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# **CRITICISING THE CHRISTIAN MARRIAGE LAWS IN INDIA THROUGH THE LENS OF RELIGION AND LAW**

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Sania Frederick Lopes, Jindal Global Law School

## **ABSTRACT**

This paper focuses upon how laws can be different or similar to the actual religion of Christianity. It dives into the scriptures of the holy bible and further analyses through various societal aspect upon how the Christian marriage laws in India are perceived through different lens than the actual one that is through the lens of the holy scriptures. It further discourses subjects which lands us on certain questions based on the applications of these laws, and the certain loopholes that needs to be addressed in a more codified aspect. Auxiliary to this, it will go to the extent of explaining why it's time to update the Indian Christian Marriage Act which needs long-standing modification and measures for bigamy prevention and punishment.

## INTRODUCTION

According to Genesis 2:24, a marriage involves spiritual, emotional, and physical closeness, and thereby it reads as, “*Therefore shall a man leave his father and his mother and shall cleave unto his wife: and shall be one flesh.*”<sup>1</sup> For those who adhere to the sermons and teachings of Jesus Christ, the institution of Christian marriage appears to be a religiously significant purpose. According to Christian marriage, certain traditions, like as the feast, the toast, and the bouquet, are indigenous, while other customs correspond with western cultures.<sup>2</sup>

There are a lot of intersectional aspects to ponder upon when one analyses the Indian Christian Marriage laws, but this paper will particularly focus on few crucial aspects on which I have primarily based my arguments and research upon. And after having clearly established that, the main argument that this paper aims to substantiate is that even though the current legislation is somewhat aligned with the actual religion but there are still some aspects that are different than how the religion perceives those aspects. And furthermore, how certain loopholes in the legislation is broadening the scope for people to exploit the holy institution of marriage within the Indian Christian Marriage laws. And therefore, to grasp and substantiate the arguments, this paper is divided into few explicit sections which will help us get a strong grip towards these arguments and understand some of the technical pillars of marriage as an institution within the realm of Christianity through the lens of Indian Christian Marriage Act.

The flow of this paper is such that in the first section we will be exploring the concept, framework, and conditions of the current Christian Marriage laws to get a general overview of the law. After we have set a strong preliminary base, then in the subsequent paragraphs we will dive into comparing the religion and the law by looking at the stance of marriage and divorce as an institution in the Christian religion. In the second section we will then go on to look at how the loopholes in the Indian Christian Marriage laws are being exploited in the current times. And look at how the legislatures and the Judiciary have responded to the loophole, along with how various Courts have interpreted and addressed these matters.

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<sup>1</sup> Why is marriage so important?: ComeUntoChrist Why Is Marriage So Important? | ComeUntoChrist, (Mar 12, 2023), <https://www.churchofjesuschrist.org/comeuntochrist/belong/family/why-is-marriage-so-important#:~:text=Marriage%20involves%20spiritual%2C%20emotional%2C%20and,unified%20in%20every%20possible%20way>

<sup>2</sup> Christian Marriage: An appraisal on its Legal Validity – IJSR.NET, (Mar 12, 2023), <https://www.ijsr.net/archive/v10i10/SR211013094703.pdf>

## BIBLICAL SCRIPTURES AND CHRISTIAN MARRIAGE LAWS IN INDIA

To quickly go through the Indian Christian Marriage laws, for a marriage to be considered valid, one or both the parties must be Christians.<sup>3</sup> The age of the groom should not be less than 21 years and that of the bride not less than 18 years. Furthermore, the most important aspect is that the consent should be free and voluntary and should not be obtained through misrepresentation, coercion, or by using undue influence of information.<sup>4</sup> And that neither of the party should have a partner at the time of marriage. Ultimately, the marriage must be conducted in the presence of at least two credible witnesses and a person authorized to issue marriage certificates.<sup>5</sup>

Now since we have a basic idea about the requirements or the framework of the Indian Christian Marriage Act, we will straight dive into the discussion that this paper aims to substantiate, the first and foremost question that arises is whether the developments with regards to various aspects mainly divorce be looked upon as unethical or as natural cultural practises in a changing society and evolving society. To answer this question, we need to critically look at two principal perspectives, i.e., the biblical and the societal point of view. And after getting a sound understanding of the same, we will dwell on it from the legal perspective. To begin with the biblical perspective, according to Christianity, there doesn't exist the idea of 'divorce'. According to the Priests I interviewed for the sake of this paper, it helps us to get to the heart of the matter that there exists the idea of nullity (annulment) of marriage which is again very similar to divorce but we cannot use these terminologies interchangeably as minute details subsists. Nullity of marriage or annulment is when the marriage is regarded as if it never happened in the first place, which is nothing but when a marriage between two people is deemed to be null and void.<sup>6</sup> In contrast, divorce is a legal means of dissolving the marriage, and the process starts when one partner files for divorce.<sup>7</sup>

The notion of divorce is not an option in a sense that the holy scriptures interpret that one should enter marriage with the knowledge that they are swearing to their spouse to God that

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<sup>3</sup> Indian Christian Marriage Act, 1860 § 4

<sup>4</sup> *Supra* note 2

<sup>5</sup> The India Christian marriage act, 1872 IndiaFilings, (Mar 12, 2023), <https://www.indiafilings.com/learn/the-indian-christian-marriage-act/>

<sup>6</sup> Annulment vs. Divorce: What's the difference? Forbes, (Mar 12, 2023), <https://www.forbes.com/advisor/legal/divorce/annulment-vs-divorce/#:~:text=A%20divorce%20holds%20that%20the,the%20marriage%20was%20never%20valid.>

<sup>7</sup> *Id*

they will be together until death separates them.<sup>8</sup> But it's important to understand the interpretation of this, it doesn't mean that you have to stay in the marriage regardless of whether one's consent was obtained or not. The biblical words say that if the marriage has been done forcefully, without consent or on similar immoral aspects then the marriage stands fully null. On accounts wherein the couple solemnised their marriage without fully knowing their responsibilities, or the meaning of marriage as an institution, even then it stands null. But in marriages where reasons for separation is different than the ones discussed aforementioned then it is not considered to be a valid separation, and in such circumstances the Church doesn't allow for registration of second marriages which is by law permissible through the act of divorce and later through court marriages.<sup>9</sup>

So Christianity has aspects wherein marriages are considered null and void, but the idea of divorce where either of the party files petition for separation is something that the biblical scriptures fails to recognise.<sup>10</sup> And this is where the law is different than the religion, as it recognises and introduces the concept of divorce. On the other side, the law is actually similar to the religion when we talk about a marriage being void based on certain grounds such as consent as well as coercion under the Indian Christian Marriage Act.

## **BIGAMY AND CHRISTIAN MARRIAGE LAWS IN INDIA**

Coming to the loopholes or problems arising out of the Christian Marriage laws in India. The laws governing marriage and divorce were previously under the purview of religion, but since they have been codified, they now fall under the purview of the state and the judiciary. So at present, the law demands that once the solemnization has happened in the Church and thereby, the registration in the church has been completed, the couple then needs to get themselves registered before the Marriage Registrar, and only then marriage is set to be completed. But before this law, the registration that was done in the Church's registration register was considered to have absolute value in terms of ascertaining the validity of marriage. And that

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<sup>8</sup>10good Christian Marriage Rules What Christians Want To Know RSS, (Mar 12, 2023), <https://www.whatchristianswanttoknow.com/10-good-christian-marriage-rules/>

<sup>9</sup> Balwinder Singh., *Changing dimensions of the concept of marriage - A contemporary challenge to personal laws in India.*, 5 International Journal of Advanced Research , 2039–2045 (2017)

<sup>10</sup> Christian ethical perspectives on marriage and family life in modern western culture HTS Theological Studies, (Mar 12, 2023), [http://www.scielo.org.za/scielo.php?script=sci\\_arttext&pid=S0259-94222008000100026#:~:text=Marriage%20implies%20a%20deep%20spiritual,\(Douma%201993%3A114\).](http://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S0259-94222008000100026#:~:text=Marriage%20implies%20a%20deep%20spiritual,(Douma%201993%3A114).)

being the case, there was no such requirement of getting your marriage registered before the Marriage registrar.

Now the problem that arises due to the present requirement is that the records maintained by the Church doesn't have any absolute value as compared to the records maintained by the Registrar of Marriages. This poses two major issues, the first one being that if couples haven't registered themselves before the marriage register then according to the government they aren't married but according to the church they are, which basically interprets such that the rights and duties that are available to the couple who had solemnised their marriage under the due procedure established by law are beyond the scope of couples who had solemnised their marriage in the church. The second issue is that if one party to the marriage has solemnised their marriage in Church in one state and later goes to another state and solemnises another marriage during the subsistence of the first marriage, and further gets this marriage registered before the marriage registrar, then according to the official data, this marriage will be held to be recorded and there will be no entry of the first marriage in the official records maintained by the marriage registrar; and this thereby invites a lot of cases pertaining to bigamy. In short, even if one person solemnises into two separate marriage in different state without getting the first marriage registered before the marriage registrar, then there is no circumstantial proof to know whether a person is already married, and thus even the minister of the church won't be able to identify this which would result into the person committing bigamy without the other party or the minister of the religion even knowing.

Now with respect to punishment for bigamy, in India, a person who marries again while the first marriage is still active is not subject to punishment; punishment only applies when the second marriage is declared null and void because it occurred while the first marriage is still active, while in English law, bigamy is defined as the act of marrying someone else while the first marriage is still active.<sup>11</sup> While bigamy is forbidden in Christian marriages, execution is challenging due to a lack of codified legislative vigour. And this is the fundamental issue with the rules governing Christian marriage in India, it is unclear as to how to close this gap in the existing legislation. The way the Courts have interpreted this issue has always been very narrow. In the case of *Saldanha v. Saldanha*<sup>12</sup>, the Court acquitted the man who was accused of bigamy and held that his first marriage was not consummated even when there was enough

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<sup>11</sup>P. R. Webb, *Undissolved Christian monogamous marriage followed by Mohammedan Marriage—bigamy?*, 14 International and Comparative Law Quarterly, 992–997 (1965)

<sup>12</sup> *Saldanha v. Saldanha*, A.I.R. 1930 Bombay 105

evidence on him having committed the offence of bigamy. Similar stance was taken by Courts in *Gnansoundari v. Nallathambi*<sup>13</sup> and *Marthamma v. Munuswamy*<sup>14</sup>. The hands of the Courts have been tied and they have been practically forced to acquit the offenders for the offence of bigamy as there is no clear codified provision which establishes the punishment for the offence of bigamy under the Christian Marriage laws in India.

Furthermore, despite the Christian Marriage Act's introduction in 1872 and several updates and amendments, none of them could change the act's inclusion of bigamy prohibitions. It is not disappointing that the legislatures did not even attempt to codify it, but rather the fact that it was not implemented even after the government took steps to close the loophole in the Indian Christian Marriage Act and bring the Christian marriages in India and matrimonial cases into compliance with the general law. The Christian Marriage and Matrimonial Causes Bill, proposed in the parliament in 1962, had explicit measures to outlaw bigamy, but owing to political unrest, this bill expired in 1967. The Ministry of Law again developed a draft in 2000 but it too failed to update the act, despite repeated requests from the Supreme Court and the High Courts for the legislatures to enact modifications to the statute. Because of this, the Act is still mute on the issue of whether a second marriage is valid, and bigamy in Christian law continues to go unpunished, at least statutorily.<sup>15</sup>

## CONCLUSION

To conclude, the framework of Indian Christian Marriage laws are fairly aligned with the actual religious scriptures. The prime differentiation is that of the divorce and the annulment but even the notion of what shouldn't be considered as a valid marriage is somewhat intertwined. Coming to the loophole of bigamy, it's important to derive the fact that the topics of Marriage and Divorce are on the Concurrent list, which essentially means that it is the responsibility of the Parliament and the State Legislatures to work together with the Judiciary in order to introduce reforms. As only codification of bigamy into the laws concerning marriages in Christianity will make sure that the caprices of the parties to take advantage of loopholes in the law in order to remarry in the absence of express provisions, leaving the other parties to the case in want of justice is negated.

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<sup>13</sup> *Gnansoundari v. Nallathambi Alias Jokim*, (1945) 2 MLJ 80

<sup>14</sup> *Mrs. Marthamma v. Munuswamy*, CrI. R.C No. 1084 of 1950

<sup>15</sup> Oshin Malpani, *State of Christian Bigamy in India*, 2 BURNISHED LAW JOURNAL (2019)