



**CROSSING THE JATI LINE:  
SUPREME COURT'S ROLE IN  
PROMOTING INTER-CASTE  
MARRIAGE IN INDIA**

*By Kiran Patel*

*From Alliance School of Law, Alliance  
University, Bangalore*

**Abstract**

Let's begin with the concept of social problem and its true meaning. It is a state or a condition which is considered to be undesirable by the society<sup>1</sup>. These social factors are generally based on religious aspirations. Due to attachment to such ideologies, social problems arise when deviations take place from such ideologies which are considered inherent in their society. Opposition or the resistance shown to inter-caste marriage is a social problem which is considered to be a crime in the society just because of the non-alignment of such a concept with their sociological beliefs. The crime of honour killing is a major crime in India even though the judiciary has failed to put such an offence under a separate section in the Indian Penal Code, 1860. This crime is what many societies consider as one of the punishments for marrying out of the caste. For example, the Hindu Marriage Act<sup>2</sup> has clearly stated under Section 5- "A marriage may be solemnised between any two Hindus....". This clearly states about marriage between two Hindus, and has nowhere mentioned the word caste in any instance while solemnising a marriage.

Article 21 of the Indian Constitution has stated with the clarity the fundamental right to "protection of right and personal liberty". The scope of this article has been widened by the judiciary where this article is also inclusive of "right to live peacefully"<sup>3</sup>. In the case of *Deepika v State of Uttar Pradesh*<sup>4</sup>, the supreme court held that, if the parties are major, they have unfettered or unrestrained right to live with whomsoever they choose to. The court does not concern itself with the fact of the parties marriage being solemnised while living together. The self-conscious nature of the Indian society is what has withheld the development of this society. The endogamous nature of marriage institutions which has been followed till date by the society consider inter-caste marriage as outside the commandments of the texts they follow due to the narrow interpretation<sup>5</sup>. This paper deals with the reasons behind the sociological differences which has led to the outcast of many men and women just because they chose to exercise the right of choosing their own partner. Adjudication in many cases by the Supreme Court in this regard has led to a new awareness much needed in society which is paving way for modernisation. Such crucial judgements also need to be dealt in depth to understand the outline of inter-caste marriage in our country. Therefore, this paper deals with the growing importance for the society to do away with traditional or age old concepts of society and marriage, while taking into consideration landmark judgements which ensures the right to marry of choice.

<sup>1</sup> Ram Ahuja, *Social Problems in India*(3<sup>rd</sup> edn, Rawat Publications,2017).

<sup>2</sup> The Hindu Marriage Act, 1955.

<sup>3</sup> P M Bakshi, *The Constitution of India*(14<sup>th</sup> edn, Universal Law Publishing 2017)83.

<sup>4</sup> AIR 2014 All 1 (7).

<sup>5</sup> Goli, Srinivas, 'Exploring the Myth of Mixed Marriages in India: Evidence from a Nation-Wide Survey.' (vol. 44, no. 2, 2013).

< [www.jstor.org/stable/43613088](http://www.jstor.org/stable/43613088)> accessed on 9<sup>th</sup> Augyst, 2019.



## Introduction

One of the professor's of law school has termed the right to marry as a positive right. This is important to reconcile intimate liberty with equality<sup>6</sup>. Though this was said in the right of same sex marriage, the principle behind the above reconciliation is nothing but a private right of choice to be given to both men and women. The most important topic to be dealt with today is how empowering the right to marry diminishes inequality in the society. This inequality arises from the vast spectrum of caste differentiation which leads to horrendous consequences in the near future if anybody in the society has tried to exercise the right to marry. The Supreme Court in India in various judgements has given support to this caste dilution through inter-caste marriage as it leads to rise in equality. The tolerance towards other religion or sect or division in their very own society increases, which leads to the diminishing occurrence of communal riots across the country. In the case of *Lata Singh v State of Uttar Pradesh*<sup>7</sup>, the Supreme Court held that- "The caste system is curse on the nation and the sooner it is destroyed the better. In fact, it is dividing the nation at a time when we have to be united to face the challenges before the nation unitedly. Hence, inter-caste marriages are in fact in the national interest as they will result in destroying the caste system." Under no law has it been specifically stated that two parties marrying must belong to the same

caste. Hindu reformist movement led by both Brahma Samaj and Arya Samaj talk about dissolving the distinctions of caste system in India by reinforcing inter-caste marriage in India<sup>8</sup>. This will lead to creation of inter-caste harmony, as believed and propagated by many people back then too. Something very crucial was stated by sociologist M.N. Srinivas (who was mostly known for his work on caste and caste system) at the national seminar of 'Casteism and Removal of Untouchability' under his paper named "Castes: Can They Exist In The India Of Tomorrow". He expressed his views on the subject of inter- caste where he clearly mentions- "While caste as a system is dead, individual castes are flourishing."<sup>9</sup> It is clear that caste is base more on juxtaposition than on hierarchy as it maintains the level of difference and uniqueness of different societies. Even though the power and rule of casteism is diminishing, the consequences of such continue to be severe in today's so called modern society too.

## Existing Legal Situation

In current times, acceptance and liberalism has been prevailing in the right to choose while marrying. Though this does not mean that it has been widely accepted and there have been no crimes being committed as a consequence of this. Even though, the 242<sup>nd</sup> Law Commission Report recommended the creation of a separate act to protect the marital institution in an inter-caste marriage,

<sup>6</sup> Gregg Strauss, 'THE POSITIVE RIGHT TO MARRY' (, vol. 102, no. 7, *Virginia Law Review*, 2016)

<[www.jstor.org/stable/24878277](http://www.jstor.org/stable/24878277)>

<sup>7</sup> 2006 (2) KLJ (SC) 735.

<sup>8</sup> KRISHNASWAMY, S., & KAMATH, R., 'MEASUREMENT OF ATTITUDE TOWARD INTER-CASTE MARRIAGE: Development of A

Likert-type Scale' (*International Journal of Sociology of the Family*, 1995)

<<http://www.jstor.org/stable/23029669>> accessed on 12<sup>th</sup> August, 2019.

<sup>9</sup> A M Shah, 'Caste in the 21st Century: From System to Elements'(vol. 42, no. 44, *Economic and Political Weekly*, 2007) 109.

< [www.jstor.org/stable/40276753](http://www.jstor.org/stable/40276753)> accessed on 12<sup>th</sup> August, 2019.



this bill has not been introduced yet. The suggested legal framework covers a multitude of topics ranging from interference of panchayats in marital matters to the right of personal liberty and from honour killing to harassment of young couples or couples intending to marry. The recommendations of the report includes-

- a) Treating members involved in condemning a marriage with a view to take consequential action as unlawful assembly for which punishment has been prescribed under the Indian Penal Code, 1860.
- b) Endangerment of personal liberty of couple or their family by harassment of social boycott as a punishable offence.
- c) Presumption of people a part of unlawful assembly to also be a participant in the commission of any offence which was consequential.

This bill also criminalises honour killing specifically. Due to the stagnancy of legislature in this regards, honour killing is not being dealt with as a separate crime under a specific section of the Indian Penal Code. The existing penalties for such a heinous crime are:-

- i. Sections 299-304: Murder and culpable homicide not amounting to murder, where the punishments are life sentence or death and fine, and imprisonment up to 10 years and fine respectively.
- ii. Section 307: Penalise murder with imprisonment up to 10 years and fine.
- iii. Section 308: Attempt to commit culpable homicide for imprisonment upto 3 years or with fine or both.

- iv. Section 120A: Penalising any person who is part of a criminal conspiracy
- v. Sections 107- 116: Penalises a person for abetment of an offence which includes murder and culpable homicide.
- vi. Section 34 and 35: Penalises criminal acts done by several persons in furtherance of a common intention.

In a fairly recent judgement passed by the sessions court in Karnal, five people were awarded death penalty for murdering a young couple who had married against the whims of the khap panchayat<sup>10</sup>. Even though it had become too late since when active measures were started to be taken in such a regard, there's still many changes pending including criminalising honour killing under a separate section in the Indian Penal Code, 1860.

#### Literature Review

The basics of the stratification of social class can be understood while reading 'Social Stratification' edited by Dipankar Gupta<sup>11</sup>. The development of caste or varna system and the relative hierarchical differences which form the basis of inter-caste marriage being negated can be well understood. The fact that caste system in our country is based more on the unique identity a society wants to maintain over the actual hierarchical nature is what makes framing laws and values important. Inter-caste marriages are considered to be the destruction of this unique society due to the dilution in their society taking place. 'Social Problems in India'<sup>12</sup> has discussed a variety of social problems in India varying from poverty to illiteracy to female subordination. One

<sup>10</sup> *Smt Chandrapati v State of Haryana* [2007] O&M P&C HC [1].

<sup>11</sup> Dipankar Gupta, *Social Stratification* (Oxford India Paperbacks, 1992).

<sup>12</sup> n(1).



feature intrinsic to all the social problems are that illiteracy has different meanings in different contexts. A highly educated family or society would also believe in maintaining pure societal blood just to maintain its unique identity. The issue of negating inter-caste is not prevalent only in backward or illiterate society. The fact that this has equally been marginalised is the most probable conclusion drawn after reviewing the above literatures.

A paper discussing a play named “Kanyadaan” by Vijay Tendulkar<sup>13</sup>, has specially mentioned women being subjected to atrocities on the basis of caste and the respective divisions in the society. The portrayal of the dalit community having different marital responsibilities and behaviour can form the basis of the violation of Article 14 and 15 of the Constitution of India. Where even though the upper caste is similar in its treatment regarding the same matter, it has not been questioned due to the division in the society. The point is that in trying to maintain an identity, the society as a whole is losing its natural identity of belonging to one another. This is why, inter-caste marriage has always been the most targeted societal problem as people consider it the only way of maintaining their so called identity. The article ‘Positive Right to Marry’ voices the opinion of the right to marry as a “power right”<sup>14</sup>. This power right in relation to the concepts mentioned in ‘Social Stratification’ can clearly be related. As societies feel the need to maintain its uniqueness and hierarchical structure, the concept of “power right” would diminish its

power to maintain the former. A power right can be considered as a right where an individual has sole right or jurisdiction over. This sole right forms the basis of a family which in turn forms the society as per the changing needs. If control over this power right is performed, the society can automatically be built over what would consider it unique and not as per the changing needs.

The above literatures can easily be inter-related with each other as the historical perspective of societies and matrimonial alliances can help understand the abhorrence of inter-caste marriage till date.

### The Social Stratification

Class analysis is important to understand a social stratification, the culmination of which influences the major social institution which is marriage. Under the Marxian method of class analysis, societies are factories producing people and goods satisfying their desires which are called the social relations<sup>15</sup>.

Social anthropologists have suggested that these relations are spread and communicated through interaction with people belonging to the same society. Due to this, the same societal beliefs are passed down. Now in the case of people interacting with someone belonging to another society and forming social relations with them, i.e., matrimonial alliance, a mixation of beliefs take place. This mix diluted the beliefs of one society while giving way for another society competing in beliefs. The simple answer would be the emergence of strong societal control over

<sup>13</sup> LOOMBA & ANIA, "Inter-Caste Marriage and the Liberal Imagination: Vijay Tendulkar's "Kanyadaan" (no. 43, *Economic and Political Weekly*, 2013). <<http://www.jstor.org/stable/23528846>> accessed on 20th August, 2019.

<sup>14</sup> n(6).

<sup>15</sup> Gavin Smith ‘The Use of Class Analysis’: *Challenging Anthropology* (McGraw-Hill Pyperson Limited, 1979).



such an interaction so as to not dilute a particular society's sphere.

In the Indian society in particular, 'The Ideology of Purity' is essential forms the presumption behind the existence behind a 'stable' society so as to avoid uproars against it<sup>16</sup>. In one of the most recent case of 'honour killing' of Kevin P Joseph, punishments were awarded to the convicted people by the Kottayam Sessions Court. His said alleged relation with the sister of the accused led to his murder purely on the grounds of him belonging to the dalit community of the Christian society. The ideology of purity or maintaining bloodline of a particular community is crystal clear in the above case where the accused considered the dalit youth of inferior caste which would mix with the blood of his sister if they co-habited together. Honour killing which the gross result of inter-caste marriage has witnessed the highest number of registered cases in the states of Haryana, Punjab, Rajasthan, Bihar and Uttar Pradesh<sup>17</sup>. An excerpt from Pradip Kumar's writing, helps us come to the conclusion) ourselves about the reason being inter-caste marriage being a sole major target. Various castes since the historical time have suffered through various problems. These problems includes economic problems in the form of agricultural shortage, upper castes abusing lower castes for loans granted, seclusion of casted from certain rituals and events, and various other issues which have also been clearly prevalent since the British time period<sup>18</sup>. This has in turn developed hatred among the social strata and have considered

an alliance formation between all the strata in the society as a taboo due to the above mentioned differences. The easiest way to form an alliance is through matrimony which is why there has been the most revulsion to the concept of inter-caste marriages. The social system in our country only functions as a system to prevent formation of united social classes with a commonality of interest or unity of purpose. The Panchayats or the social councils of different castes and society assume the role of community guardians and apply the principle of 'moral vigilantism' as a recourse for protecting 'community interests'. This has strongly been condemned by the Supreme Court on the grounds of violation of the constitutional rights of a person.

#### Supreme Court and Indictments

In the recent case of *Armugum Servai v State of Tamil Nadu*<sup>19</sup>, the Supreme Court strongly deplored and condemned the conduct of katta or khap panchayats. Such bodies have taken law into their own hands and indulged in offensive activities by punishing people who have exercised their right of choice guaranteed under Article 21 of the Indian Constitution. These bodies have no constitutional validity of its autonomous functioning even though they have been looked upon as guardians of the interests of the community but in turn leads to the destruction of the basic morals. Justice Makrkankey Katju has briefly written in the very same judgement – "We hold these truths to be self-evident, that all men are created

<sup>16</sup> Pauline Kolenda 'The Ideology of Purity and Pollution': Caste in Contemporary India (Waveland Press, 1985).

<sup>17</sup> *Prevention of Interference with the Freedom of Matrimonial Alliances (in the name of Honour and*

*Tradition): A Suggested Legal Framework* (Report No.242, 2012)3.

<sup>18</sup> Pradip Kumar 'Mobility and Conflict: Social Roots of Caste Violence in Bihar': Caste, Caste Conflict and Reservation (Ajants, 1985).

<sup>19</sup> (2011) 6 SCC 405.



equal, that they are endowed by their creator by certain inalienable rights that among these are life, liberty, and the pursuit of happiness" - American Declaration of Independence, 1776. He also continues to write- "Over two centuries have passed since Thomas Jefferson wrote those memorable words, which are still ringing in history, but a large section of Indian society still regard a section of their own countrymen as inferior. This mental attitude is simply unacceptable in the modern age, and it is one of the main causes holding up the country's progress." It has been a very long time since this modern age came into being but as rightly said we haven't been able to escape the clutches of the past.

The most landmark judgement involving both inter-caste marriage and honour killing is *Lata Singh v State of Uttar Pradesh*<sup>20</sup>. An important passing remark was made in the judgement which is as follows- "The caste system is a curse on the nation and the sooner it is destroyed the better. In fact, it is dividing the nation at a time when we have to be united to face the challenges before the nation unitedly. Hence, inter-caste marriages are in fact in the national interest as they will result in destroying the caste system.....There is nothing honourable in such killings, and in fact they are nothing but barbaric and shameful acts of murder committed by brutal, feudal minded persons who deserve harsh punishment. Only in this way can we stamp out such acts of barbarism." The uncivilised society before is in no comparison to the civilised society today. The continuance of such atrocities and violations only prove the nature of uncivility in today's society too. The court directed that there is no bar to an inter-caste marriage under the Hindu

Marriage Act or any other law. The police or administrative authorities have the responsibility to ensure is a boy or girl who is a major willingly marry, the couple is not to be harassed by anyone. They should not be subjected to any threat of violence and any person or body involved in such threats or instigates them is taken into account by instituting criminal proceedings by the police against them. It is important to note that the existence of society of community councils or panchayats itself give way to having scant autonomy over personal liberty and autonomy.

As per the proposed changes in the 242<sup>nd</sup> Law Commission Report<sup>21</sup>, the above councils or panchayats were suggested to be brought under the purview of the penal law or penal provisions to act as a preventive measure. The report has also proposed bringing 'honour killing' under the ambit of Section 300 of the Indian Penal Code specifically so as to provide a clear and transparent laws on such atrocities. Repressive social practices are pursued even today due to the adjustment from past social practices to individual freedom which creates major tension. Individual freedom is paramount in law and should not be abrogated on the face of dated social practices. Past social dogma cannot be said to have been upheld by few elderly being a part of community councils if it is in violation to the rights of self- worth. Social protection in such a form is only superficial. Joseph J. Ellis has propounded "We don't live in a world in which there exists a single definition of honour anymore, and it's a fool that hangs on to the traditional standards and hopes that the world will come around him." This in reference to the case of *Shaktivaahini*

<sup>20</sup> (2006), 5 SCC 475.

<sup>21</sup> n(18).



*v Union of India*<sup>22</sup>, where the grounds or basis on which the crime of honour killing is committed was stated. The petitioner which is an organisation which was entrusted with the task of conducting research study on “Honour Killings in Haryana and Western Uttar Pradesh”. It was contended that social pressure instilled deep fear in the minds of the couple wanting to marry and are treated inhumanly by the core group of the society or community one belongs to. Especially, the existence and reputation of a woman solely depends on the decisions of the male dominated family. If the girl or woman decides to dissent, then at such situations even the family chooses to be silent on how she is dealt with when the core group of a society decides to intervene. The research studies proves that the actions related to honour based crimes are as follows- (i) loss of virginity outside marriage; (ii) pre-marital pregnancy; (iii) infidelity; (iv) having unapproved relationships; (v) refusing an arranged marriage; (vi) asking for divorce; (vii) demanding custody of children after divorce; (viii) leaving the family or marital home without permission; (ix) causing scandal or gossip in the community, and (x) falling victim to rape. The existence of parallel law enforcement agencies in any society is against the rule of law and such ‘law governing bodies’ are illegal. It was also stated that- “It is because their violent acts have not been taken cognizance of by the police and their functioning is not seriously questioned by the administration. The constitutional provisions are shown scant regard and human dignity is treated at the lowest melting point by this collective. Article 21 which provides for protection of life and liberty and guards basic

human rights and equality of status has been unceremoniously shown the exit by the actions of these Panchayats or the groups who, without the slightest pangs of conscience, subscribe to honour killing. In this backdrop, prayers have been made as has been stated hereinbefore.” *Kartar Singh v State of Punjab*<sup>23</sup> has included a piece of writing by a judge of the International Court of Justice, C.G. Weeramantry which talks about social interests in the following words- “The protections the citizens enjoy under the Rule of Law are the quintessence of twenty centuries of human struggle. It is not commonly realised how easily these may be lost. There is no known method of retaining them but eternal vigilance.”

In *Vikas Yadav v State of Uttar Pradesh*, a young man was murdered by the brother of a girl who was all though was fully educated, believed to follow social honours till eternity even though they existed in the past. Proceeding further, the Court held:-

“75. One may feel “My honour is my life” but that does not mean sustaining one’s honour at the cost of another. Freedom, independence, constitutional identity, individual choice and thought of a woman, be a wife or sister or daughter or mother, cannot be allowed to be curtailed definitely not by application of physical force or threat or mental cruelty in the name of his self-assumed honour. That apart, neither the family members nor the members of the collective has any right to assault the boy chosen by the girl. Her individual choice is her self-respect and creating dent in it is destroying her honour. And to impose so-called brotherly or fatherly honour or class honour by eliminating her

<sup>22</sup> (2018) 7 SCC 192.

<sup>23</sup> [1954] SC145.



choice is a crime of extreme brutality, more so, when it is done under a guise. It is a vice, condemnable and deplorable perception of “honour”, comparable to medieval obsessive assertions.” Time and again the court has held such judgements and given clear views on such evils persisting in the society. As it has been rightly said by Blaise Pascal, “Men never do evil so completely and cheerfully as when they do it from religious conviction.<sup>24</sup>” In this case it may be both religious and social or communal which has tirelessly brought us down.

### Conclusion

Even early scholars like Max Mueller, Abbe Dubois, and sociologist Max Weber were uncertain about the capability of India to modernise itself due to the caste system. They opined that it may be difficult for India to side-line the system of caste and develop socially and economically. The above is true to an extent in the matters of social norms. The hypothesis is proved to be null as economic progress in our country has nowhere paved the path for social progress. The entire concept of ‘honour killing’ only proves the social backwardness which the scholars predicted about. Individual’s right to choose guaranteed under Article 21 of the Indian Constitution overrules any societal norms. Castes functioning under the misapprehension of protecting interests of its members is in turn destroying it by controlling aspects of their life they have no right over. The same right to privacy has also been guaranteed by Article 21. It’s the age to bind the society together and not divide it. This binding is what would promote social progress which would in turn also promote

economic progress to a much greater extent. The question of social distinction which is prevalent even today is due to a society clinging on to its past identity which maintained its uniqueness and hierarchy. The Supreme Court has clearly overruled community council’s interest as binding due to their illegal position in the society. Promoting hatred towards other castes by such entities are a threat to the democratic, social and secular nature of our country. Stronger laws must be made by the legislature on the control of panchayats or councils and must be punished for a single action on promoting hate towards others and publicly deepening the societal divisions through acts of subservience from young couples. The 242<sup>nd</sup> Law Commission Report has recommended a separate bill named ‘Prohibition of Interference with the Freedom of Matrimonial Alliances Bill’. This has not been brought into force by the legislature till date. The existence of a separate bill will ensure stricter and specific laws even under the penal provisions. The courts till date have been juggling between various sections in the Indian Penal Code in the absence of a statute. If the above bill comes into force, the courts will waste lesser than in convicting criminals as specific laws would be in existence. Checks on panchayats or communal councils must be mandatory so as to regulate their working and keep tabs on their actions. This way many heinous crimes can be kept at bay by having preventive measures since the beginning. The fear of law will also be instilled in the minds of the councils/ panchayats where they will refrain from abridging the rights of the people and lose the

<sup>24</sup> Blaise Pascal: The Pensees (The Perfect Library, 2013).



unnecessary control over the society they previously had.

### Bibliography

Ahuja R., *Social Problems in India*(3<sup>rd</sup> edn, Rawat Publications,2017).

Bakshi P M, *The Constitution of India*(14<sup>th</sup> edn, Universal Law Publishing 2017)83.

Gupta P, *Social Stratification* (Oxford India Paperbacks, 1992).

Kumar P 'Mobility and Conflict: Social Roots of Caste Violence in Bihar': Caste, Caste Conflict and Reservation (Ajants, 1985).

LOOMBA & ANIA, "Inter-Caste Marriage and the Liberal Imagination: Vijay Tendulkar's "Kanyadaan" (no. 43, *Economic and Political Weekly*, 2013).

<<http://www.jstor.org/stable/23528846>.> accessed on 20th August, 2019.

Pascal B: *The Pensees* (The Perfect Library, 2013).

Pauline Kolenda 'The Ideology of Purity and Pollution': Caste in Contemporary India (Waveland Press, 1985).

*Prevention of Interference with the Freedom of Matrimonial Alliances (in the name of Honour and Tradition): A*

*Suggested Legal Framework* (Report No.242, 2012)3.

Shah A M, 'Caste in the 21st Century: From System to Elements'(vol. 42, no. 44, *Economic and Political Weekly*, 2007) 109.

< [www.jstor.org/stable/40276753](http://www.jstor.org/stable/40276753).> accessed on 12<sup>th</sup> August, 2019.

S. KRISHNASWAMY , & R. KAMATH, 'MEASUREMENT OF ATTITUDE TOWARD INTER-CASTE MARRIAGE:

Development of A Likert-type Scale' (*International Journal of Sociology of the Family*, 1995)

<<http://www.jstor.org/stable/23029669>> accessed on 12<sup>th</sup> August, 2019.

Smith G 'The Use of Class Analysis': Challenging Anthropology (McGraw-Hill Pyerson Limited, 1979).

Srinivas G, 'Exploring the Myth of Mixed Marriages in India: Evidence from a Nation-Wide Survey.' (vol. 44, no. 2, 2013).

< [www.jstor.org/stable/43613088](http://www.jstor.org/stable/43613088)> accessed on 9<sup>th</sup> Augyst, 2019.

Strauss G,'THE POSITIVE RIGHT TO MARRY' (, vol. 102, no. 7, *Virginia Law Review*, 2016)

<[www.jstor.org/stable/24878277](http://www.jstor.org/stable/24878277).> The Hindu Marriage Act, 1955.

The Indian Penal Code, 1860.

\*\*\*\*\*