

A TALE OF TWO LAWS: SPECIAL MARRIAGE ACT AND ANTI CONVERSION LAW IN INDIA

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ABSTRACT

This paper is exploratory in nature and utilizes qualitative methods to understand the implications of two laws. The Special Marriage Act (SMA) of 1954 allows for inter-religious marriage and is heralded as a 'liberal law' which does not identify people based on parochial identity but sees them as 'individuals'. However, the administrative workings of SMA suggest otherwise: giving a month's notice, and calling for three witnesses, makes it a nightmare for those navigating it in the context of inter-religious marriages in India. Combined with anti-conversion laws, which by now twelve states of India have already passed, the moral vigilantism by right-wingers in case of such marriages and over-enthusiastic marriage officers who go beyond the law to question and act on objections, make SMA unattractive. In the background of the queer marriage hearing ongoing in the Supreme Court, which is calling for the amendment of the SMA to allow same-sex marriages, begs the question, can two calls for changes- one progressive and the other regressive be accommodated by the Indian state?

Keywords: Special Marriage Act, Anti Conversion Law, state, Court.

Introduction

Several state governments, post-2014, often ruled by BJP and its allies, have developed anti-conversion laws, which put up hurdles in the way of inter-religious marriage. In some senses, a law antithetical to such anti-conversion laws is the Special Marriage Act (henceforth SMA) of 1954. The act was enacted to allow civil marriage between adults (the bride must be of 18 years of age or more and the bridegroom 21 years or more) of different religious and caste backgrounds. Of course, such a law extends to all citizens of the country. Therefore, every Indian fulfilling the age criterion, as well as not having any other living spouse, is eligible to be married

under the act. Its coverage is also broader, unlike religion-specific personal laws, which apply to those who identify as belonging to a specific religion.

The paper is divided into three sections: the first lists out the methods used in the paper and the materials it relies on. The second section, which is the results, explores the advantages and administrative shortcomings of SMA for inter-religious couples and looks at how the anti-conversion law interferes with the already flawed implementation of SMA. The third section, which is the discussion tries to comprehend what roles the state and central governments play in implementing marriage laws and rules in the country. Taking the example of the state of Uttar Pradesh in recent years, this article will try to argue how the two laws, when seen together, show how the state and central governments work to make laws inaccessible through their workings.

Materials and Methods

The paper uses content analysis as its chief method in understanding the two laws in question: The Special Marriage Act and the Anti conversion act. In addition to examining the laws, it also relies on media reports of different incidents which highlights the implications such laws have in its implementation.

Results

SMA: advantages and hurdles in case of inter-religious marriage

SMA has both advantages and disadvantages for inter-religious couples. One of the most significant advantages of SMA, as opposed to other marriage laws in India, is that neither of the partners is forced to change one's caste or religion to that of the partner. The Hindu Marriage Act doesn't allow such interfaith marriages. The Muslim personal law has a loophole that will enable such marriage but requires the non-Muslim spouse to be converted to Islam before marriage.

On the other hand, SMA has built-in shortcomings, especially in terms of its rules and regulations. When adults marry under SMA, particularly when they are going against their own families or communities, one of the shortcomings is the 30 days waiting period which allows anyone to raise objections against the marital union. Even when consenting adults elope to escape their families and decide to get wed outside their jurisdiction, the notice is served in their hometowns, inviting harassment from self-styled moral policies and vigilantes in the name of protecting the dominant religion/caste. The notice is put outside the marriage officer's office of the identity proof address of the bride and the bridegroom, which in turn exposes the personal information of the people intending to marry under the SMA. It also allows those against the marriage to harass the couple and force them to call off the wedding (Tholpuruni, 2022).

In addition, many marriage officers act extra-judicially, sending a notice to the addresses of parties, publishing it in local newspapers, requiring parents' consent for marriage or sending police constables to verify the contents of the notice (Karwa, 2021). Many SDM office employees discourage couples from getting married under SMA, advising them to go to the Arya Samaj and convert (Tholpuruni, 2022). In Lucknow, for instance, a woman who had applied for marriage under SMA because she wanted a wedding without rituals, and had her parents' consent, found a call from her local police station asking if she or her father would mind coming to the police station, where she was asked why she was getting married under SMA. Even after a month's notice, there was no answer from the SDM office, after which she wanted to escape the hassle of SMA and get married under HMA. A month after her marriage, the police visited her matrimonial home again to enquire if she was happy, facing any difficulties etc. (Bhandare and Karwa, 2020).

The way SMA is constructed makes it very open-ended so anyone wishing to obstruct marriage can do so (Mody, 2002). Parental consent is not mentioned in law when two consenting adults marry. UP, particularly has many honour killings pertaining to such inter-faith relationships, among other reasons. In the case of Lata Singh vs the state of UP, who did an inter-caste marriage and was harassed by her relatives, had to get a court order for police protection and quash trumped-up charges against her husband's family (Bhandare and Karwa, 2020).

Other obstacles include the greater number of witnesses required to get married under SMA (three) instead of two, say in HMA. Because of other complications under the act, such as being asked to testify if any objections are raised during the 30 days, anyone asked to be a witness would hesitate to do so (Tholpuruni, 2022).

The administrative process of SMA makes it a hassle, often forcing couples to convert to the other's religion and marry under Hindu or Muslim marriage laws. The Allahabad High Court, in the case of Safiya Sultana vs the state of UP, where a Muslim woman had converted to Hinduism and married her partner, after her parent found out, locked her up in their house ordered in response to a habeas corpus that the mandatory 30 days waiting period should be revised (Karwa, 2021). She had applied to be married under SMA, but the 30-day waiting period would have resulted in interference from their family and society. So, they decided to get married under the Hindu Marriage Act (Scroll Staff, 2021).

Anti-Conversion acts

The other related law to SMA is the anti-conversion act enacted by states. As many as twelve states in India have anti-conversion laws. The stated aim of these laws is to reduce forceful religious conversion. In states like Uttar Pradesh, there is a ban on conversion via marriage. In

the case of conversions, notices need to be given, which in the case of Uttar Pradesh is for 60 days. These laws do not require evidence to find anyone guilty or be punished, so they have often been used against religious minorities (Vakil Search Staff Desk, 2022).

The number of states which have passed anti-conversion laws in recent years has done so, citing the issue of 'love jihad'. 'Love jihad' is a myth propagated by right-wingers that Muslim men trick Hindu women into marrying them, converting Hindu women into Muslims (Tholpuruni, 2022). The assumption is women of the Hindu fold do not have agency of their own to fall in love with a Muslim man, and the only way they can marry is when the Muslim man is directly forcing her or she is tricked into believing that she is in love. Further, the Uttar Pradesh forcible conversion law gives higher punishment to SC, ST, minor and women, which perhaps denotes the first three in the same category as minor, who is easily tricked and cannot take individual decisions. It is also an attempt to take the right of SCs away from conversion, who have traditionally embraced other religions such as Buddhism, to escape discrimination within the Hindu fold (Bhattacharya, 2021). The act also asks the District Magistrate to give certificates of 'lawful conversion', mandatory for couples to present when they have inter-faith marriages, without which the marriage registrar can refuse to register an already solemnized marriage. The Allahabad High Court ordered against this (Sinha, 2021). However, the extent to which marriage officials follow it is a question.

Mody (2002), in the historical context, contrasts the idea of love marriage as legitimated in the law and such marriages looked upon as illegitimate by society. The same logic applies in the case of anti-conversion laws and the 'forcible conversion' rhetoric in the case of marriages. Hence, some states, backed by the BJP government or its allies, have passed anti-conversion laws which put up hurdles for such inter-religious couples wanting to marry.

Despite such laws being passed, there is little data that such marriages entailing forceful conversion were taking place before the law was passed (Sharma, 2020). A month after passing of the law in UP, there were 14 cases, 49 people were in jail, however among them, only 2 women complainants pronounced themselves as victims (Sahu, 2021). However, India does not have a national anti-conversion law, although several attempts have been made to pass one without success; finally, in 2015, the law ministry stated that it was impossible to have a blanket national anti-conversion law. But states are free to enact their laws.

Discussion

Here, it becomes necessary to outline what role the state and central government play in marriage laws in India. Three lists detail the jurisdiction of state and central governments and over which their jurisdiction overlaps. These three lists are the state list, the union list and the concurrent list.

In times of conflict, particularly in matters under concurrent list, the union law has power over the state law. Further, under specific circumstances, the union government can legislate in state laws (Majeed, 2006).

In the case of matters such as SMA, which are firmly on the central list, it is difficult for the state government to change the legislation itself. So, they bring about changes in the rules for implementation of legislation, often becoming contradictory to the act itself. In UP, for instance, the SMA rules involve giving notice to the parent's house of the bride and groom and involving the respective municipality or panchayat of the hometowns. Another way in which state governments act in preventing inter-religious marriages in their own states is the Anti Conversion acts. The state government argue that through the law of their making, they are trying to increase individual freedom within their territory.

Conclusion

Owing to the disadvantages of the SMA, the Allahabad High Court, in a recent judgment, remarked that the law is not adept at the changing needs, expectations, and attitudes of present-day society (Sinha, 2021). However even when states have a free hand in bringing about anti-conversion laws and making their own rules about SMA's implementation, unless a better alternative comes about, what choice do inter-religious couples have with respect to marriage? SMA has liberal aspects, which makes civil unions possible, so much so that in the case of same-sex marriage hearing in the Supreme Court, one of the petitions appealed for allowing same-sex marriage under the SMA (Hindu Bureau, 2023). Thus, there are two directions in which SMA can go- to be more liberal, allow same-sex marriages and ease the administrative hassle for all couples, and on the other hand, make the administrative rules so stringent, combined with the anti-conversion law that it makes inter-religious union extremely difficult. The law rarely takes its course; it is very much embedded in the socio-political fabric of the state.

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