sometimes in religious practices and codifying personal laws selectively. The Hindu Widow Remarriage Act, 1856, is a piece of reformist legislation impacting Hindu tradition. Liberal support arose to raise the legal marriageable age for girls to 16 years in the Age of Consent Bill, 1891, meant to counteract child marriage. Orthodox Hindu and Muslim leaders challenged it, nevertheless. The British Acts of 1872, 1936, etc., Indian Christian Marriage Act and Parsi Marriage and Divorce Act followed, thereby specifying the regime in law for these communities. So, Western concepts of law began to get a toehold in this legal pluralism which for long kept separate personal laws under colonial rule.

India's legal system underwent a transformation following independence with the codification of personal laws to keep with religious freedom and constitutional principles of equality and justice. Hindu marriage laws saw drastic reforms with the passing of the Hindu Marriage Act in 1955, absolutely forbidding polygamy and making divorce provisions and some gender equality.⁵ From the year 1954, the Special Marriage Act provided a secular alternative of interfaith and inter caste marriages outside religious frameworks. But Muslim Personal Law (Shariat) Application Act 1937 failed to codify Islamic marriage laws to any great extent, for religious communities continued to retain autonomy to regulate personal affairs.⁶ Legalizing reforms attempted at unifying and protecting individual rights, but they were diluted by religious groups and by politics. The debate over Uniform Civil Code (UCC)⁷ is one more

proof that the evolution of marriage laws in India is still a work in progress bound to collision of history, culture and laws.¹

Many have examined the themes of the right to marry from different theoretical perspectives. This right has evolved over time, and it is still open to legal challenges. The natural law theory has a significance not only in general but specifically as the most relevant legal theory when it comes to discussing marriage, which is now an intrinsic institution and morally and religiously based. This theory has, in the course of history, had a bearing on recognizing marriage even under personal laws that are deeply entrenched into religious traditions in India. But ever since the introduction of legal positivism, which maintains that law is separate from morality, the call increasingly remains for a universal, secular dimension of marriage. Legal positivists insist that the regulation of marriage be dependent on objective legal norms rather than religious doctrine for they put forth the proposition that the state is under obligation to provide equal treatment to all irrespective of their gender, religion and sexual orientation.⁸ The liberal discourse of rights is an extremely integral one in marriage equality from the constitutional point of view. The essence of this theory is that protection of liberty of individuals is given precedence and restraint of its exercise by the state is needed. It is within this framework that marriage exists as a social institution owing to the basic principles of equality and non-discriminations in the right to marriage and family for all; yet marriage is not an instrument of the state but rather one of the rights guaranteed under the Constitution of Uganda. The justification for this is pursued by John Rawls' justice theory wherein one supports a legal system that weighs fairness and balance so that a same-sex couple, or an interfaith couple who happen to live in the same area, enjoys the same opportunity to marry. Of feminist legal thought, one very powerful view is to illuminate the intersection of gender, marriage, and inequality. Traditional marriage laws have consistently been criticized for not only reinforcing patriarchal norms but also limiting women's autonomy, for their rights are often dictated differently based on men and women as per religious personal laws. Feminist scholars believe that equal marriages in law must come on the wings of gender-neutral and rights-oriented marriage reform.

Thus, queer legal theory is bound further into this complication by questioning the heteronormative structure of marriage and calling for the formal acknowledgment of other

¹ Diganta Mukherjee and Indraneel Dasgupta, "A Revisionist Analysis of the Failure of the Widow Remarriage Act of 1856," 3 (2007)

forms of relationships speaking outside the male- female paradigm. These kinds of theoretical perspectives offer a very strong base for analyzing the heterogeneities and contradictions under which marginalized communities live in Indian marriage laws.²

Article 21 and the Right to Life and Personal Liberty

The Supreme Court in India, through interpretation of Article 21 of the Constitution, has been extending over the years the human rights under marriage as a dimension of human dignity, autonomy and personal choice. It has affirmed the view that the right to marry one's own choice is but a part of one's personal liberty and neither the State nor the society shall introduce unreasonable restrictions on the person's marital decisions. In *Shafin Jahan v. Asokan K.M* (2018), the Supreme Court stressed that it is one of the personal liberties, marriage and is an adult's right to choose his/her partner without any interference from family or religious authorities. This principle has also been laid down in *Lata Singh v. State of Uttar Pradesh* (2006), wherein the Court laid down that honor killings and social ostracization of couple's inter-caste and inter-religious made into such unions were made constitutionally protected. The broader interpretation of Article 21 also comes through as in *K.*

S. Putt swamy v. Union of India (2017) which had also recognized right to privacy as a fundamental right. The courts have also clearly shown the importance of linking marriage to privacy, for, in linking one with the other, an individual's decision regarding his spouse is outside the purview of surveillance by the state, family coercion, or societal disapproval. Yet, these very progressive judgements are still fettered within legal limits which can now be said to be because the mandatory public notice period under the Special Marriage Act denies couples the personal liberty of marrying according to their own choice and wraps them up in social rejection negating the very principle of this right.

This right is nullified by social disapproval that encompasses them. The term 'personal liberty' under Article 21 of the Constitution goes beyond freedom from physical restraint to include the right to make basic life choice unconstrained of the external influence. The interpretation is in alignment with international human rights standards which view marriage as intrinsic to its meaning to human dignity; in India, however, there is also a personal liberty aspect that is impeded more by rigid societal norms and religious conventions that seek to and regulate

² Aastha Mishra, "From Tradition to Reform: A Comparative Study of Personal Laws in India," 6 International Journal for Multidisciplinary Research (2024)

personal relationship. It is even clearer for same-sex couples now after the decriminalization of homosexuality in *Navtej Singh Johar v Union of India*; yet, here too, the Union of India (2018) would keep the right to marry denied. The initial recognition held by the Court that sexual orientation is a component of the right to privacy and dignity did not apply to agreeing with same-sex marriage, notwithstanding the fact that the LGBTQ+ have no legal marital rights pertaining to inheritance, to adoption, and spousal benefits. However, the gulf between judicial recognition and legislative endeavor suggests that the implementation of Article 21 falls short of fully securing the potential for the enlistment of matrimony choices. The existing jurisprudence of the judiciary on personal liberty now seems to be evolving in recognizing marriage as a basic right, but this requires legislative action to amend the existing marriage laws to bring them in line with constitutional protection.³

Constitutional Debates on Marriage Rights in India

With debates around personal laws associated with marriage showcasing the underlying complexities in the interplay of religious traditions, individual freedoms, and the vision evolving of a modern, secular State, the Constituent Assembly of India extensively deliberated on personal laws. The crux had been whether India should have a Uniform Civil Code (UCC) for the sake of uniformity in marriage laws across all religious communities or prefers different personal laws as per the religious practices. The UCC has thus been argued by Ambedkar to be the great unifying factor in all matters of national unity as well as gender justice, for it obviates gender disparities in marriages, divorces and successions. After all, it was a blatant compromise that the break was made from the traditional view of Article 44: the UCC was included in Article 44 of the Directive Principles of State Policy instead of making it a fundamental right. The Assembly's dictation here was to carve out a middle position on religious autonomy versus constitutional ethos: for the time being, about marriage law, Assembly deigned not to entirely jumble it up and waited longer instead before codifying it. Regulating marriage rights in India has always been a decisive role of the judiciary, which has proved to extend its domain of freedom from discriminatory laws in personal laws within its premises. It has, over the years, interpreted marriage as not only an essential right of an individual's right to life and liberty but has also disallowed state or society interference in personal choices. Landmark pronouncements such as *Lata Singh v. State of Uttar Pradesh* (2006) were all on the recognition

³ Anderson, D. M., Matsuzawa, K., & Sabia, J. J. "Marriage Equality Laws and Youth Mental Health". Social Science Research Network (2019). https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3503769 (Last visited on 28 March 2025).

that persons have a right to marry within the breadth of their caste or religion as they deem fit and free of fear of social ostracism with constitutional protection against such social oppression. The right to choose a partner can be regarded as an integral part of personal liberty, which according to the Supreme Court of India (2018) should not be dictated or managed by religion or any other preferences of the family in *Shafin Jahan v. Asokan K.M. v. State*. Just similar, in *Navtej Singh Johar v. Union of India*, while decriminalizing homosexuality, it rather indirectly approved the right of same sex couples to be in relationships and that constitutes a future legal battle around what can be termed 'same sex marriage'. In the same vein continue judicial scrutiny of procedural barriers under the marriage laws; this involves that specific time of notice set in the Special Marriage Act that was considered opening space for harassment with respect to interfaith marriage. It has left an important role of the judiciary in reinforcing the primacy of constitutional rights over personal laws and evolving marriage rights in India, where legislative action was slow or missing, sometimes taking the lead.⁴

There is a growing recognition in India of the right to marriage as a component of the fundamental right to life as enshrined under Article 21 of India's Constitution- the one providing for protection of life and personal liberty. Through a line of landmark decisions, the Supreme Court has been liberalizing Article 21 to include within its ambit the person's right to marry a person of his or her choice, which is considered inalienably linked to dignity and an autonomous human person. In *Shafin Jahan v. Asokan K.M.* the court categorically ruled that the right to marry is part of Article 21 and that any interference by the State or society into one's personal choices regarding with whom to marry constitutes an infringement of a fundamental right. Likewise, in *Navtej Singh Johar* and *Joseph Shine v. Union of India* (2018) and similar cases, it was argued that constitutional morality rests on the principles of equality, liberty, and non-discrimination, just as it said about marriage laws and not about any religious orthodoxy. This further made marriage rights more secure by declaring that marriage, sexual contact, and family life shall not be subject to unwanted intrusion by the State under the description of recognized fundamental rights in *K.S. Puttaswamy v. Union of India* (2017), namely that privacy is a fundamental right. However, those progressive propositions remain lacking because despite these analytical advances, the legislative reforms that would recognize same-sex marriages, address gender-based inequities in personal laws, and resolve potential conflicts between religious and constitutional rights remain absent. It indicates that the goal of marriage

⁴ Ibid.

as a fundamental right under Article 21 is still unfinished work in progress.

Article 14 and the Right to Equality

This guarantees an individual to equality before law and prohibition from discrimination, however, the system of marriage in India has continued to bedevil injustices in law against women, people from other religions, and sexual minorities. The judiciary of the country had stressed that disparities in personal laws must be justified in terms of constitutional morality and not religious traditions. The Supreme Court, through its ruling in *Shayara Bano v. Union of India*, established that instant triple talaq is unconstitutional since it infringes on the right to gender equality, thus adding a parameter of test marriage law concerning constitutionality and not only being under the purview of prescription from religions. Increasingly, issues about maintenance rights, inheritance of property, and divorce have been coming up in courts that are seeking a gender-neutral approach. However, despite such advancements, the marriage laws are still unequal in most ways, having much to do with the differentiating offered by Hindu and Muslim personal laws to woman. Thus, there cannot be a more glaring discrimination than the one that is faced by same-sex and interfaith couples, who continue to be hypocritical impediments against constitutional equality due to societal stigma. Thus, varying arguments concerning equality of Article 14 versus Article 21 put the same-sex marriage issue within the purview of the study of law in India. If heterosexual couples are given social recognition with a series of concomitant rights, then, on the flip side, the same-sex couples stand denied that same equality. Denial of certain marital rights to same-sex couples thus leads to denial of equal access to benefits these couples could afford, for example, joint ownership of property, making medical decisions, pensions, and other social security benefits. That inequality came into great visibility at the same time same-sex couples were pursuing through the courts the striking down of marriage law provisions: the petitioners alleged that the deprivation of that right is inherently discriminatory based on sexual orientation.

The Supreme Court acknowledged the discriminations against same-sex couples, but left it open in its application for deliberation by the legislature, thus taking a more conservative stand. Therefore, the same legislation cross-provisions through which interfaith marriages must go, such as notice requirements defined under Special Marriage Act, constitute discrimination for interfaith couples against those marrying within their faith, in every sense within an adverse dimension. Therefore, such discrimination against interfaith couples and same-sex couples shakes Article 14's application in marriage. While the judiciary has undertaken wide- ranging

attempts to further equality, legislative quiescence and social opposition have continued to impede the full realization of equal marriage rights for all persons in India.⁵

Article 25-28 and Freedom of Religion

The articles from 25 to 28 in the Constitution have assisted in sustaining a long tradition of discussions in Indian legal theory on the intersection between marital rights and religious freedom. Thus, Article 25 assures the right of an individual to freely profess, practice, and propagate religion; Article 26 guarantees the religious denominations themselves that they shall be free to manage their own affairs. These articles conflict and limit the right of individuals to marry freely, particularly with intermarriage, where the personal laws having their origin in scriptural texts of a particular religion put restrictions on marriage. The Special Marriage Act, which was meant to provide a secular framework for inter-caste and interfaith marriages, has faced considerable criticism for the procedural difficulties discouraging couples from exercising their constitutional right to marry beyond their religions. The requisite public notice period under the Act has stirred vast controversy as it has been misused to the extent that it turns out to be antagonistic to the interests of the couple by exposing them to societal backlash, coercion from families, and interference from the state in the name of upholding certain religious or cultural values. Then the whole matter is further complicated by the personal laws derived from a set of scriptures, which raise the question of religious freedom as against rights of the marriage.

Religion has been applied with varying interpretations in the formulation of the personal laws. On the whole, the laws on personal rights differ under religions: Hindu, Muslim, Christian, and Parsi personal laws prescribe conditions for marriages, dissolution of marriages, or rights of inheritance, thereby leading to a scenario where the marriage rights of the individual are characterized by an uneven and fragmented legal framework. Contradictions arise that will often lead to discrimination, affecting mostly women and interfaith couples. Anti-conversion laws are an increasing controversy clashing with inter-faith marriages, often dressed in the generality of 'love jihad' used to justify further restraints on religious conversions for purposes of marriage. These laws restrain a couple from undergoing conversion for marriage without official permission and thereby counter standardization by rendering the practice unconstitutional as denoting an infringement on freedom of religion and right to personal

⁵ Mrugesh Vaishnav and I.D. Sharma, "Management of issues relating to marriage, mental illness, and Indian legislation," 64 Indian Journal of Psychiatry 93–107 (2022).

liberty. However, the Supreme Court in *Shafin Jahan vs. Asokan K.M.*³⁸ emphasized- marriage is not a subject of control by state- claiming that there exist norms projected by law and society that the domain of constitutional freedom of religion is restricted under an interpretation which ups an ancestor over that of individual rights. However, Articles 25-28 legitimize this imposition; the Supreme Court has repeatedly held that religious freedom could never be invoked in justification for violating fundamental rights. *Shayara Bano* and *Sabarimala Temple Entry* cases were dealt with in relation to gender differences that intersect with religion; thereby, the Court has expanded the horizon to see that constitutional morality will override any religious orthodoxy. This interfering nexus between personal laws and marriage rights should thus have been dealt with. Religious practices shall bear no prejudice towards this.

Gender-Based Discrimination in Marriage Laws

On marriage laws in India, which are mainly governed by religious personal laws, there exists grave injustice against women, glaringly representing constructs of an entrenched patriarchal structure. Historically, men have enjoyed powers of far greater proportions about marriage, divorce, and inheritance in Hindu, Muslim, Christian, and Parsi marriage laws, thereby imposing relegated positions on women. After certain reforms under the Hindu Marriage Act, 1955, provisions for divorce and maintenance have been introduced; however, still a long way remains in fighting for women to assert their rights in society and the law. For instance, that a woman has the right to seek divorce under the law is to no avail as the social stigma attached to divorce becomes a deterrent for these women to break free from such ties, particularly in the more conservative communities. This bias is visible under Muslim personal law as well, which operates under the Model 1937 Act. Herein, it had historically been men who had the unilateral right to initiate divorce through *talaq*, while women were left with the protracted and cumbersome route of *khula* or seeking intervention from a judicial forum. In the case of *Shayara Bano v. Union of India*, the Supreme Court declared triple *talaq* unconstitutional. However, more importantly, the wide-ranging question concerning the gender biases inherent with divorce rights under Muslim personal law has remained an issue yet to be dealt with. Though some discriminatory provisions present in Christian and Parsi marriage laws have been addressed, the Indian Divorce Act of 1869 still contained provisions whereby a Christian woman had to prove adultery together with one other unreasonable ground, such as cruelty or desertion, to obtain a divorce, whereas her Christian husband was permitted to acquire a divorce on the sole ground of adultery. The subsequent amendments in 2001 changed this

requirement, but the existence of gender bias in personal laws suggests that the latter strongly upholds patriarchal traditions in Indian marriage laws.⁶

Patriarchy finds plenty of evidence within property rights, nullity settlements or spousal-rights concerning very often a woman being placed at a disadvantage. Though the Hindu Succession Act of 1956 does amend the law in favor of Hindu women, it grants equal rights to ancestral property for them. In practice, inheritance rights are still very hard because of social stigma and familial pressure. Often daughters are forced to relinquish their-property rights in favor of male relatives. Under Sharia law, a Muslim woman is entitled to half the share of inheritance as to her male counterpart. Thus, her economic dependence on other male members of her family is enhanced. Even in divorce, provision related to the maintenance of married women is mostly not in her favor. Although the divorced wife is entitled under Section 125 of the Code of Criminal Procedure, 1973, to maintenance, this is merely a paper guarantee, and, in practice, the enforcement is weak, depriving many women of respectable financial maintenance. The plight of Muslim women for post- divorce maintenance was brought to the surface after the judgment of the Shah Bano case (1985), which was criticized for the legislative measures following it in promoting religion over gender justice. Old laws and social prohibitions prevent true equality in marital rights, even though learned judges of the Supreme Court have extended progressive legislation to help fill the gap between the genders. Maintenance, when granted, is often of a paltry amount and falls short of what would sustain a woman in view of the sheer scale of economic disparity that women face after divorce.

In a series of landmark judgments to strengthen the women-friendly aspects of marriage laws, gender justice has been established by judicial precedents. In *Mary Roy v. State of Kerala* in 1986, the Supreme Court held that the provisions of Christian laws of inheritance, which discriminated against women of the Syrian Christian community by denying them equal rights to property, were struck down. Thus, an important measure was put in place for redressing gender injustices with respect to religious personal laws. Likewise, in *Danial Latifi v. Union of India* (2001), the Supreme Court made an interpretation of the Muslim Women (Protection of Rights on Divorce) Act, 1986, to the benefit of granting divorced Muslim women some reasonable maintenance beyond the iddat period, thus reversing the retrogressive impact of the

⁶ Sarker, S. P., & Biswas, M. et.al., "Restitution of Conjugal Rights v. Individual Autonomy: Looking Through the Constitutional Lens in India". 52 (1) International Journal of Legal Information, 23–38 (2024) Available at: <https://doi.org/10.1017/jli.2024.25> (Last visited on 28 March 2025).

legislation that had been imposed after the Shah Bano case. The judgment in *Vishaka v. State of Rajasthan* (1997) was mostly about workplace harassment but also addressed, though peripherally, the greater realm of gender-sensitive laws dealing with marriage and family laws. Continuing in this spirit, *Joseph Shine v. Union of India* (2018) threw out the crime of adultery under IPC Section 497 on the ground that the law discriminated against women, treating them as the property of their husbands. Though these judgments have contributed to chipping away at some of the gender inequalities, the lack of a common marriage law and the continued usage of obnoxious religious personal laws result in legal inconsistency in treating women across communities.

So, the challenge is to put in place mechanisms whereby these judicial pronouncements are translated into meaningful reforms in law that would deal with gender imbalances present in marriage laws. To achieve any semblance of gender justice, India must go for a Uniform Civil Code or take substantial steps to amend personal laws so that all forms of patriarchy are eliminated, and equal rights in marriage, divorce, and inheritance are ensured.

PERSONAL LAWS AND THE RIGHT TO MARRY

Hindu Marriage Act, 1955

Hindu Marriage Act passed in 1955 was an extremely important work of reforming and codifying Hindu personal laws in favor of Hindus, Buddhists, Jains, and Sikhs post-independence. It lays down the conditions of a valid marriage, grounds of divorce, and maintenance rights, prohibiting polygamy and favoring monogamy. It laid down marriage age limits, emphasized that consent ought to be free, and forbade marriage within certain degrees of relationship, unless allowed by custom. Judicial interpretation played a crucial role in the customization of the Act in the light of social change. In *Shah Bano* (1985), although directly concerning Muslim law, nonetheless, the Court's emphasis on maintenance rights indirectly impacted Hindu law, such as when interpreting divorce grounds like cruelty and desertion liberally, thereby extending women's rights.

Nevertheless, the Act has been subjected to a certain degree of criticism. Requirements for sacramental ceremonies can obstruct interfaith couples and others who do not follow such traditions in marrying. It is silent on marriage between persons of the same sex; rather, gender discrimination continues to hamper the inheritance rights of women under legislation, even after the amendments made to the Hindu Succession Act of 2005. Judicial activism, especially

in the cases of Shah Bano and Danial Latifi, has pressured the reforms toward being more consonant with constitutional ideals of equality and liberty. The Hindu Marriage Act was indeed a major step toward slowly shaking off conservatism, whereas the loopholes around inclusivity and gender justice only serve to reinforce a pressing need for legislative and judicial reform.⁷

Muslim Personal Law (Shariat) Application Act, 1937

Muslims in India get their marriage, divorce, maintenance, and inheritance laws from the Muslim Personal Law (Shariat) Application Act of 1937. This act bases its laws on the religious texts rather than being subject to a codified civil framework, like the Hindu Marriage Act. It is defined as a contract where marriage occurs and theoretically allows for greater freedom, especially for women, but such rights are frequently denied by patriarchal interpretations of excluded laws. Polygamy is condemned by unequal gender but is legally allowed. The abolition of triple talaq under the Shayara Bano v. Union of India (2017) judgment of the Supreme Court marked a significant stride toward gender justice in India. Yet women still have difficulties obtaining khula, maintenance, and safety from unilateral verdicts of their husbands.

Reformations like the Muslim Women (Protection of Rights on Marriage) Act, 2019 which address some injustices do not yet formulate a scheme for addressing larger systemic inequalities. Further, reform has become complicated by religious freedom under Article 25 and equality of sex under Articles 14 and 15 of the Constitution.

Opposed by conservatives and without a uniform civil code, reform now has nestled, stalled and controversial change. All voices would have to be weighed carefully and fairly to give equilibrium between the religious identity and the constitutionally mandated justice and equality.⁸

Indian Christian Marriage Act, 1872 and Parsi Marriage and Divorce Act, 1936

The Act governs marital rights and the registration procedures therein for Indians of the Christian and Parsi faiths through the Indian Christian Marriage Act of 1872 and the Parsi

⁷ Sarker, S. P., & Biswas, M. et.al., "Restitution of Conjugal Rights v. Individual Autonomy: Looking Through the Constitutional Lens in India". 52 (1) International Journal of Legal Information, 23–38 (2024) Available at: <https://doi.org/10.1017/jli.2024.25> (Last visited on 28 March 2025).

⁸ Muslim Personal Law (Shariat) Application Act, 1937

Marriage and Divorce Act of 1936. With regard to registration, public notice, and solemnization by a minister or registrar, these are seen as being regulated under the Christian Marriage Act, which is today declared as obsolete as detrimental to personal choices and gender sensitiveness. While historically, divorce was permitted to Christians on the grounds of adultery only, it has been expanded via judicial interpretation to include cruelty, desertion, and mental disorder. The need for Christians to inherit equally with men was highlighted in *Mary Roy v. State of Kerala* (1986), revealing in the process a larger failure in personal laws. The Parsi Marriage and Divorce Act of 1936, though preserving community customs through Parsi matrimonial courts, often entails delays in procedures that are discriminatory to the Parsi woman marrying outside her community. Both Acts here, however, mirror the existing tension between the oppression of religious traditions and the Indian Constitution's principles of equality and individual freedom. Attempts to reform these laws have been met with backlash from conservative religious elements and resistant legislative bodies. Looking forward, to reconcile personal law with constitutional principles of justice, dignity, and gender equality will take much internal community work along with judicial activism and proactive legislation.⁹

Special Marriage Act, 1954

This was meant to promote civil marriage whereby different persons of different religions and castes can get married. It was meant to bring in the progressive laws that were to reflect the constitutional ideals of secularism and individual liberty. Notably, it provides requirements such as minimum age, monogamy, mental maturity, and the absence of consanguinity. However, two interrelated provisions make it an instrument of harassments and threats against the inter-faith and inter- caste couples: mandatory public notice of 30 days. Some have been forced to seek judicial relief because of these developments. Such procedural hurdles ironically make this Act even more burdensome than personal laws administered by religions, which discourage its use and pushes couples toward religion conversion for easier registration of marriages. The courts have stressed reform, yet no legislative action has been initiated. As the scope for inter-caste and inter-faith marriages has widened, reforms have become urgent for doing away with the public notice requirement to ensure the constitutional right to marry governmentally in open and free fair competition, as emphasized in *Shafin Jahan v. Asokan K.M.* (2018). A reformed SMA would further deter India's secular fabric and hold it strong

⁹ Nandini Chatterjee, "Religious change, social conflict and legal competition: the emergence of Christian personal law in colonial India," 44 *Modern Asian Studies* 1147–95 (2010).

against the standards of individual dignity and freedom.

The Goa Civil Code and Its Impact on the Right to Marry

The Goa Civil Code, often termed India's very own Uniform Civil Code (UCC), governs marriages, divorces, and succession uniformly across all communities inhabiting Goa. In the rest of India, personal laws vary from one religion to another, whereas Goa has one secular law that prescribes monogamy, grounds for divorce equal for both spouses, and joint ownership in respect of property acquired during marriage. It serves as a paradigm of legal equality and harmonization, maintaining freedom of religion. The Code has been criticized for upholding outdated gender norms requiring a wife to obtain her husband's consent for important financial decisions and for certain exemptions permitting bigamy for specified communities, thus exposing inadequacies in the complete gender-equal perspective. Though flawed, the Goa Civil Code is often cited in debates across the nation to demonstrate that a UCC is possible for a pluralistic society such as India. Opposition to a national UCC is fueled more by political and religious sentiments than difficulties of legality. If polished to rid itself of any vestiges of gender bias, the Goa model may just be a valid template to be followed in tethering the plural culture of India to the constitutional ethos of equality and secularism.

Analysis of Key Supreme Court and High Court Judgments

In India, the judiciary has played a crucial role in expanding the right to marry, especially when personal laws conflict with constitutional principles. In *Lata Singh v. State of Uttar Pradesh* (2006), the Supreme Court upheld an adult's right to marry across caste and religion, condemning honor killings. *Shafin Jahan v. Asokan K.M.* (2018) reinforced marriage choice as a matter of personal liberty under Article 21. The landmark case *Navtej Singh Johar v. Union of India* (2018) decriminalized same-sex relationships, recognizing sexual orientation as intrinsic to identity and dignity, paving the way for future marriage equality debates. Courts have also criticized procedural barriers under the Special Marriage Act, calling for reforms to align personal laws with evolving constitutional values. Overall, the judiciary has consistently emphasized protecting the right to marry as a core aspect of individual liberty in India's constitutional democracy.¹⁰

¹⁰ Amali Philips, "Stridhanam: Rethinking Dowry, Inheritance and Women's Resistance among the Syrian Christians of Kerala," 45 *Anthropological* 245–63 (2003).

The Current Same-Sex Marriage Cases and the Legal Arguments Presented

In recent years, Indian courts have faced growing demands for the legal recognition of same-sex marriage. Following the Navtej Singh Johar (2018) ruling that decriminalized homosexuality, petitioners argue that denying same-sex couples marriage rights violate Articles 14, 15, 19, and 21 of the Constitution. They emphasize that marriage is not only a social institution but also a legal one, granting rights like inheritance, adoption, and medical decision-making. The government and conservative groups counter that marriage is traditionally a union between a man and a woman and that any change should come from Parliament, citing societal unpreparedness. In October 2023, the Supreme Court declined to legalize same-sex marriage, leaving the matter to the legislature, highlighting the ongoing tension between constitutional rights and socio-cultural resistance.

A Deeper Dive into Same-Sex Marriage and LGBTQ+ Rights

The landmark ruling in Navtej Singh Johar v. Union of India (2018) decriminalized homosexuality by striking down Section 377 of the IPC, recognizing sexual orientation as an intrinsic part of human identity and upholding dignity, privacy, and equality under Articles 14, 19, and 21. While the judgment dismantled colonial-era prejudices, it did not legalize same-sex marriage or extend associated rights like inheritance, joint property ownership, or spousal benefits. Despite petitions urging marriage equality post-Navtej, the Supreme Court deferred the matter to Parliament, citing separation of powers and societal readiness. This judicial restraint leaves LGBTQ+ individuals without full legal recognition or protection, highlighting the gap between constitutional promises and lived realities, as legislative action on marriage equality remains absent.

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Same-Sex Marriages

Tension runs high in India around the issue of same-sex unions, where people grapple over rights versus culture and tradition. The 2018 *Navtej Singh Johar* case, decriminalizing homosexuality, was a much-needed step toward tackling LGBTQ+ inequality without, however, legalizing same-sex marriage, and therefore left a legal gap. This is the place where same-sex couples might cohabit but die without being recognized by law and thus without enjoying certain rights, including inheritance, adoption, tax exemption, or medical decision-making power. Social inclusion is thus marred by discrimination as well as family rejection, workplace bias, and ostracism by society. There are even some instances where they are forced to undergo conversion therapy or coerced into heterosexual marriage. Now, the legal recognition of same-sex marriage is addressed to equality arguments under Article 14, dignity arguments under Article 21, and autonomy arguments under Article 19 of the Indian Constitution when it comes to same-sex unions. The petitioners will argue the following case: marriage is a legal institution and not a religious one, so the right to deny that institution to same-sex couples violates their fundamental rights. To this, one might conjure traditional personal laws defining marriage as being between a man and a woman, and anything else, so they affirm, should be done by legislation and not the courts. Debates like these revolve around constitutional morality versus social mores changing, evolving through legal reforms. In the

¹¹ Saketh Sundar, "LGBTQ+ Rights in India: The Legal Struggles of Same-Sex Marriage," 7 International Journal for Multidisciplinary Research (2025).

Navtej Singh Johar case, the Supreme Court decriminalized homosexuality, not necessitating the legalization of same-sex marriage. Subsequent cases claimed that depriving same-sex couples of marriage rights violated their fundamental rights. In October 2023, the Supreme Court ruled that the Parliament amends law in this regard, explicating the contradiction between evolving constitutional interpretations of equality and rigid societal norms.

Thus, same-sex couples do not enjoy essential legal protections, let alone eradicating the stigma against them. The only way forward requires strong and robust legislative changes to fall in line with the constitutional tenets of equality and personal liberty. This may make it possible for the rights of all individuals with respect to non-conventional sexual orientation to be recognized.¹²

Inter-caste and Inter-religious Marriages

In India, marriages between different castes and religions are subjected to serious social and legal constraints, notwithstanding constitutional provisions for equality and personal liberty. The Special Marriage Act, 1954, affords a means for such unions to take place. However, since the statutory notice of thirty days often puts the couples under the glare of public scrutiny and harassment-not to mention threats-the Act sometimes offers little protection. Deep-rooted prejudices often lead families to reject inter-caste and inter-religion marriages, causing them to be subjected to forced separation, social ostracization, and, in extreme cases, honor killings. The spectacular cases of Nitish Katara and Ankita Bhandari import an understanding of how far society goes to punish any transgression of caste or religious endogamy in marriage. In particular, the political climate surrounding inter-religious marriages has turned coerced conversion of Hindu women into a charged slogan, "love jihad," that has been utilized to falsely accuse Muslim men. While the allegations cannot be substantiated by even a shred of evidence, several states have passed laws that scrutinize interfaith marriages, thus erecting further legal barriers. Court decisions such as *Lata Singh v. State of Uttar Pradesh* (2006) and *Shafin Jahan v. Asokan K.M.* (2018) reaffirmed the constitutional right of any person to marry a person of their choice, but these rights stand somewhat corroded by strong societal resistance.

The Special Marriage Act requires a notice of 30 days, which becomes a hurdle to the couple in a vulnerable situation where they may be subject to the wrath of society. Legal reforms and

¹² Saketh Sundar, "LGBTQ+ Rights in India: The Legal Struggles of Same-Sex Marriage," 7 International Journal for Multidisciplinary Research (2025).

strong enforcement procedures coupled with social reforms are necessary to facilitate free exercise of rights to marry without fear or coercion. Transformation in law and in society is the key to addressing these issues, ensuring protection of individual autonomy, and prevention of violence.

Interfaith Marriages and State Interference

The interference and concern at different levels of people who got interfaith marriages, particularly those between the Indian couples, by refraining laws which are instituted at the same time. Apart from this, the Special Marriage Act, 1954 itself has created procedural complexity due to the mandatory 30-day public notice that puts the couple under unbearable societal pressure, threats, and risks to safety. This has been happening because there are instances, where on account of political or religious pressure authorities refuse to register interfaith marriages, often against a person constitutional right. In *Shafin Jahan v. Asokan K.M.* (2018), the Supreme Court reconfirmed the right to marry as a part of personal liberty under Article 21 that prevents interference from an individual by society or state. Bureaucratic obstructions and social stigma persist, notwithstanding such pronouncements. Though various High Courts have endorsed a philosophy that parental disapproval or societal norms cannot supersede an adult person's autonomy in partner choice, the prospect of legal barriers continues to loom. These recent laws, for example, those involving the so-called "love jihad" laws established in states like Uttar Pradesh, Madhya Pradesh, and Uttarakhand, meant to prevent alleged fake conversion to other religions for purposes of marriage, have become instruments for punishing interfaith couples, particularly Hindu women marrying Muslim men. State control imposed on a person through a requirement for prior government approval of religious conversion violates personal liberty and is, therefore, susceptible to serious constitutional challenge under Articles 14, 19, and 21.

Some actions have been taken by the courts where they provide some police protection and accept rights of interfaith couples while legal aid and human rights organizations have interventions on the issue. Other states have established special cells within the police stations to handle interfaith marriage cases. None of these alone, however, solve the problem since there is social opposition, administrative delay, and even ignorance of the law by many people.

Meaningful reform will only come through more potent legal mechanisms, amendments to SMA removing the restrictive provisions, and strict enforcement of constitutional rights.

Interfaith couples in India will continue to strive for their fundamental right of marriage without any undue interference from the state or society till then.

Comparative Study Analysis of Other Countries' Legal Frameworks:

Most laws recognize such right as valid to some degree; however, it is most variable from jurisdiction to jurisdiction. Their differences thus reflect the nations' various cultures, religions, and constitutional paradigms. Compared with the complex and often inaccessible legal scenario prevailing in India, several nations did have progressive marriages that favoured rights to marry without limitations of gender, religion, or caste. Marriage law is mostly civil law for western democracies, like the United States, Canada, and the United Kingdom; personal relationships are out of the realm of this control from religion. For example, the historic Supreme Court ruling *Obergefell v. Hodges* (2015) reaffirmed that marriage is a fundamental right under the Fourteenth Amendment in the United States in states legalizing same-sex marriages. Likewise, Canada recognized same-sex marriage in 2005 under the Civil Marriage Act, while the United Kingdom also enacted properties giving marriage equality. Rights are vested in individual autonomy and equal protection under law enabling marriages that are inter-caste, inter-faith, or same-sex. In contrast, this is possible for countries like Saudi Arabia and Iran, where marriage is purely a religious law niche and has thereby limited it on grounds of faith and gender. Marriages in Muslim countries are ruled according to laws of Islam. They regard marriage more of a religious doctrine rather than a civil contract and prop up most inter-faith ones, as well as place tough boundaries on wives' marital rights. Even in democracies like Israel, marriage is a function of religious authorities so that civil marriage for interfaith couples cannot be held within the country. In the same vein, several Asian countries, for instance, Taiwan and Nepal, have taken steps toward the recognition of rights relating to marriage. By becoming the first Asian country to legalize same-sex marriage, Taiwan set an important precedent in the region for marriage equality in this regard in 2019. However, the Supreme Court in Nepal had already declared same-sex relationships recognized; however, detailed laws of marriage are still being discussed within the country. These various international examples reflect how culturally diverse nations are regarding matters of marriage rights, thus yielding scope for further study into how India could reform itself in this regard to create a very inclusive and equitable legal position.

International Human Rights Standards: Relevant Treaties and Conventions

The marital right, being hailed an actual human entitlement by multiple international treaties

and conventions, stresses equality, non-discrimination, and personal autonomy. Article 16 of the Universal Declaration of Human Rights states, "Men and women of full age, without any limitation due to race, nationality, or religion, have the right to marry and to found a family." This embodies the free consensually of marriage meaning being derived entirely through the free will of the parties concerned without coercion or external interference. India is still bound by the terms of the International Covenant on Civil and Political Rights (ICCPR), thus enforcing this right by Article 23, which states, "No one shall be subjected to discrimination by any national, regional, or other authorities in matters with respect to marriage laws." Under Article 2, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) with effective implementation since 1979 focused on gender-based inequalities in marriage and ordered state parties to eliminate forced marriage, child marriage, and all other forms of deprivation of equality in divorce and custody. Being a signatory to treaty CEDAW, India is obligated to align its personal laws with international human rights standards. Differences persist, however, particularly in personal law with respect to women's rights to inherit property, marriage, and divorce. The Yogyakarta Principles, while essentially a guide, describe the realization of human rights regarding sexual orientation and gender identity. Among other things, these principles call for recognition of same-sex relationships and assert that the refusal to recognize same-sex relationships amounts to a human rights violation against the population of the LGBTQ+. Although a lot of international treaties have been signed by India, making them difficult to be implemented due to the rebuttal of the personal laws and the society, bringing Indian marriage laws at par with international standards would call for a judicious balancing of constitutional guarantees and human rights obligations so that people would not be deprived of their basic right to marry for discriminatory reasons.

The Influence of International Court Rulings on Indian Court Rulings

International court decisions have an influence on the interpretation of the Indian judiciary, especially with respect to the expansion of basic rights that include the right to marry. The Indian courts have always sought global jurisprudence in matters relating to privacy, equality, and personal autonomy. Important implications stem from the European Court of Human Rights (ECHR) concerning marriage rights and the principle of nondiscrimination in family law. The ECHR's judgment in *Oliari v. Italy* (2015), which held that the non-recognition of same-sex unions was a violation of the right to private and family life under the European Convention of Human Rights, has found its way into arguments for marriage equality in India. Other cases, like the South African Constitutional Court's ruling in *Minister of Home Affairs*

v. Fourie (2005) that endorsed same-sex marriage, have entered the discourse for its allied issues in India. In the case of Navtej Singh Johar v. Union of India (2018), the Supreme Court of India relied heavily on foreign jurisprudence, especially that from the US and UK, striking down Section 377 thereby decriminalizing homosexuality. The justices discussed Obergefell v. Hodges and South Africa's National Coalition for Gay and Lesbian Equality v. Minister of Justice (1998) for the reason that sexual orientation is now recognized as an aspect of human dignity and identity worldwide. Rulings at an international level affect women's rights and the right to religious freedom, as in Shayara Bano v. Union of India (2017)-where triple talaq was ruled unconstitutional-the court looked at laws in other Islamic nations that have already abrogated the practice. It further points to the continued efforts of the Indian judiciary toward a globalized human rights norm, reinforcing constitutional morality as opposed to societal traditions. An Indian court continues to refer to these international judgments, especially where there is a strong adverse opinion from legislative and religious quarters regarding the applicability thereof, but the increasing relevance of global human rights jurisprudence has made even the impossible be possible, and it is expected that in days to come they will aim at undermining any fuels barring a more inclusive and progressive platform for future marriage laws in India.

CONCLUSION AND SUGGESTIONS

CONCLUSION

Woven with strings of legal, social, and religious consideration, marriage in India has led to widespread conflicts between constitutional rights and personal laws. Through a few notable cases—Navtej Singh Johar v. Union of India, Shayara Bano v. Union of India, and of course Shafin Jahan v. Asokan K.M., just to name a few—the judicial interpretation of the law has grown to accommodate marriage rights, emphasizing individual autonomy against opposing social or religious pressures. Disparities between communities can be seen in personal laws that govern marriage under the Hindu Marriage Act, 1955; the Muslim Personal Law (Shariat) Application Act, 1937; the Indian Christian Marriage Act, 1872; and the Special Marriage Act, 1954. Indeed, those in marginalized groups, especially women and the LGBTQ+ community, continue to encounter challenges with respect to the right to marry. In comparison with international human rights standards, the need is emphasized for reform towards an inclusive legal structure ensuring equal rights to all regardless of religion, caste, or sexual orientation. Despite protections within the Constitution, custom and religion heavily restrict marriage

rights. Differing personal laws thus place a patchy, often discriminatory, structure for marrying rights, especially to women and same-sex couples. While courts uphold individual choice and equality, reform of the laws is still imperative to connect constitutionally sound ideals with current-day reality. The question of the Uniform Civil Code (UCC) further into the debate of Article 44 has racked itself in the conflict of religious freedom and gender equality. The calculating situations like Shah Bano (1985) and Shayara Bano (2017) brought out the undesired state of a woman under personal laws and lobbied for their uniformity. On the other hand, it is doubted that a UCC would jeopardize the religious diversity of India. Secular marriage would be free from personal laws with no special features enhanced from the Special Marriage Act. Such a Goa exemplifying the Civil Code model could be one that respects religious diversity but apparently well accessible civil rights. Still, much remains in the society into or through such a transition.

Crucial reforms include abolition of the 30-day public announcement requirement in the SMA for safety and privacy of couples; marriage rights for same-sex couples; women's marital property rights; changes in personal laws regarding divorce, maintenance and inheritance.

Though progress is clamped by judicial activism, the legislative arm should chip in to build a marriage law context that will test genuinely inclusionary and fairly constitutional. These will forever be the cause for inequality in marriages and personal freedoms in India.

SUGGESTIONS

Some of the legal and policy reforms Parliament shall put in place to strengthen the right to marry in India include the next. The government will be wary of implementing the Uniform Civil Code (UCC). so that a uniform set of laws govern marriage-with equal rights regardless of religion-while retaining cultural diversities. But UCC being a fair distance away, amendments should be increasingly sought, for instance, personal laws could be amended to abolish any provisions that discriminate in nature and align marriage laws with the constitutional values. Henceforth, the Special Marriage Act, 1954, has stood as a secular option for interfaith and inter-caste couples, and presently it must be freed from the shackles that hold the most bearing, especially the 30-day notice period that subjects couples to social harassment and turmoil. India should, in that spirit, begin to recognize same-sex marriages either through legislation or judicial intervention, so that equality for LGBTQ+ is realized. If ever, under a

catchall problem, same-sex couples suffer in innumerable areas in the absence of legal protection-given the lack of security in inheritance, taxation, and adoption-as will be most easily attended to via legal reforms from progressive international frameworks. Also, the need to support marital rights for women must include criminalization of marital rape and effective enforcement of dowry and domestic violence laws along with reforms granting equal matrimonial rights on divorce and inheritance. Laws providing legal aid should also address those on the contrary against family pressure as far as their marriage choices are concerned. Surely just change will become only a reality once the legal right to marry is enforced in any visible way, therefore an awareness-raising campaign should be drawn upon any caste basis or religious prejudices must be spread amongst laypeople about how social acceptance of interfaith, inter-caste, or same-sex marriages may be empowered. In schools, the curriculum should focus on constitutional rights regarding marriage, equality before law, and individual autonomy. Law enforcement agencies need effective training regarding honor-base violence and forced marriages to protect unwilling individuals from coercion and violence. Further interdisciplinary and legal research would be required, dedicated to socio- economic aspects of restrictive marriage laws and how legal and policy reforms can be directed effectively in that regard to securing the fundamental right to marry.



WHITE BLACK
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