

Inter-Caste Marriage Under Hindu Marriage Act, 1955 And Special Marriage Act, 1954

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ABSTRACT

Marriage in India is purely based on caste system. Religion, caste, sub caste are primary integral element of Indian society. Mostly marriages are performed within the same Sub-Caste, Caste or religion in Indian society. If someone thinks to defy this basic rule of Hindu marriage and wants to inter caste marriage then he readies himself to face various challenges. In India different communities are governed by the different personal laws and marriage are also performed according to the concerned personal laws of the person. Mostly Hindu marriages are governed under "The Hindu Marriage Act, 1955" and Inter-Caste marriages between only Hindu, Sikh, Buddhist and Jain also governed under this Act. However in extra ordinary circumstances when inter-caste marriage performed between two persons where both or one of them did not belong to Hindu community or religion then the marriage performed under the provisions of "The Special Marriage Act, 1954". Both "The Hindu Marriage Act, 1955" and "The Special Marriage Act, 1954" legally permits the inter caste marriage in India. But the applicability of the both acts is different. "The Hindu Marriage Act, 1955" applied to only Hindus¹, and under this act inter caste marriage between two Hindus is valid and "The Special Marriage Act, 1954" applied to every citizen of India, any two Indians are married under this act. Marriage conditions are different under both marriage laws. The main objective of this research is to analysing the validity of Inter-Caste marriage under "The Hindu Marriage Act, 1955" and "The Special Marriage Act, 1954". We also discuss the conditions of inter caste marriage, registration of marriage and other personal rights and obligations under the both personal laws.

Keywords: India, Inter-caste Marriage, Societal Attitude, The Special Marriage Act, 1954, Right to Marry.

INTRODUCTION

Castism and religious discrimination are one of the major barriers in the way of Indian national unity. From the very ancient time, Indian society divided into various castes on the basis of their profession. Even today after entering into 21 century, a major part of Indian population believes in caste system and also against the inter caste or inter religious or inter faith marriage. But in order to eradicate the castism and religiously discrimination inter caste and inter religious marriages are allowed and accepted by the Indian society. In a modern era due to modernisation westernisation urbanisation and development has brought several of positive changes relating to the inter caste marriages in India. Today inter caste marriages are generally performed by the Indian youngsters. But the major part of inter caste marriages performed by the urban peoples only. People of the rural area not ready to accept the inter caste marriages till the present time. Inter-caste marriages are also permitted under different Indian personal laws. A major part of Inter-Caste marriages performed under "The Hindu Marriage Act, 1955" and "The Special Marriage Act, 1954" in India. Basic conditions relating to marriage are different from each other under both laws.

Today, India has well-established Inter-Caste marriage laws, however the rate of performing Inter-Caste marriage in India is very low. According to a survey report of Indian Human Development Survey, inter caste marriage performing rate in India is only 5.4%. Madhya Pradesh is the lowest inter caste rate in India, only with 1% ratio. The growth of inter caste marriages are very slow and ratio of inter caste marriage are not going to upwards.²

Inter Caste Marriage in India

Marriage was totally affected by castism in India from very ancient time. There are several principles developed by caste communities, which deal with the term marriage, like: the marriages were performed within the same caste. If a person chooses his life partner outside his caste or community, it was treated as an offence against the whole community. In old days, inter-caste marriages were banned in Indian society and it was considered to be against the

¹The Hindu Marriage Act, 1955, s.2

²Editorial, "Just 5% of Indian marriages are inter-caste" The Hindu, Nov. 13, 2011

culture of the society.³ Religion or Caste is more essential element of marriage other than love, perfection, feelings and consent of parties getting married in India. Inter-caste or Inter-religion marriage means solemnization of marriages outside the same caste or religion. Though, in the society marriage between inter-religious and inter-caste is not permitted under the old Indian custom but now days it is performed by the young people as a result of their love and affection or emotional attachments.⁴ For example: Brahmin male married to Sudar female etc.⁵

India is a country of multiple religion, castes, sub-castes and linguistic groups.⁶ The Constitution of India guarantees for equal treatment of laws irrespective of religion, caste, etc.⁷ Similarly, the modern Indian personal laws provide opportunity to someone to get married to as per their own choice, but Indian society is still reluctant to accept these marriages.

The circumstances have been changing day by day because of modern education, and modernization of the society. However, in old days, Indian society did not support the inter caste marriage but today, Indian society also is showing their interest to accept these marriages. It is possible only through modern education and awareness.⁸

Brief History of Inter-Caste Marriage in India: In India, Inter-Caste marriages are accepted forms of marriages, since the ancient period and such accepted forms of marriages were known as "Gandharvavivaha". This type of marriages only required the consent of the bride and the groom. This form of marriage was however considered as an 'unapproved form' of marriage since it did not involve 'kanyadan' or presenting the daughter to the groom by the father of the daughter.⁹ In the Rig Vedic times, Gandharva marriage was most popular type of marriage in which freedom of choice and mutual consent was most important. The king 'Dusyanta' married to 'Sakuntala' was an example of Gandharva marriage.¹⁰ Marriage of Savitri and Satyavane was an inter-caste marriage during the time of Mahabharata.

After the establishment of British courts and legal codes, some Inter-Caste marriages were valid under law but the Indian society could not accept such marriages.¹¹ Anuloma marriages were valid within the territory of Bombay and Madras.¹² The first law relating to civil marriages in India was the "Special Marriage Act, 1872" enacted during the British period on the recommendation of the first law commission of pre-independence era of India. The main purpose of the act was to facilitate the inter caste or inter religious marriage in India.¹³ In 1922 the Act was amended to make it available to Hindu, Sikh, Buddhists and Jains for marrying within these communities without any renouncing their own religion. A marriage performed between Christian and non-Christian is legally valid under the provisions of "The Indian Christian Marriage Act, 1872".¹⁴ Marriage between the Sikhs who belongs to the different Sikh castes is legally valid under "The Anand Marriage Act, 1909".¹⁵ Inter-Caste marriage between two Aryans is valid under "The Arya Marriage Validation Act, 1937".

Post Constitutional Period

Constitution of India is one of the most unique Constitutions of the world which takes care of all sections of the Indian society. The framers of Indian Constitution were aware of the value and importance of right to life and human dignity including the right to marry. The Constitution of India is the supreme law of the land and there is nothing beyond the Constitution. According to the **Kelson's** pure law theory the Constitution of India is the grand norm which means, it is at the top and there is nothing beyond that.

³Man Singh Das and Panos D. Bardis, *The Family in Asia*, 88 (George Allen & Unwin Ltd, London, edn.1st, 1978)

⁴Henry A. Bowman, *Marriage for Moderns*, 163 (McGraw-Hill book company New York, 7thedn. 1970)

⁵*Id.* at 165.

⁶K.M. Kapadia, *Marriage and Family in India* 117(Oxford University Press, Calcutta, 3thedn.1966)

⁷The Constitution of India, 1950, art 15.

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰HerambaChatterjeeSastri, *The Social Background of the Forms of Marriage in Ancient India* 519 (Sanskrit PustakBhandar, Calcutta, 1stedn. 1974).

¹¹Deshpande, ChandrashekharGangadhar, *A Comparative Study of Caste and Inter-Caste Married Couple In Maharashtra_ with Special Refrence to Societal_ marital and personal adjustment* (1969)(Unpublished Ph. D. Thesis, The University of Pune)

¹²*BaiGulab v. Jiwan Lal*, AIR 1922 Bom 32.

¹³Law Commission of India, 212th Report on Laws of Civil marriages in India- A Proposal to Resolve Certain Conflicts (Oct, 2008)

¹⁴The Indian Christian Marriage Act, 1872.

¹⁵The Anand Marriage Act, 1909.

After the independence of India, inter caste marriages are legally valid under Indian Constitution and various Indian personal laws enacted by Indian parliament. Firstly, Right to Marry given to all citizen of India under the provisions of Indian Constitution. Right to choose their life partner whether within or outside the same community or caste, is the personal matter of someone and no one should be deprived from this right.¹⁶ Such marriages are legally valid under the different Indian laws like “The Special Marriage Act 1954, Hindu Marriage Act 1955” etc.

The first few provisions of the Constitution defined as fundamental rights including “Equality before law¹⁷, Prohibition of discrimination on grounds of race, religion, caste, sex or place of birth¹⁸, Protection of life and personal liberty¹⁹ etc.” are the anti-discriminatory provisions which guaranty equal rights to all including ‘right to marry’ according to one's own choice. Everyone has right to marry with any person with his free will, there is no need to taking permission or consent of his parents or community regarding this.²⁰

Right to life and personal liberty expands its scope to cover right to privacy and right to choose one's own partner for marriage and family.²¹ Law Commission of India also recommended a structure for proposal of bill entitled “*Prevention of Interference with the Freedom of Matrimonial Alliances (in the name of Honour and Tradition)*”.²²

Inter-caste marriage under Special Marriage Act, 1954

“The Special Marriage Act, 1954”, which replaced with “The Special Marriage Act, 1872” is a civil law that allows people to marry regardless of religion or belief. The act allows the parties to perform any type of religious ceremony to facilitate their marriage and also provides the registration of marriage to the people who have been married under any other personal law. The Law was introduced to ensure that caste, religion and community did not prevent someone from choosing their life partner. Under this act consent of both parties are most important regardless of their caste or religious beliefs.

In 1954 Parliament of India enacted “The Special Marriage Act, 1954” to provide for registration and validation of special form of marriages in India. After passing this Act solemnization of inter-caste marriages in India has become very easy and ratio of performance of such marriages going upward. The Act does not apply to any specific religion or group or community or caste, like other personal laws.²³ Now, youngsters of India have a easy and legal way to solemnized a marriage outside his caste or religion. The Act extends to the whole India. Under the provisions of this act every citizen of India, also included the citizen of India who are currently residing in abroad, can performed a marriage or inter caste marriage in India.²⁴

Gone are the days when a child used to get married within the same caste, religion or community according to the choice of his or her parents. Today's modern world all the youngsters want to marry with a perfect match on the basis of qualities not on the basis of same caste or community.

According to Dharmasastra and Indian law, all the religion and castes are equal but the society is not ready to accept the inter caste marriage. Under this act marriages are performed only through the mode of registration, there is no need of religious ceremonies for the validity of marriage. The parties of the marriage are not required to renounce their caste and religion for solemnizing the marriage.

“The Special Marriage Act, 1954” states that a marriage can only be valid under this law if the following conditions are fulfilled at the time of marriage:

- Both parties of marriage must be monogamous, it means both parties are unmarried and neither party has living spouse.²⁵
- Neither party is of unsound mind and incapable of giving a valid consent to the marriage.²⁶

¹⁶ The Constitution of India, 1950, art 21.

¹⁷ *Ibid.*

¹⁸ *Id.* art. 15.

¹⁹ *Supra* note 17

²⁰ Prof. Kusum, *Family Law-I* (Butterworths Wadhwa, Nagpur, 3rd edn., 2011)

²¹ DR. J.N. Pandey, *Constitutional Law of India* 249 (Central Law Agency.)

²² Law Commission of India, “242nd Report on Prevention of Interference with the Freedom of Matrimonial Alliances.

²³ *Supra* note 2 at 87.

²⁴ *Ibid*

²⁵ The Special Marriage Act, 1954, s. 4(a)

²⁶ *Id* at s. 4(b)(i),(ii),(iii)

- The male party must be at least 21 year old and female party must be at least 18 year old.²⁷
- Both the parties do not fall in the definition of prohibited degree or sapinda relationship.²⁸

The parties of marriage shall give a written notice to District Marriage Registrar where either or both parties must be residing of minimum 30 days period. The marriage shall be registered after the expiry of 30 days of the notice period that has been published. The marriage certificate is issued by the marriage registrar to the marriage parties.

Inter-caste Marriage under the Hindu Marriage Act, 1955

Under Hindu religion marriage means “kanyadan” which means father of the girl gifting her to the boy according to the all religious rites or ceremonies. Whole Hindu religion based on the myths. Hindu marriage is considered to be a sacrament and strongest, unbreakable bond even after death of parties.

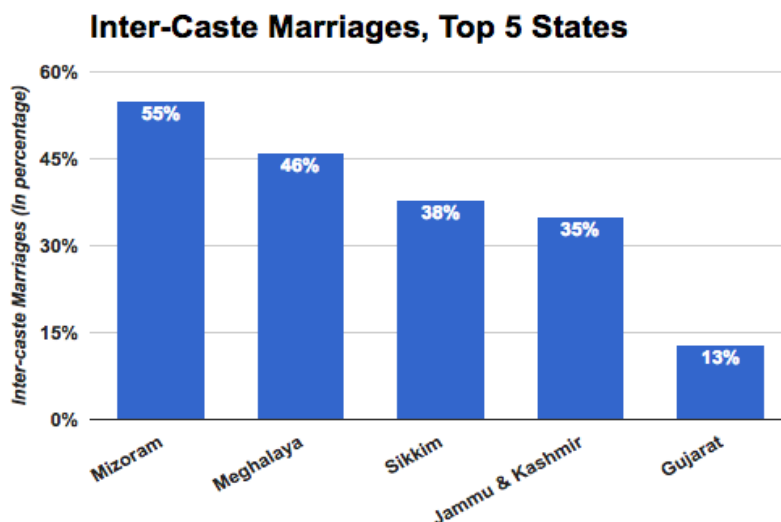
Indian parliament passed “The Hindu Marriage Act, 1955” in the year 1955. This act passed for the security of personal rights of Hindus. Inter-caste marriage is also valid under this act, if the marriage parties are Hindu, Sikh, Buddhist and Jain by religion. A marriage performed between two Hindu belonging to two different castes is valid.²⁹

The act applies to a person who is included in the definition of Hindu³⁰ and a permanent resident of India, who is not Parsi, Christian, Jew and Muslim by religion. Hindu marriage is always solemnized in accordance with the Hindu customs and rituals. There are several mandatory ceremonies for a valid Hindu marriage but the most important and essential ceremonies are Saptapadi, which means taking seven steps by both marriage parties at the same time, around the fire and Kanyadan, which is performed by the father of the girl.³¹ Hindu marriage may be solemnized by performing all the religious ceremonies of both marriage parties or either of them.

Position of inter caste marriage at present

Indian Territory includes total 28 states and 8 union territories of India. After passing the modern personal laws, development of education and globalization of the country, inter-caste marriages are accepted by the youngster as well as Indian society.

The various states of India having different ratio of inter caste marriages. Mizoram, a Christian-dominated state, where 87% of the people are Christian and the state have most inter-caste marriages in India. Approximate 55% people of Mizoram are entering into inter-caste marriages.³² Meghalaya and Sikkim followed Mizoram, with 46% and 38%, respectively.³³ These three north-eastern Indian states were followed by Muslim-dominated states of India, Jammu and Kashmir (35%) and Gujarat (13%).



Indian Judicial Response towards Inter-caste Marriage

²⁷*Id* at s. 4(c)

²⁸*Id* at s. 4(d)

²⁹*Nilesh Narin Rajesh Lal v. Kashimira Bhupendrabhai Banker*, AIR 2010 Guj 3, 2010(1)HLR 439.

³⁰*Supra* note 1.

³¹*Supra* note 1 at s.7

³²National Council of Applied Economic Research, New Delhi, Family Health Survey report.

³³The Indian Human Development Survey (IHDS-II), 2011-12

In *Lata Singh v. State of U.P. & another*³⁴ Supreme Court of India giving landmark decision in the favour of right to marry and against the honour killing on the ground of inter-caste marriage. The court provided unwavering support of a woman's right to choice of her life partner.

Right to marry is integral part of right to life & liberty under Art 21 of Constitution of India. The choice of his or her life partner whether within or outside his or her community is absolute right of an individual given by Indian Constitution. Neither the state nor the law can dictate a choice of partners or limit the free ability of every person to decide on these matters.

In *Sanjeev Kumar v. State of Himachal Pradesh*, the High Court of Himachal Pradesh held that inter-caste marriage is a valid marriage under the law proved by Indian parliament. The court also says that all human beings are equal in the eyes of God, thus no one is discriminate on the basis of sex, colour, caste, race, creed etc. Right to marry is a well-recognized right by ancient law as well as modern law. It is further observed by the Hon'ble Court that in *Shrimad Bhagwat Gita*, a message of God, it is propounded that who discriminates amongst the creature of God and do not see the presence of the God everywhere can never attain the blessing of the God. Hindu Vedas propound the principal of equality. Therefore, discrimination on the ground of caste or religion is not only against the law, it is also against the God and Dharma.

Everybody has right to life including right to marry with her or his free choice of their life partner. No individual or even the state has right to interfere in the personal life and liberty of any person.³⁵ "Once a person who is major, he or she can marry whosoever he/she likes with his or her free will." Every person has right to life including the right of marry. Under the expression of right to marry, every person has right to choose his or her life partner according to his or her own free will.³⁶ A person who is major has right to choose their life partner without taking the consent of his parent or other family members. Apex court of India observed that right to reputation is a facet of the right to life of a person. It has been reiterated that since right to reputation is a person's valuable asset and a couple of inter caste marriage has a reputation in the world. They have also right to reputation and no one says anything unfair relation to their marriage or relation.³⁷

It was held that: "In such cases of inter-caste or inter religion marriage the Court has only to be satisfied about two things that the girl is above 18 years of age, in which case, the law regards her as a major vide Section 3 of the Indian Majority Act, 1875. A major is deemed by the law to know what is in his or her welfare and the wish of the girl."³⁸ Allahabad High Court held that the right to marry is an integral part of right to life and liberty. Right to marry also treated as a fundamental right. Once a person becomes major they cannot be restrained from going everywhere and live with anyone.³⁹ The courts says if any girl willingly, of her own accord, accompanies any boy, the law does not direct to the boy of taking her back to her parent's home or even of instructed her not to join him.⁴⁰ The court held that everyone has "right to marry" with his free will and also says that no one has right to disturb the others relating to their person rights. Khaps should not take the law into their hands and cannot assume the character of a law implementing agency. A person who is major has right to choose their life partner without taking the consent of his parent or other family members. Apex Court of India opined that "all persons who are planning to perpetrate 'honour' killings should know that the gallows await them"⁴¹

United Nations on Inter Marriages

In the favour of mixed marriages several Declarations, Conventions, Conferences were held at international level and several countries had from time to time passed the different laws which were gives the right to performed marriage with his free will and provides adequate punishments on the commission of any kind of acts which are prevented any one from thisright. Important Declarations, Conventions, Conferences and legal provisions of different countries are discussed below in detail:

The Universal Declaration of Human Rights, 1948: This Declaration guarantees that every person shall be free from gender inequality, slavery, racial or religion based discrimination, and exploitation.⁴¹ Every man and woman of full age and mental ability have a right to marry and found a family with her or his free will, without any bars or brigades due to

³⁴ (2006) 5 SCC 475

³⁵ *Shiv Kumar Gupta Alias Rajuv v. State of U.P. and Others* (1999)

³⁶ *ArmugamServai v. State of Tamil Nadu*, (2011) 6 SCC 405.

³⁷ *State of Bihar v. Lal Krishna Advani*, AIR 2003 SC 3357.

³⁸ *Fiaz Ahmed Ahanger and others.v. State of J&K*, 2009(3)RAJ 692.

³⁹ *Jyoti Alias Jannat and Anrv. State of UP and others*, ILR (3) 2003 (ALL) 703, 2004 AIR (ALL) 45.

⁴⁰ *Ibid*

⁴¹ Universal Declaration of Human Rights, 1948,art.7

caste, race, nationality or religion etc.⁴² Everyone has equal rights relating to marriage, during marriage and dissolution of marriage. Marriage will only be done with the full independence and consent of the spouse. If the consent of either or both spouses is not free or valid then the marriage can be void or voidable.⁴³ Everyone has the right to life, liberty and the security of person⁴⁴ and also has equal protection against the any discrimination which made violation of this Declaration.⁴⁵ No one will be arbitrarily interfered with in his or her privacy, family, home or correspondence, nor will his honour and reputation be attacked.⁴⁶ *The Declaration on the Elimination of All Forms of Racial Discrimination*, 1963 states that all racist organizations to be banned or illegal and also calls on the UN to learn the causes of racial or colour discrimination to fighting it better so that offences against couple of inter-racial or inter-caste marriage on the basis of race can be stopped.⁴⁷ *International Convention on the Elimination of All Forms of Racial Discrimination*, 1965 declared that marriage is based on the personal choice of the person, it is not based on the racial, religious or caste. So that inter racial marriage, inter caste marriage, etc are valid and the inter marriage spouses has right to choose his life partner if any one interrupt this right of any another person in any way, punishable under the law. Right to marry with any one is all human being's personal right.⁴⁸ Every national shall act in conformity with this obligation and not to support, protect, maintain or funded any racial discrimination or racial hate.⁴⁹ *The Convention on Consent to Marriage, the Minimum Age for Marriage and the Registration*, 1962 was fully and directly relating to right to marriage.⁵⁰ No marriage shall be legally valid without the free and independent consent of both the parties.⁵¹

Some effective Suggestions are given below for improving the situation of Inter-Caste or Inter-Gotra marriage in India

Education: Education plays the very important role in our society. Thinking and life style of the society always depend upon the education level. The countries where the education level is high, rate of inter-caste or inter marriages are also high. In USA education level is high so rate of mixed marriages in USA 17% and because of our lower literacy rate, rate of mixed marriage in India only 5%. Inter caste marriage more successful between two educated persons. Thus, education is the major external factor of inter-caste marriage. So, if the adequate education level increasing in India then the rate of inter-caste marriages are definitely increasing.

Family care and social support: Indian families and society against the mixed marriages so the youngster of the Indian society afraid from solemnized inter caste marriage. If someone performed inter-caste marriage, families of the person cut all the relations with him and also harassed sometimes. Youngsters are ready to performed inter-marriages if the families are ready to accept it.

Awareness of Human rights, Social Campaign and Personal Freedom: Indian people do not fully aware about their rights and personal freedom. Awareness of these personal rights and freedom are playing very important role to increasing the rate of inter caste marriages in India. The government of India must arrange campaigns relating to the awareness of these personal rights in every part of the Indian society. These campaigns definitely encourage and also motivating youth to perform inter caste marriages.

Honour Killing: Honour killing is a violation of Human Rights. Some of the person who believing in the old tradition of marriages against the inter caste or inter-gotra marriages. They are harassed and murdered the inter-caste marriage couple. These crimes are very heinous. Law commission also recommended that rate of honour crime increasing day by day so that Indian legislature has a need to enact a new law to control these crimes strongly.

Casteism: Every person of the society might think that his/her caste is superior or inferior to other spouse or partner. Casteism and Untouchability are main barriers in the way of inter caste marriages in India. The government of India shall be taking adequate actions to abolish these social evils.

⁴²*Id* art.16.

⁴³ *Id.* art 3.

⁴⁴ *Id* art.16.

⁴⁵ *Id.* art.7.

⁴⁶ *Id.* art 12.

⁴⁷ *The Declaration on the Elimination of All Forms of Racial Discrimination*, 1963, art. 8,9 and 10.

⁴⁸ *International Convention on the Elimination of All Forms of Racial Discrimination*, 1965, art. 5(d)(iv)

⁴⁹ *Id.* art. 2.

⁵⁰ B. Sivaramayya, "The Convention on Consent to Marriage, the Minimum Age for Marriage and the Registration of Marriage 1962, with special reference to India" Vol. 8, *Journal of the India Law Institution* 404 (1966)

⁵¹ *The Convention on Consent to Marriage, the Minimum Age for Marriage and the Registration of Marriage* 1962, art 1.

The word “Special” must be dropped from the title of “The Special Marriage Act, 1954”: The title of special marriage act is “Special Marriage Act 1954”. The people of India think that the act relating to some special marriages. But they don’t know this act relating to the normal form of marriage. The word “Special” must be dropped from the title of the “Special Marriage Act 1954” and the act be simply called “The Marriage Act 1954” and aware the society about the provision of this act.

Uniform Civil Code: Our society needs a new marriage law, which is applicable within the whole territory of India and to all citizen of India irrespective of their religion, community or caste without any exceptions or exemptions. Uniform Civil Code will provide equal right and justice to peoples of different religions or caste, relating to their marriage, divorce, maintenance, inheritance etc. This code comes under Article 44 of the Constitution of India. The code is very important to reach the goals of the Directive Principle of Indian Constitution. The code simplifies the personal complex laws relating to matrimonial and property matters.

CONCLUSION

Marriage is basically personal matter of human beings. But some religious or other narrow minded persons think that marriage is a matter of society. They believe that marriage always perform within the some race, religion, caste, group etc. From the very ancient time, Indian society always made struggle against this caste system, but still now caste system exists because the strength of spotter of caste system is very high. Inter-caste marriage are not problem of one country or nation, it is issue of whole world. From the very ancient time, inter-caste marriages are not fully accepted by the Indian society but Anuloma and Pratiloma were allowed to perform some high caste communities. During the rule of British government, several changes were coming like: several legal enactments were made in the favour of inter caste marriage. Indian Constitution giving the legal validity to inter-caste marriage under right to personal life and liberty. After independence of the country, Indian legislature also enacted “The Special marriage Act, 1954” and “The Hindu marriage Act, 1955” to giving the legal validity to inter caste marriage. The United Nations also declare that Right to marry is a personal right of a person in Universal declaration of Human Rights. United Nations make several declarations, conferences, conventions, reports etc. against the discrimination on the basis of race, religion, caste, colour, sex etc. These declarations, conventions and conferences are also legalized the inter-caste, inter-religious and inter-race marriages.

Indian society are not ready to accept the inter caste marriage till now, after passing several laws in the favour of inter caste marriage. Law commission of the India also recommended in his report no.242 that our society has needed to enact a new law relating to handle marriages and other relative affairs of marriage.