THE MANY FACES OF LAW: BREAKING THE SHACKLES OF INTER-CASTE AND INTER-RELIGIOUS MARRIAGES IN INDIA

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ABSTRACT

Endogamy, and intra-caste marriages, are one of India's most resilient caste-based practices. Prohibition between inter-caste and inter-religious marriages have been prevalent in society for ages and it leads to various consequences for the victims. This paper examines the determinants of inter-caste and inter-religious marriages by bringing out the intersection between the social and legal issues of such marriages in India. This study combines sociological theories with a detailed analysis of the existing laws on this issue and discusses their socio-legal impact on the country. In order to offer insight on the social repercussions suffered by those who defy these limiting standards, the article carefully examines the factors influencing people's decisions to marry outside of their caste and religion. It also talks about various laws and Articles of the Constitution, such as the Special Marriage Act 1954 and Article 21, along with other statutes. It analyses why such marriages are not a part of the rural culture and scrutinises the views of the youth of the country on this issue. Using all of the above, this paper identifies the adverse social dynamics, acting covertly and overtly against the expected growth of inter-caste and inter-religious marriages in India by highlighting the consequences of such actions in certain religions and communities, despite the legal legislations and the forces of modernisation, democratisation and globalisation. India has made significant progress in terms of inter-caste and inter-religious marriages being on the rise. However, this paper will debunk this view as such marriages are not embraced very well by the society at large, and we have a long way to go to get rid of all prejudiced and preconceived notions embedded in our society. These inter-mixed marriages have been legalised under the Special Marriage Act, 1954. Despite various legislations, large sections of society continue to prohibit such marriages, as it is regarded as a taboo. This gap between the posited law and social practices raises pertinent questions, which are answered through this paper. The research adds to the corpus of knowledge by offering a

comprehensive grasp of the complex dynamics surrounding these marriages. It is an invaluable tool for academics, decision-makers, and anybody else trying to understand the intricacies of this widely observed social phenomenon in India.

Keywords: religion, caste, marriage, India, endogamy, exogamy, society.

Introduction

In a country like India, which shelters diversified groups and, is hailed for being a land of pluralism and secularism, endogamy or intra-caste marriage has been the most ubiquitous caste-based practice. Caste and religion are essential elements of the Indian society (Corwin 830). Marriages within the same caste and religion are common in Indian culture. Marriages across various castes and religions are a difficult and socially unacceptable proposition (Corwin 830). Therefore, the primary objective of the paper is to understand the spatial patterns and determinants of inter-caste and inter-religious marriages in India by bringing out the intersection between the "social" and "legal" and explaining how these 'stratifications' are social constructs. This paper identifies the adverse social dynamics, acting covertly and overtly against the expected growth of inter-caste and inter-religious marriages in India by highlighting the consequences of such actions in certain religions and communities, despite the legal legislations and the forces of modernisation, democratisation and globalisation. India has made significant progress in terms of inter-caste and inter-religious marriages being on the rise. However, this paper will debunk this view as such marriages are not embraced very well by the society at large, and we have a long way to go to get rid of all prejudiced and preconceived notions embedded in our society. These inter-mixed marriages have been legalised under the Special Marriage Act, 1954 (Pothen 192). Despite various legislations, large sections of society continue to prohibit such marriages, as it is regarded as a taboo. This gap between the posited law and social practices raises pertinent questions, which are answered through this paper.

Research methods

The research for this paper was conducted mainly by using quantitative methods. The doctrinal research method was used, which is based on secondary sources. The facts, statistics and data were collected from government websites (National Crime Records Bureau), case laws and newspaper articles. These facts and statistics helped trace the changing dynamics of society regarding the acceptability of inter-caste and inter-religious marriages. For example, by how

much percent have these kinds of marriages increased and in which places. These statistics and facts were substantiated by applying the concepts from other secondary sources- scholarly articles and academic sources. The scholarly articles also helped analyse the data in the findings and discussions section also. The empirical research was based on primary data and was carried out by collecting information using sociological methods, which are observations and the survey method. It was an online survey with a set of structured questions that the respondent completed by filling out a form. The sample size for the survey questionnaire was small; it was filled by around 15 people who were from the upper caste. However, it was also filled by people from different religions and different age groups from both genders by using the convenience sampling technique. Therefore, a holistic view of the notions of the people about inter-caste and inter-religious marriages could be drawn, which helped understand the reasons for various human behaviors and conducts.

Findings and Discussions

An analysis of the existing laws promoting inter-caste and inter-religious marriages through a sociological lens

Marriage between different castes and religions is regarded as a taboo in India. Exogamous and endogamous restrictions apply during the marriage. Therefore, the Government of India passed various laws to legalise inter-caste and inter-religious marriages. Under the Hindu Marriage Act, 1955 prohibition on inter-caste marriages is not recognized. Moreover, the Special Marriage Act, 1954 is a provision for the citizens of India, which allows people from two different religious backgrounds or different social groups to come together in the bond of marriage (Pothen 192). However, despite the laws being enshrined in the Indian constitution, large sections of the society continue to prohibit inter-caste marriages. Reports show that inter-religious marriages account for 11% of all marriages in India. Similarly, only 5.58% of marriages are inter-caste (Goli 201). There is an evident gap between legislation and social practice. Thus, there is a need to evaluate the status of such social practices in a legal system. There are two sociological theories through which we can analyse this. Eugen Ehrlich's theory of Sociology of Law fills up these theoretical gaps. He concludes that legal development is influenced more by societal development than by legislation or judicial science. According to Ehrlich, the law is derived from 'social facts' and obeyed due to social pressure. For him, the law does not originate from formal sources of law like legislations. For him law, arises from

society and is termed as 'living law'. If we analyse inter-caste marriages from Ehrlich's perspective, it becomes clear that prohibition on intercaste marriages by the society is part of the 'living law', this norm is obeyed by the majority of the individuals and hence, the society does nothing wrong in prohibiting inter-mixed marriages. According to Eugen's theory, society is a better source of law than legislation or judicial decision and the formal law should be adjusted to match the living law (Kelsen 67). However, Hans Kelsen believes the concept that the law should be free from any sociological, political or logical investigation (Kelsen 68). According to Kelsen, "the law will stand on its own." As a result, the theory is known as the Pure Theory of Law. On the application of the aforementioned approach to intercaste marriages, it is contended that intercaste marriages are permitted in India. The Special Marriage Act, 1954 lists down conditions for solemnization of marriage between two people from different social groups. Since the act derives its validity from the Constitution, and consequently, from the basic structure, it must be considered to be valid. Thus, if a Hindu and Muslim or people from different castes marry fulfilling the conditions under the said statute, the marriage is valid, disregarding the opinions of the society. The conceptions of Ehrlich and Kelsen adopt a multifaceted approach to the law, allowing for a better understanding of the balance between individual and collective interests, as well as the importance of rights and sovereignty.

The reasons for the lesser number of inter-caste and inter-religious marriages in rural areas compared to urban areas

The India Human Development Survey (IHDS) reported that inter-caste marriages are more common in urban areas than in rural areas. According to a study performed by the Indian Statistical Institute, inter-caste marriages are more frequent in urban areas (5.2 percent) than in rural ones which is 4.9 percent (Corwin 824). Probably, this is because inter-caste couples have repeatedly faced "social ostracism" and "social excommunication" in such areas. Furthermore, especially in rural areas, these couples are forced to leave their homes. This is because the rural areas are governed by khap panchayats, "unofficial village councils," who issue edicts forbidding inter-caste marriage. The Pioneer reported a case where a khap panchayat issued an edict banishing a family after their son married a woman from a different social group (Krishnaswamy 126). Moreover, in such areas, those who dared for inter-caste or inter-religious marriages by violating the social norms had to face the consequences of violence, social boycott and honour killings (Krishnaswamy 129). Even though, there is a voluntary

organization in India called Love Commandos, which assists and protects such couples from harassment and honour killings; the practice could not be completely eradicated. Honour crimes are violation of Articles 14, 15, 19 and 21 of the Constitution of India (Corwin 825). Despite these legislations there has been a tremendous rise (about 70%) in Honour Killings as recorded by the National Crime Records Bureau (NCRB). This explains why the people in rural areas, behave the way they do. Firstly, they are scared about the consequences they have to face if they commit such actions. Secondly, the people in such areas have a herd mentality. This herd mentality is not only restricted in the rural areas, it exists in the urban areas also. In the words, of Emile Durkheim, this is called social facts which are, "manners of acting, thinking, and feeling external to the individual, which are invested with a coercive power by virtue of which they exercise control over him." These social facts are things like institutions, social norms, and values that exist external to the individual and constrain the individual forcing him/her to things under social pressure. People who practice religious and caste exogamy are alienated by the society as they are regarded to contribute to anomy. This is the Anomie Theory, which describes a social condition characterised by the disintegration or disappearance of norms and values which were common to the society (Thio 151). To avoid such social stigmas, the other people of the society also started prohibiting inter-caste and inter-religious marriages, making it a 'collective conscience'. Thus, we see that the social system triumphs over the legal.

An analysis of the restrictions placed by the society on the marriage between Hindus and Muslims

The survey conducted by National Center for Health Statistics (NCHS) provided information on inter-religious marriages between Hindus and Muslims. Usually, an objection is raised by the society when a Hindu marries a Muslim. There is a sect in every community and religion that prohibits them from doing so because they are filled with absurd and ludicrous views about their orthodox ideals, which are so fundamental that they lead to extremism and lunacy. The hatred is so much that the Hindus think that Love jihad is an Islamophobic conspiracy theory. According to the conspiracy belief, Muslim men use seduction, feigning, love, deception, kidnapping, and marriage to convert Hindu women to Islam (Patel 1092). This is being propagated by Hindus to prevent anyone in their community from marrying a Muslim. Therefore, it is not shocking to see that only 2.1 percent marriages are between Hindus and Muslims, most of which take the help of 'Love jurisdictions' (Mody 48). Moreover, Tanishq, a

jewellery brand, in its advertising contextualized and promoted an inter-faith marriage (between a Hindu and Muslim). This portrayal drew criticism from a virulent section of the society, forcing Tanishq to withdraw its advertisement. This shows how much the society despises inter-religious marriages. However according to the law, everyone has a right to marry a person of one's choice and it is an integral part of the right granted under article 21 of the Indian Constitution (Pothen 194). In one of the cases, *Shafin Jahan v. Ashokan K.M., (2018) SCC 368*, it was held that:

"The choice of a partner, whether within or outside marriage, lies within the exclusive domain of each individual and should not be affected by the matter of faith. The State and the law cannot dictate a choice of partners or limit the free ability of every person to decide on

these matters." Religious and traditional values in our society appear to be more sacrosanct and valuable than human rights, including the right to life and the right to marry by one's choice (Goli 195). The social values and morals have their own space, but they are not above the constitutionality and guaranteed freedom. One's choices and decisions should be respected since they are theirs, and the approval of their actions should not be in the hands of society; rather, it should be in accordance with the Constitution of India.

Results of the survey conducted and analysis of the views of the youth on inter-caste and inter-religious marriages

The online survey conducted by me helped in drawing conclusions about inter-caste and inter-religious marriages. The survey questionnaire was filled by around 15 people who were from the upper caste. However, people from different religions (mainly Hindus and Muslims), age groups and by both the genders also filled the questionnaire. This helped me to understand the notions of various groups in the society regarding inter-caste and inter-religious marriages. Some people opposed inter-caste marriages as they still look down upon the lower castes. The survey asked respondents their views about laws to stop marriages between upper castes and lower castes. About 70% of the respondents said that such laws should exist. Moreover, most of them were not aware of the laws passed by the legislations to legalise such marriages. They were unaware of the social hardships the couples of such marriages had to face. Most of the questions had mixed opinions, some people had a positive view and some negative. However, the views on inter-religious marriage were common to all, almost everyone opposed it, especially a marriage between a Hindu and a Muslim. The notion that inter-religious marriages

should be prohibited by law was not limited to older generations. The youth of our country also had a similar view. By delving deeper into the intricacies of this matter, it was found that, the ideational factors which includes beliefs, values, attitudes, norms, and schemas of the family; influences and affects the thought process of the youth. Arlan Thornton, an American Sociologist, specialises in the study of marriage and family. He came up with the theory of developmental idealism which states that the attributes of societies and families defined as traditional and who have an orthodox mindset will pass on their thought process to the next generation and same is the case with a modern family. Basically, the future generation will bring family changes in the direction of what their family follows. The theory suggests that individuals who endorse developmental idealism are expected to engage in family behaviours that are compatible with the values and beliefs of that family (Allendorf 246). For example, almost all traditional families oppose the marriage between a Hindu and a Muslim, it is a common notion among all the elders which has been ingrained in the minds of the youth. Customarily, parents, along with other senior family members, chose spouses for their children based on caste, as well as religion, which makes the children think in that direction (Allendorf 246). If a particular family, was in favour of these marriages, the youth of that family would probably do the same. There is a link between developmental idealism and any family behaviour at the individual level. Therefore, we need to develop an alternate sociological language to break these absurd norms among the elders of the family and take steps to not make majoritarianism a dominant ideology.

Conclusion

In India, marriages are by and large endogamous (or homogamous). Inter-caste and inter-religious marriages are not common phenomena. Many formal and informal laws are being introduced to normalize such marriages. The legislature made an amendment under the Special Marriage Act, 1954 to protect such couples from religious believers who believe they have committed a sin by marrying beyond their caste or religion. Despite, knowing that these marriages are legal, most Indians find it difficult to consider marriage outside their own social groups. The institution of marriage has exposed the loopholes and the deep-rooted communal mindsets of the people. According to the Hindu religion's most sacred book, the 'Shri Math Bhagavad Gita,' the entire system of caste allotment is not comprehended correctly by the common people. Moreover, Lord Krishna says, "The four categories of occupations were created by me according to people's three qualities and activities. Although I am the creator of

this division, know me to be the non-doer and eternal." Drawing a parallel between Bhagavad Gita and Lord Krishna's words, it is clear that caste is assigned to people not based on their purity but on their attributes and professions. The objective of allocating caste is to allow a person to complete his/her specific karma and achieve 'Moksha', i.e., Liberation. This shows how the caste system and 'stratifications' are 'social constructs.' Social values and morality have their own space, but they are not above the rule of law. One's choices and decisions should be accepted since they are theirs, and the approval should not be in the hands of society. However, it is heartening to see that the caste system's hold on marriage selection is eroding with time. Due to the impact of modernization, socioeconomic development, and globalization of the Indian economy, the shift in marital patterns is taking place. This is a great start to eradicate the caste system in India. The caste system is so deeply ingrained in Indian culture that the country is still struggling to come out of the issues faced by this social menace.

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