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INTERRELIGIOUS MARRIAGES: TRANSCENDING THE LIMITS OF THE INDIAN CHRISTIAN MARRIAGE ACT, 1872

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Abstract: *Religious personal laws of different religious communities essentially govern marriage, divorce and other family-related matters in India. In this land of religious pluralism, there have always been many cases of interfaith marriages. The Indian Christian Marriage Act 1872 (ICMA) is arguably the only Indian personal law in theory that provides legal means to solemnise interfaith marriage. It also mandates solemnisation of all marriages under its form where one of the parties to a marriage contract is a Christian under pain of invalidity. Specifically, Canon law of the Church under the ICMA, 1872 in the context of the Indian personal law system allows interfaith marriages, i.e. between Catholics and non-Christians provided the demands of the law are fulfilled. The requirements of certain conditions from prospective interfaith couples, however, have become contentious in light of the principles of religious freedom and personal choice. In the wake of anti-conversion laws also called 'Love Jihad' laws in many Indian states, solemnising interfaith marriage according to Canon law appears also legally ill advised. These challenges necessitate a common marriage law outside religious personal laws. In order to achieve this objective, the paper uses comparative research method (internal-external comparison) to compare and evaluate two legal orders. Consequently, the paper identifies, the Special Marriage Act, 1954 of India as providing such a facility for interfaith marriage irrespective of religion or belief, but this optional secular law is not well known and has limitations. Therefore, harmonising the provisions of Canon law and the optional secular law of marriage (external comparison) is necessary to provide legal safeguards to interfaith couples and to ensure religious freedom and personal choice.*

Keywords: *Interfaith marriage, Anti-conversion laws, Religious freedom, Personal laws, Special Marriage Act, 1954*

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Introduction

In India, arranged marriages continue to be the norm and commonly preferred way of entering into marriage (Jejeebhoy & Halli, 2005: 179-180). Most young people continue to view a spouse chosen by the parents as the best choice, though modern trends show greater consultation of parents with their children (Jones, 2018: 353). Contemporary arranged marriage system takes different forms and varies extensively by region (Bowman & Dollahite, 2013; Ngaoni, 2021), but religion is still the main criterion while selecting one's marital partner (Vishwakarma, Shekhar & Yadav, 2019:315-316). Intra-faith marriages are generally solemnised in respective religious personal laws following its religious rites and rituals. However, in this land of religious pluralism, there have always been many cases of interfaith marriages, too, calling into question the applicability and relevance of religious personal laws for interfaith marriages. The Special Marriage Act (SMA) 1954 of India provides a legal option for persons of different religions to intermarry, but this optional secular law is not well known and has a number of procedural limitations. The long haul of bureaucratic requirements seems to vitiate the very purpose of the Act to uphold individual liberty and conscience, and facilitate interfaith marriages (Choudhary, 1991: 2981). Specific to marriage between Christians and non-Christians, the Indian Christian Marriage Act (ICMA), 1872[2] is arguably the only religious-based law that explicitly provides for interfaith marriages without conversion and mandates its form for validity of marriage.[3] Debatably, those who wish to marry under other personal laws are required to undergo religious conversion before the marriage ceremony or its registration (Jaising, 2021). Yet solemnising interfaith marriages under a particular religious law has become a thorny problem on account of increasing campaign of alleged interfaith marriages for the purpose of conversion. In the guise of countering forceful religious conversion, many Indian states have passed 'freedom of religion' statutes, thereby effectively criminalising interfaith marriages. This calls for the need to find legal alternatives and to harmonise the provisions of the ICMA, 1872 and the SMA, 1954 to facilitate and provide legal safeguards. This paper discusses the aforementioned issues in three parts and according to the following methodology (Kestemont, 2015: 361- 384). The first part examines the current scenario of interfaith marriages in India (description-evaluation). The second part analyses two legal orders of marriage that requires reform (internal-external comparison) and the third part focuses on harmonising two legal provisions with the aim of protecting the rights of interfaith couples (external comparison).

[2] The Indian Christian Marriage Act, 1872 with Notes, Delhi: Universal Law Publishing Co. Pvt. Ltd., 2001.

[3] Section 4- "Every marriage between persons, one or both of whom is [or are] a Christian, or Christians, shall be solemnized in accordance with the provisions of the next following section; and any such marriage solemnized otherwise than in accordance with such provisions shall be void."

1. Current Scenario of Interfaith Marriages in India

An increase of interfaith marriages over recent years was partly contributed by globalisation, rural to urban migration, increased level of modern education, rise in equal employment opportunity, and social mobility (Jauregui & Mcguinness, 2003: 75). Yet in general, the society in India still is largely skeptical and less supportive of interfaith marriages. Such marriages are yet to receive full social sanction and acceptance. The common attitude towards interfaith marriages continues to be greatly influenced by customs and traditions of respective faith communities. So while the trend of marriage is not static, as some studies indicate that as a result of the aforementioned factors there would be "reduction of cultural diversity" (Ambirajan,2000: 2141-2147), leading also to changes in marriage practices, society as a whole prefers arranged religious endogamous marriage (Verma & Sukhramani, 2017: 18; Fuller & Narasimhan, 2008: 737). Such marriages are arranged by the family more or less strictly adhering to the rules of class, religion and caste, viewing marriage more as an alliance between two families or communities than a matter of the individual's choice. In cases where there are serious deviations, we may hear of so-called'honour killings' (Dasgupta, 2007: 4214; Goli, Singh & Sekher, 2013: 202). Love and personal feelings are often viewed as hindrance to the selection of spouses in keeping with the family ideals (Gupta, 1976: 75). Therefore, interfaith marriages in general are often treated as a break from the self-regulating system of the community, thereby invoking penalties and prohibitions. As a result, some couples resort to elopement or even convert to the partner's religion as a way to realise their choice of marriage (Chakravarti, 2005: 310-311).

Together with a few runaway cases of interfaith couples or conversion, compounded by alleged distrust among religions, large-scale occurrence of interfaith marriages even among educated and self-reliant Indians have been minimal, as social disapproval and religious sanctions continue to inflict deep stigma on those who choose to defy the traditional model of religious endogamy (Goli, Singh & Sekher, 2013: 205). In addition, a strong desire of protecting religious identity in Indian society and an attitude of maintaining religious purity have often led to violent opposition of interfaith marriages through targeted campaigns in an effort to stop such unions at all costs (Verma & Sukhramani, 2017: 21). Such restrictions and oppositions have even boiled over to animosity between religious communities. In this type of communal conflict, interfaith marriages between Hindus and Muslims have been flashpoint issues, going by the records of related incidents, violence and intervention by the religious groups. A typical example of religious group's involvement against interfaith marriages is a targeted campaign aimed at protecting Hindu girls from Muslim boys (ET Bureau, 2014; Puniyani, 2014; Mishra, 2014; Trivedi, 2018; Arya, 2019; Kurian, 2020). 'Love Jihad' is one of such campaigns prevalent in India for the

last few years, apparently orchestrated by right-wing Hindu activists. The campaign alleges that Muslim men are waging war in India through so-called false love marriages to lure Hindu and Christian girls (Rao, 2011: 425; Gupta, 2009: 13).

Today, many Indian states have in place a controversial 'anti-conversion law'[4] that effectively criminalises interfaith love and marriages. While it is not within the scope of this paper to examine all anti-conversion laws in force, it is crucial to underscore that laws in some states expressly refer to marriage as a ground for unlawful conversion (Law Library of Congress, 2018). The Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020 for instance states that "[a]ny marriage which was done for the sole purpose of unlawful conversion or vice versa…shall be declared void (s. 6 of the UP Ordinance, 2020)" or "[n]o person shall convert or attempt to convert, either directly or otherwise, any person from one religion to another…by marriage (s. 3 of the UP Ordinance, 2020)". Laws in other states carry similar ramifications though stated in a different language. Such laws thus make marriage between persons of different religions virtually impossible under any religious personal laws by constituting 'conversion for marriage' or vice versa illegal (Jaising, 2021). Moreover, some of these laws are so vague and broad that it relegates undefined power to the state machineries to term anything that they dislike problematic, thereby potentially leaving the door open to "discriminatory abuse in their applications" (South Asia Human Rights Documentation Centre, 2008: 63; Zuberi, 2021). Hence, the laws purportedly meant to serve as protectors of constitutional rights could become violators of the rights they seek to guarantee (South Asia Human Rights Documentation Centre, 2008). This seems to generally reflect how large sections of the society in India continue to hold a regressive belief that interfaith marriages are disruptive to social cohesion and religious endogamy. It also reflects the misconception that any interfaith marriage is a means of religious conversion. Therefore, interfaith love continues to face societal and family pressure and at times remains dangerous in a society where patriarchal norms and religion have significant command over people's lives (Strohl, 2019: 29-36; Biswas, 2020). Regrettably, love and marriages across people of different religions often have been viewed by most religions as an implicit challenge to religious homogeneity, its norms and its customs. Hence, the 'inter-meshing' of love, marriage and conversions have become deeply problematic and highly politicised agenda to the point that any possibility of exercising one's legitimate right to love and to choice across religion especially for women have been ignored and such individuals are projected as victimised (Gupta, 2009: 13- 15).

Nonetheless, there have been many cases of interfaith marriages, though the number still is not very significant. The most recent nationwide evidential study on interfaith marriages in India by analysing data from the *Indian Human Development*

[4] As of March 2022, anti-conversion laws are in place in ten Indian states namely, Odisha, Madhya Pradesh, Arunachal Pradesh, Gujarat, Chhattisgarh, Himachal Pradesh, Jharkhand, Uttarakhand, Uttar Pradesh and Madhya Pradesh.

Survey (IHDS), 2005 (Desai, Vanneman & NCAER, 2005) suggests that 2.21 percent of women (age 15-49) had married outside their religion. Interfaith marriages are also higher among younger women at 2.8 percent as against 1.9 percent of those above age 30. Similarly, among women living in urban areas, interfaith marriage is at 2.9 percent compared to 1.8 percent for rural areas (Goli, Singh & Sekher, 2013: 193-206). This indicates that education and employment of women and urban residence has brought a corresponding higher rate of interfaith marriages. An earlier study of 2011 on national scale using the data from the *National Family Health Survey*, 2005-2006 (NFHS-3) shows that 2.1 percent of marriages were interfaith (Das, K. et. al., 2011, Table 4). Pew survey conducted from 17 November 2019 to 23 March 2020 reports that while most Indians feel India is religiously tolerant and religious diversity is beneficial for the society, two out of three Indians are not in favour of interfaith marriages (Pew Research Center, 2021). So what does the situation of interfaith marriages leave us? There is on the one hand, the near impossibility of interfaith marriage in any personal laws without it being put to the scanner of the 'Freedom of Religion Act' and on the other, the right to personal choice and liberty irrespective of religion or belief and the concomitant need to ensure interfaith couples legal protection. We shall briefly examine now how two legal orders in India stand to addressing these issues.

2. Legal Orders of Interfaith Marriages

2.1. Interfaith Marriages under the Code of Canon Law 1983 [ICMA, 1872]

The Indian Christian Marriage Act 1872 (ICMA) is arguably the only Indian personal law in theory that provides legal means to solemnise interfaith marriage. The Act however, fundamentally excludes any possibility of a valid marriage between a Christian and a non-Christian being celebrated under any other personal laws (supra, note 3). It provides two forms of marriage; one a civil form, solemnised by a Marriage Registrar appointed under the Indian Christian Marriage Act, and the other a religious form performed by a priest/minister of any Christian denomination namely, the Church of England, the Church of Rome or the Church of Scotland (s. 3 of ICMA, 1872). Here we have what we may call, personal laws within the personal law. In addition, the requirement of Christian denominations for interfaith marriages differs substantially from one to the other and it does not seem to be an easy proposition to bring all these Churches under one category (Law Commission of India, 1960). The legal impediments to marriage and effect of violation of such impediments also greatly differ from one another (Bakshi, 1984: 47 - 54). The common prac-

tice notwithstanding, the civil form tends to be largely a religious form especially when a party to the marriage involves a Roman Catholic. Thus, interfaith marriages according to the canonical form of Roman Catholics can be solemnised according to section 5 (1) of the ICMA, 1872.

A Catholic intending to enter into an interfaith marriage is directly governed by canons 1086, 1108, 1125 and other related canons of the Code of Canon Law 1983 (CIC/1983). The requirements of the canons, however, have issues of major concerns in respect to the non-Christian partner. The most delicate issue is the promise of the religious upbringing of children in the Catholic faith (Doyle, 1990: 237). Yet this is an obligation and a right of both parties and hence it is only fair to consider it in terms of equitable rights, for the parties are "equally bound and equally free" (Anglican-Roman Catholic Commission, 1976: 42). Therefore, a one-sided promise is bound to affect the freedom of conscience of the other partner (Curran, 1966: 97). Notably, the present law exercises great leniency in that it only asks the Catholic partner "to do all in his or her power (c. 1125, 1°)" but it continues to be an objectionable issue to freedom of worship of the non-Christian partner. Another contested area is the imposition of the canonical form (c. 1108) for interfaith marriages. Given the legal and religious pluralism**,** any unilateral imposition of a religious law upon another who is governed by a different law appears to be arbitrary and insensitive to non-baptised parties in interfaith marriages (Mcmanus, 1962: 283). The legal flaw concerning marriages in the Church also is that while the State recognises the validity and existence of Church marriages upon registration, it does not recognise the power of the Church to dissolve marriages celebrated under its religious form. Couples in such marriages are required to obtain a civil divorce (Agnes, 2011b: 93) under the Indian Divorce Act, 1869 lest they be guilty of the crime of bigamy for remarriage after the declaration of nullity of marriage by the Church tribunal. It appears advisable, therefore, that the law of the Church should be in sync with civil law of the state. Hence, in closing in light of co-existing constitutional provisions under Indian law, it seems desirable that the issue regarding religious upbringing of children be left to the collective decision of the interfaith couples. Similarly, the requirement of canonical form for the validity of interfaith marriage if not abrogated should at least be mitigated.

2.2. Secular 'Legal Option' of the SMA, 1954

The Special Marriage Act, 1954[5] of India provides a legal option to solemnise marriages "between any two persons (s. 4 of SMA)". The Act is a secular legal op-

[5] The Special Marriage Act, 1954 as amended by the Marriage Laws (Amendment) Act, 1999, Delhi: Universal Law Publishing Co. Pvt. Ltd., 2001 [hereafter the SMA 1954].

tion because religious personal laws primarily govern personal matters such as marriage, divorce, succession, adoption and guardianship (Law Commission of India, 2017). In principle, the SMA 1954 is indifferent to religions of the parties seeking to contract marriage under the Act. The civil right to marry whomever one chooses is made available between two persons irrespective of any restrictions imposed by their personal laws (Mahmood, 1978: 11; Mody, 2008: 92; Agnes, 2011a:93). The Act is particularly relevant in that unlike personal laws, it enables persons of different religious faith to enter into a valid marriage without renouncing their faith or converting to the partner's religion (Ghosh, 2018). Thus, the secular remedy under SMA 1954 has conclusively provided a viable exit option for Indians "against potential encroachments of state-enforced religious laws" in protecting the right to intermarry without legal limitations and the freedom to marry someone of their choosing (Yüksel, 2013: 61 & 67). The SMA 1954 also gave 'love' a legal recognition and protection (Mody, 2013:52).

In the absence of a uniform civil code, the SMA, 1954 is seen as the closest law to it as for the first time, all Indians, irrespective of religion were at least theoretically brought under the jurisdiction of a single law of marriage albeit by voluntary application (Yüksel, 2013: 178; Saxena: 2020). The effect of the Act also is that once marriages are solemnised/registered under it, the personal laws cease to apply. The Act can be seen as a progressive law and a radical departure from the generally inclined traditional form of marriage within the same religion (Garg: 2021). Besides, in the wake of anti-conversion laws in many Indian states, conversion in order to marry someone of their choice has become a greater problem (Joshi, 2020) and consequently placed consenting adults from across religion in great dilemma. Therefore, the Act assumes greater significance in providing individuals the freedom of choice and conscience. With necessary revisions of certain limitations of the Act as we will address in section 3.2, the SMA, 1954 offers the most viable 'legal option' in meeting the demands of the dynamic society and of the changing times (Law Commission of India, 1974). In the context of interfaith marriages, i.e. between Catholics and non-Christians, harmonising the provisions of the CIC/1983 and the SMA, 1954 is essential to uphold freedom of conscience and to protect the rights of interfaith couples.

3. Harmonising different Legal Orders to Protect the Rights of Interreligious Couples

From the analysis of the two legal orders, we have two fundamental rights that the state/constitutional courts must guarantee protection and its free exercise with respect to every individual. They are the freedom of conscience and the rights to pri-

vacy and autonomy of choices. In this regard, we noted that reform of laws in both the CIC/1983 and the SMA 1954 pertaining to interfaith marriages are essential to safeguard rights and to meet the demands with the changing times. From a wider perspective, harmonising the provisions of the two legal orders can be a solution to most issues of interfaith marriages between Catholics and non-Christians under the Indian personal laws system.

3.1. The CIC/1983: Freedom of Religion and Conscience

To reiterate, religious pluralism is one of the unique, strong facets of Indian society. Religion has a pervasive influence on Indian society on a political and cultural level, and on every aspect of societal behaviour and values (Gist, 1957; Buultjens, 1986; Madan, 1989; Mitra, 1991). While freedom of religion is enshrined in the Constitution and there are legal protections for religious groups and minorities, India experiences high levels of legal restrictions on religious conversions (Majumdar, 2018). In a major decision of the Supreme Court on the controversy over conversions, Justice Ray clarified: "The freedom of religion enshrined in Art. 25 is not guaranteed in respect of one religion only but covers all religions alike…What is freedom for one is freedom for the other in equal measure**...**" (*Rev. Stainislaus vs. State of Madhya Pradesh & ors*). Although, the promise of the Catholic spouse in interfaith marriage does not pertain to the conversion of the non-Christian partner per se, the promise to baptise and educate children in the Catholic faith (c.1125.1) is equally inequitable with the principle of "[w]hat is freedom for one is freedom for the other in equal measure… (*Rev. Stainislaus vs. State of Madhya Pradesh & ors*)."

It is important to recognise that the divine obligation to educate children in their faith is seen as resting on both parents and either would fail gravely if they deliberately neglected this duty (Bhaldraithe, 1986: 439-440). This recognition assumes great significance in light of legal pluralism with possible competing claims among different religions on religious upbringing of children. A widely held opinion among scholars is to abrogate the promise of the Catholic party in interfaith marriage and leave the task of religious upbringing of children to the decision of the spouses themselves (Curran, 1966; Schierse, 1971; Bhaldraithe, 1971; Pivonka, 1983; Jameson, 2014). The spouses must take the correct decision together without endangering their marriage, and with mutual respect to the freedom of conscience (Vatican Council II, 1965). The Church must repose some faith on the Catholic party of his/her sincere desire to baptise and educate children in the Catholic faith. The law, as Orsy noted, assumes that the Catholic party is deeply committed to the Catholic faith but in real life, it may so happen that the non-Catholic party is more ardent to his/her faith. In such circumstances, the balance must shift to the concrete good

that is possible in marriage (Orsy, 1988: 187). Naturally, the obligation of the Catholic party to baptise and educate the children will continue to remain and the Church should continue to insist even if the requirement of the promise is reneged (Orsy, 1964: 757; Pivonka, 1983: 113). Yet from the larger perspective of religious pluralism, it is a sign of deep fairness and commitment of the Church for religious freedom of all by abrogating one of the controversial issues in interfaith marriages. The law even as it stands demands nothing more than is humanly possible, but the promise in itself regardless of its fulfilment causes strain by imposing a unilateral demand on a subject that is rightfully a concern of both parties (Orsy, 1988:187).

3.2. The SMA 1954: The Rights to Privacy and Autonomy of Choices

In principle, the SMA 1954 is religion-neutral allowing any two persons with/ without religious affiliations or of different faiths to intermarry. Yet, the Act has several limitations some of which even work against its very purpose of providing legal protection of the freedom to marry a person of one's own choice. For example, the thirty- day notice period soliciting objections (s. 7 of SMA) to the intended marriage has become a mechanism for surveillance to track down largely interfaith couples marrying against the will of their parents (Saxena, 2020). This has subjected consenting adults across religions to severe scrutiny, threats, abductions and reportedly even murders and 'honour killings' (Chowdhry, 2007; Mody, 2007: 331 - 344). A Human Rights Watch reports non-state actors including one's own families often misused the thirty-day period to forcibly prevent interfaith union (Human Rights Watch, 2010). Thus, a procedure intended to prevent fraud and bigamous marriages results in grave violation of the rights to privacy and impingement of autonomy of personal choices. While proposing amendments in the SMA, 1954, the Law Commission observed that the changes in the society necessitate "changes in the structure of law" lest it remains static and stationary (Law Commission of India, 1974). Another report on "Prevention of Interference with the Freedom of Matrimonial Alliances" emphasised that the autonomy of every person in matters of choice is "central to an open society and civilized order" (Law Commission of India, 2012, para, 4.1 & 4.2). Besides, with the 'Freedom of Religion Laws' in force in several Indian states barring interfaith marriages under personal laws, and various decisions of the Supreme Court regarding privacy and freedom of choice, it is about time that the thirty-day notice requirement is repealed.

The Supreme Court of India has on several decisions ruled that the right to choose one's marital partner is a legitimate constitutional right. Therefore, "[t]he consent of the family or the community or the clan is not necessary once the two adult indi-

viduals agree to enter into a wedlock…it is a manifestation of their choice which is recognised under Articles 19 and 21 of the Constitution" (*Shakti Vahini vs Union of India*, 2018, para. 41; *Lata Singh vs State Of U.P. & Another*, 2006, para. 4). In another decision, the Apex Court ruled that "[n]either the state nor society can intrude" into the private domain of "[i]ntimacies of marriage, including the choices which individuals make on whether or not to marry and on whom to marry" (*Shafin Jahan vs Asokan K. M.*, 2018, para. 23). In particular, a recent landmark judgment of the Allahabad High Court taking cognisance of the Law Commission Reports and reliance placed on Supreme Court decisions, ruled that it is "cruel and unethical" to impose publication of notice (s.6) and inviting objections (s.7) upon the current generation with nearly 150 years old customs and traditions (*Smt. Safiya Sultana & Anr vs. State Of U.P. & Ors., 2021, para. 41*). It observed that a statute should be evaluated on the basis of the changing needs of the present times as the "purpose of law is to serve the society as per its requirements" (*ibid., para.7 & 11*). The High Court, ruled that publication of notice shall be "read as directory in nature" and not mandatory (*ibid., para. 46*). Hence, the Marriage Officer shall not publish the notice unless the parties to the intended marriage requested it in writing (*ibid., para. 47*). A petition on this issue, *Nandini Praveen vs. Union of India* is pending before the Supreme Court to decide on the Constitutionality of certain provisions of the Special Marriage Act (Supreme Court Observer (SCO)).

The rationale behind the publication of a 30-days notice largely seems to rest on the premise that it ensures the fulfillment of the conditions under Section 4 of the SMA. Yet the well-intended provisions have often resulted to unintended and adverse consequences. Disclosing all private information to the public and inviting objection to the marriage is a peculiar requirement of the Act that is never the case under personal laws (*Smt. Safiya Sultana & Anr vs. State Of U.P. & Ors., 2021, para.* 45). Verifications on marital status of the parties (s.4.a), capacity to give valid consent (s.4.b.i), age (s.4.c) etc. can be ascertained on the basis of certificates issued by the government or competent authorities. Therefore, the declaration of the freedom of the parties before the marriage officer in writing and issuance of certificates about their identities and status must be deemed sufficient. In case of any doubt, the Marriage Officer has the discretion to ask for appropriate proof (*ibid., para.* 47). As the Allahabad HC observed, even if a marriage was solemnised in violation of any of the conditions of section 4, legal consequences as also happens under the personal laws would follow (*ibid., para.* 45). In the present society that universally recognises the right of consenting adults to marry any person of their choice, a law that demands anything more than what is necessary to verify their identity amounts to violation of privacy and infringement to autonomy of choices (*ibid.;* Law Commission of India, 2012, para. 4).

3.3. Legal Framework for Reform and Harmonisation

The Law Commission of India in 2008 proposed a provision to include in the Special Marriage Act 1954 that all interfaith marriages between persons governed by different personal laws be solemnised under this Act. If this recommendation were to be implemented, it would overrule the provision of interfaith marriages under the ICMA, 1872. Specific to our issue of concern, marriages between Catholics and non-Christians will then no longer be legally possible according to the regulations of the Code of Canon Law, 1983. In 1960, the Law Commission had noted that personal law of a particular religious community should have application only when both parties to the marriage belong to the same religion (Law Commission of India, 1960). This concept of limiting the jurisdiction of religious laws to its members seems fair and reasonable. But, as expected, the Christian organisations in India had vehemently opposed such a proposition of change in the ICMA, 1872 and rejected the definition in the Christian Marriage Bill, 2000 that states, "[e]very marriage between persons both of whom are Christians shall be solemnised in accordance with the provisions of this Act" (Parliament of India (Rajya Sabha)).[6] The Bill of 2000 remains pending in the Parliament.

Notwithstanding certain procedural deficiencies, the SMA 1954 has assumed greater significance in the recent past in the wake of anti-conversion laws in many Indian states that are apparently against forced conversion but surreptitiously designed to prevent interfaith marriages. The need for a secular legal option for interfaith marriage is also accentuated by the absence of legal alternatives under the Indian personal law system. Canon Law under the ICMA, 1872 provides the possibility, provided one of the parties is a Catholic, but as discussed already, it is not without affecting in some way the freedom of religion and conscience of the non-Catholic party. Therefore, in order to address issues facing interfaith couples, we propose harmonisation of the two legal orders in the following framework:

i) In light of the principle of the freedom of religion and conscience, the unilateral promise of the Catholic spouse in interfaith marriage be removed and to leave the task of religious upbringing of children to the collective decision of the spouses themselves. Most crucially, mitigate the requirement of the canonical form from validity to liceity and make it a legal requirement for prior registration of interfaith marriages under the SMA 1954. In effect, the respective personal laws of the parties then cease to apply. The marriage and all other matrimonial remedies will then be governed entirely by the SMA 1954, whether or not the interfaith couple subsequent to the civil registration/mar-

[6] Section 3 of the Christian Marriage Bill, 2000.

riage had another religious ceremony acceptable to both (Valliyamthadam, 2017: 156).

ii) In light of the Rights to Privacy and Autonomy of Choices for interfaith couples, it is highly desirable that the procedural provisions of the SMA 1954 are simplified. A 30-day notice (s.6) and invitation of objection (s.7) in particular should be removed, requiring only proof of one's identity and marital status necessary through official documentary evidence (*Smt. Safiya Sultana & Anr vs. State Of U.P. & Ors., 2021, para. 45*). While substantive amendments of both legal orders may be necessary in the future to meet the Indian social realities and the plurality of religion and legal systems, we have a considered view that the selective amendments proposed here would ensure the rights of interfaith couples.

Conclusion

Religion continues to wield tremendous influence on the secular Indian society. Multi-religious groups, which are doctrinally incompatible, not only co-exist, though not always peacefully but also are entitled to constitutional protection of their beliefs and personal laws (Derrett, 1968: 31). While the Indian personal law system may be a response to "cultural and religious diversity in family matters", it has posed significant challenges to interfaith couples in particular as one is generally expected to solemnise marriage under one's own personal law (Ahmed, 2019). Yet no other religious personal law except the ICMA 1872 has legal provisions to solemnise interfaith marriages. For marriages between Catholics and non-Christians, the canonical regulations of the CIC/1983 are usually followed, but it has serious problems with respect to the freedom of religion and conscience. Following anti-conversion laws, persons seeking to marry someone outside their religion have faced targeted legal censure and the danger of abuse of these laws remains a serious issue (South Asia Human Rights Documentation Centre, 2008). Amidst controversial anti-conversion laws that criminalise interfaith love, it is legally ill-advised to solemnise interfaith marriage even under the ICMA, 1872. A legal alternative for interfaith marriage is therefore, an imperative. The selected reforms and harmonisation of certain provisions of the SMA 1954 and the CIC/1983, we believe, address the problem and protect the rights of interfaith couples until a uniform marriage law for all religions is fully achieved.

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