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Introduction

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Preface

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

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Description

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CRIMINAL OFFENCES: INTERFAITH MARRIAGES AND HONOR KILLING OF WOMEN IN THAT REGARD

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ABSTRACT

This paper explores the socio-legal matrix surrounding interfaith marriages and the accompanying phenomenon of honor killings targeting women in South Asia, with a primary analytical focus on India and comparative constitutional jurisdictions. Interfaith union in pluralistic societies frequently intersects with entrenched patriarchal codes, communal anxieties, and systemic extra-judicial coercion. When women exercise marital autonomy across religious boundaries, patriarchal community structures perceive it as a threat to endogamous boundaries, leading to severe violence, including deliberate honor crimes. Employing legal-analytical and socio-empirical methodologies, this study evaluates existing statutory frameworks, judicial prece-dents, constitutional rights to dignity and choice, and the efficacy of criminal sanctions. The paper examines the tension between personal laws, state legislation—specifically recent anti-conversion statutes—and fundamental constitutional guarantees under Articles 14, 19, and 21 of the Indian Constitution. It argues that statutory ambivalence and institutional complicity aggravate the vulnerability of women entering interfaith marriages. The paper concludes by recommending targeted penal legislation, statutory victim-protection protocols, and normative socio-legal reforms to eradicate honor-based atrocities and secure individual autonomy.

Keywords: Interfaith Marriage, Honor Killing, Patriarchal Hegemony, Autonomy, Bluebook.

I. INTRODUCTION

The intersection of individual liberty, religious identity, and criminal violence presents one of the most critical legal challenges in contemporary socio-legal scholarship. Interfaith marriages, while protected by constitutional principles of autonomy and freedom of choice, frequently trigger violent reactions from kinship groups and community institutions. In many traditional societies, women's bodies and choices are treated as symbols of community honor

and social order. Consequently, when a woman exercises her fundamental right to select a partner outside her religious group, it is often viewed not as a personal choice, but as a violation of collective socio-religious boundaries.

This paper provides an analytical examination of the criminal offenses associated with in-terfaith marriages, focusing on the practice of honor killing targeting women. It examines how deep-seated patriarchal structures, reinforced by customary norms and political rhetoric, turn private personal choices into public conflicts. Through a socio-legal and doctrinal analysis, this study evaluates the inadequacy of general penal frameworks, such as the Indian Penal Code, 1860 (now Bharatiya Nyaya Sanhita, 2023), in addressing honor crimes. It also analyzes the impact of recent anti-conversion legislation on interfaith couples.

The central thesis of this essay is that honor killings arising from interfaith marriages are not isolated criminal acts, but systemic, socio-legal crimes rooted in patriarchal structures and collective endogamous norms. The absence of a dedicated statutory framework, combined with state policies that police interfaith intimacy, weakens constitutional guarantees of life, liberty, and personal autonomy. To address this issue, the legal system must transition from viewing these acts merely as individual homicides to recognizing them as systemic crimes against fundamental human rights.

A. *Research Methodology*

This paper employs a mixed socio-legal research methodology, combining doctrinal legal anal-ysis with critical sociological frameworks. The primary sources analyzed include constitutional provisions, statutory frameworks, judicial precedents, and international human rights conventions. The secondary sources include peer-reviewed legal literature, sociological studies on honor violence and endogamy, and reports from human rights organizations. The analytical framework incorporates critical feminist jurisprudence and constitutional law principles to evaluate the tension between individual agency and community authority.

B. *Scope and Delimitation*

While honor-based violence occurs globally across various cultures, this paper focuses primarily on the South Asian legal landscape, with particular emphasis on India. Comparative references to neighboring jurisdictions, such as Pakistan and Bangladesh, and relevant international human rights frameworks are included to provide broader context. The study focuses specifically on criminal acts against women in interfaith relationships,

analyzing how personal law, statutory regulation, and customary practices interact within the criminal justice system.

II. THE SOCIO-LEGAL CONTEXT OF INTERFAITH MARRIAGES

Interfaith marriage represents a critical junction between personal autonomy, religious identity, and state regulation. In a pluralistic society, the right to marry across religious lines serves as a key indicator of individual liberty and legal secularism. However, social structures often treat religious endogamy as essential for maintaining social hierarchy and community boundaries.

A. *Religious Endogamy and Patriarchal Control over Female Agency*

The opposition to interfaith marriage is deeply rooted in patriarchal structures that control women's sexuality and matrimonial choices. Sociological analysis shows that patriarchal com-munities view women as standard-bearers of familial and communal honor.[1] When a woman marries outside her religious community, it is frequently perceived as an attack on the group's demographic integrity and social standing.

This perspective treats women's agency not as an exercise of personal rights, but as a vulnerability to be regulated by male relatives and community elders. Kinship networks often enforce endogamy through various forms of coercion, ranging from social boycotts to physical violence. The regulation of women's choices in interfaith relationships thus serves to maintain patriarchal authority and reinforce boundaries between religious communities.[2]

B. *Statutory Frameworks Governing Interfaith Unions*

In India, the legal framework for interfaith marriages is primarily provided by the Special Marriage Act (SMA), 1954.[3] Enacted to offer a civil marriage option without requiring religious conversion, the SMA was designed to protect individual autonomy in matrimonial matters. However, procedural provisions within the Act create practical barriers for interfaith couples.

Sections 5 and 6 of the SMA require a mandatory thirty-day public notice period before a marriage can be solemnized. This notice, which includes personal details and addresses of the parties, must be displayed at the local marriage registry. In practice, this public disclosure requirement exposes interfaith couples to intimidation, harassment, and violence from family members and vigilante groups.[4] Rather than protecting the couple, these procedural requirements often give hostile actors time to locate and target them, weakening the statutory

protections intended by the law.

III. STATUTORY AMBIVALENCE AND ANTI-CONVERSION LEGISLATION

The legal challenges facing interfaith couples have increased with the passage of state-level anti-conversion statutes. While originally framed to prevent forced conversions, these laws have created additional legal obstacles for interfaith marriages.

A. *State Anti-Conversion Statutes: Analysis and Constitutional Concerns*

Over the past decade, several Indian states—including Uttar Pradesh, Madhya Pradesh, Gujarat, and Uttarakhand—have enacted or amended legislation regulating religious conversions.[5] These statutes generally presume that conversions carried out for the purpose of marriage are unlawful unless approved by state authorities through complex administrative procedures.

These statutory frameworks raise significant constitutional concerns:

(a) Presumption of Guilt: Several anti-conversion laws reverse the burden of proof, requiring the individual accused of facilitating conversion to prove that it was voluntary and free from coercion or inducement.[6]

(b) Vague Definitions: Terms such as" undue influence," "allurement," and "coercion" are broadly defined, allowing law enforcement agencies significant discretion in their appli-cation.

(c) Prior Administrative Notification: Requirements to notify district authorities up to sixty days before converting create administrative barriers that can expose individuals to public scrutiny and social pressure.

B. *Impact on Personal Autonomy and Privacy*

These statutory measures directly affect the right to privacy and personal liberty guaranteed un-der Article 21 of the Constitution of India. In *K.S. Puttaswamy v. Union of India*,[7] the Supreme Court affirmed that personal privacy includes decisional autonomy over intimate relationships and faith. The court held that choices regarding marriage and religion belong to the core of individual dignity.

State regulations that require administrative approval for religious conversion or interfaith marriage undermine these constitutional guarantees. By creating legal mechanisms that en-able family members or third parties to challenge private matrimonial decisions, these statutes

increase the exposure of interfaith couples to harassment and extralegal violence.

IV. THE CRIMINOLOGY AND JURISPRUDENCE OF HONOR KILLING

Honor killing represents an extreme expression of patriarchal control and community enforcement. It refers to the premeditated murder of a family or community member—predominantly female—perceived to have brought dishonor upon the collective unit by violating established social, moral, or religious norms.

A. *Conceptualizing Honor-Based Crimes*

Honor crimes differ from general criminal acts in their motivation, structure, and execution. Unlike crimes arising from individual disputes, honor killings are usually planned and supported by extended family or community structures.[8] The motive is not merely personal grievance, but the restoration of collective social status within a community.

Key features of honor crimes include:

- **Collective Authorization:** Decisions are often made or endorsed by informal community councils, such as *Khap Panchayats*, or extended family networks.
- **Public Execution:** The violence is frequently committed in a public or visible manner to demonstrate compliance with social norms and deter others.
- **Complicity and Silence:** Kinship networks and local communities often conceal evidence, protect perpetrators, and obstruct law enforcement investigations.

B. *The Victimization of Women in Interfaith Contexts*

Women are disproportionately the primary victims of honor violence in interfaith relationships. This pattern reflects the intersection of gender-based control and religious identity. In many patriarchal communities, a woman's body is treated as property that carries the honor of her family and religion.

When a woman marries outside her faith without familial approval, her action is often viewed as a challenge to male authority and communal boundaries. The resulting violence serves two main functions: punishing the individual woman for asserting her autonomy, and re-establishing patriarchal control over other women within the community.

V. CONSTITUTIONAL AND STATUTORY EVALUATION IN INDIA

The constitutional framework of India provides strong protections for individual liberty, equal-ity, and personal choice. However, the legal system's response to honor killings reveals a gap between constitutional rights and statutory enforcement mechanisms.

A. *Constitutional Guarantees under Articles 14, 19, and 21*

The Indian Supreme Court has repeatedly held that the right to marry a person of one's choice is a fundamental component of freedom and dignity under the Constitution:

- **Article 14 (Equality Before Law):** Discriminatory treatment and targeted violence against individuals who marry outside their caste or religion violate constitutional guarantees of equal protection.[9]
- **Article 19(1)(a) (Freedom of Expression):** The freedom to choose one's life partner and express intimate associations without state or third-party interference is an essential element of personal liberty.[10]
- **Article 21 (Right to Life and Personal Liberty):** The Supreme Court reaffirmed in *Shafin Jahan v. Asokan K.M.*[11] that the right to marry a person of one's choice is integral to Article 21. The Court emphasized that neither society nor the state may override an adult's autonomous decision regarding marriage.

B. *Inadequacy of the Indian Penal Code and Bharatiya Nyaya Sanhita*

Despite the constitutional guarantees, the primary criminal law framework—formerly the Indian Penal Code, 1860 (IPC), and currently the Bharatiya Nyaya Sanhita, 2023 (BNS)—does not explicitly define or categorize "honor killing" as a distinct criminal offense.[12]

Instead, honor killings are prosecuted under general penal provisions governing murder, culpable homicide, and criminal conspiracy.[13] This framework presents several practical challenges:

(a) Failure to Address Collective Responsibility: General homicide provisions treat the crime as an isolated act committed by individual perpetrators, failing to account for the collective planning and involvement of informal councils or extended family members.

(b) Evidentiary Barriers: Due to community support for the perpetrators and intimidation of witnesses, obtaining eyewitness testimony and material evidence is often difficult un-der standard criminal procedures.

(c) Lack of Specific Preventive Duties: Standard penal provisions react after a crime has

occurred, lacking proactive statutory mechanisms to protect threatened couples or hold police officials accountable for failing to act on reports of intimidation.

VI. JUDICIAL RESPONSES AND PRECEDENTS

In the absence of dedicated statutory legislation, the judiciary has taken a lead role in addressing honor crimes and protecting interfaith couples.

A. *Key Supreme Court Precedents*

The jurisprudence surrounding honor crimes and individual autonomy has developed through several landmark cases:

1. Lata Singh v. State of U.P. (2006)

In *Lata Singh v. State of U.P.*,[14] the Supreme Court addressed the harassment faced by an inter-caste couple. The Court issued direct instructions to administrative and police authorities across the country to ensure that adult men and women who enter into inter-caste or inter-faith marriages are protected from violence, threats, and harassment by relatives or community members.

2. Arumugam Servai v. State of Tamil Nadu (2011)

In *Arumugam Servai v. State of Tamil Nadu*,[15] the Supreme Court condemned informal village councils (*Khap Panchayats*) that issue illegal decrees against individuals marrying outside their caste or religion. The Court observed that such acts are illegal and directed administrative officials to take preventive action against illegal assemblies attempting to enforce endogamy through violence or intimidation.

3. Shakti Vahini v. Union of India (2018)

The most comprehensive judicial intervention occurred in *Shakti Vahini v. Union of India*.[16] Treating honor crimes as an attack on individual dignity and human rights, the Supreme Court issued preventive, remedial, and punitive guidelines:

- **Preventive Measures:** Directing state governments to identify areas where honor violence is prevalent and establish special safe houses for couples facing threats.
- **Remedial Directions:** Requiring law enforcement agencies to provide immediate protection and safe accommodation to threatened couples upon receiving a complaint.
- **Punitive Steps:** Directing disciplinary action against police or administrative officials who fail to act on reports of threats or violence against interfaith or inter-caste couples.

4. Shafin Jahan v. Asokan K.M. (2018)

In *Shafin Jahan v. Asokan K.M.*,[17] widely known as the" Hadiya case," the Supreme Court set aside a High Court judgment that had annulled an interfaith marriage involving an adult woman. The Supreme Court emphasized that the right to choose a religion and a life partner is an essential aspect of personal liberty that cannot be restricted by family members or judicial intervention.

B. *Challenges in Enforcement and Implementation*

While these judicial rulings provide strong legal standards, their implementation remains inconsistent across jurisdictions. Safe houses established under the *Shakti Vahini* guidelines are often underfunded or unavailable in rural areas. Local police personnel sometimes share the conservative social views of the community, leading to delayed action or inaction when couples seek protection. Consequently, judicial directives alone have proven insufficient without corresponding statutory reform and administrative accountability.

VII. COMPARATIVE AND INTERNATIONAL PERSPECTIVES

An examination of comparative legal frameworks and international human rights law highlights standard practices for addressing honor crimes and protecting matrimonial choice.

A. *Comparative Legal Models: Pakistan, Jordan, and the UK*

Different legal systems have addressed honor-based violence through distinct statutory and procedural reforms:

- **Pakistan:** For decades, perpetrators of honor killings exploited provisions in the Penal Code that allowed heirs of a murder victim to pardon the killer (*Qisas* and *Diyat*).[18] Following public debate over high-profile cases, Pakistan passed the *Criminal Law (Amend-ment) (Offences in the Name or on the Pretext of Honour) Act 2016*.[19] The Act made honor killing a non-compoundable offense in cases where mandatory life imprisonment is imposed, preventing family members from legally pardoning perpetrators.
- **Jordan:** Article 340 of the Jordanian Penal Code historically allowed reduced sentences for men who committed violence against female relatives caught in acts of adultery.[20] Legislative amendments in 2001 and subsequent judicial decisions removed these automatic sentence reductions, strengthening criminal penalties for honor-based crimes.[21]
- **United Kingdom:** The UK introduced the *Forced Marriage (Civil Protection) Act 2007*

and subsequently criminalized forced marriage under the *Anti-social Behaviour, Crime and Policing Act 2014*.[22] The UK legal framework focuses on civil protection orders, specialized police units, and community-based support services for individuals at risk of honor violence or forced marriage.

B. *International Human Rights Norms*

Honor killings and the restriction of matrimonial choice violate core principles of international human rights law:

(a) **Universal Declaration of Human Rights (UDHR):** Article 16 states that adult men and women have the right to marry and found a family without limitation due to race, nationality, or religion.[23]

(b) **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW):** Article 16 of CEDAW requires state parties to eliminate discrimination against women in all matters relating to marriage and family relations, ensuring the same right to choose a spouse freely.[24]

(c) **International Covenant on Civil and Political Rights (ICCPR):** Article 6 guarantees the inherent right to life, while Article 23 affirms the right of men and women of marriageable age to marry and found a family.[25]

These international instruments establish that states have an affirmative duty to protect in-dividuals from private non-state violence, including honor-based crimes committed by family members or community institutions.

VIII. RECOMMENDATIONS AND LEGISLATIVE PROPOSALS

Addressing the challenges surrounding interfaith marriages and honor killings requires a comprehensive legal and administrative framework. Based on the analysis in this paper, the following legislative and policy measures are proposed:

A. *Specific Statutory Legislation against Honor Crimes*

The Law Commission of India, in its 242nd Report, recommended a dedicated statutory bill to prevent unlawful interference in interfaith and inter-caste marriages.[26] Building on these recommendations, Parliament should enact a comprehensive law that:

- Explicitly defines" honor-based crimes" as distinct offenses with enhanced penalties for premeditated acts approved by family networks or informal councils.

- Imposes collective accountability on informal bodies, such as *Khap Panchayats*, that is-sue decrees encouraging violence, harassment, or social boycotts against interfaith couples.
- Reverses the burden of proof regarding bail in cases involving documented death threats or severe physical violence against couples.

B. *Reform of Procedural Barriers in Marriage Laws*

The Special Marriage Act, 1954, should be amended to reduce procedural risks for interfaith couples:

- Repeal or modify Sections 5 and 6 of the SMA to eliminate the requirement for public disclosure of personal details at local registry offices.
- Establish an online, confidential registration mechanism that allows couples to submit notices and complete marriage solemnization without public exposure to hostile third parties.

C. *Institutional and Administrative Reforms*

Statutory changes must be accompanied by administrative measures to ensure effective protection:

- **Mandatory Protection Orders:** Provide immediate, enforceable protection orders upon receiving complaints of intimidation from interfaith couples, backed by penal consequences for non-compliance by law enforcement officers.
- **Specialized Safe Houses:** Establish well-resourced, secure safe houses staffed by trained personnel in every district to accommodate vulnerable couples during notice periods and initial transition phases.
- **Sensitization and Training:** Conduct regular training programs for law enforcement, judicial officers, and administrative authorities on constitutional rights, gender sensitivity, and international human rights standards.

IX. CONCLUSION

The recurrence of honor killings against women who enter into interfaith marriages high-lights the persistent conflict between individual constitutional rights and deep-seated patriarchal structures. In a constitutional democracy governed by the rule of law, individual liberty, personal dignity, and the freedom to choose one's life partner must take precedence

over customary norms and collective social pressures.

While the Supreme Court of India has established strong judicial principles affirming the fundamental right to marry across religious boundaries, practical barriers remain. Procedural requirements in civil marriage statutes, combined with anti-conversion legislation, continue to create risks for interfaith couples. Furthermore, the reliance on general penal provisions fails to address the systematic, collective nature of honor-based violence.

Securing the constitutional guarantees of life, liberty, and equality requires targeted legislative action. Enacting specific statutory laws against honor crimes, streamlining civil marriage procedures, and establishing effective victim protection frameworks are necessary steps. Only through a sustained combination of statutory reform, judicial enforcement, and administrative accountability can society eliminate honor killings and protect individual autonomy for all citizens.

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