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**INTER-RELIGION MARRIAGE AND ALTERNATIVE DISPUTE
RESOLUTION: A SPECIAL REFERENCE TO UTTAR PRADESH
PROHIBITION OF UNLAWFUL CONVERSION OF RELIGIOUS
ORDINANCE BILL, 2020**

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Abstract

“Marriages are made in heaven and consummated on Earth”, India is a secular state where religious diversities play a major role but when it comes to marriages it is governed under specific personal laws. As the quote state that marriages are made in heaven a supreme authority i.e. God makes the marriages in heaven, society don't have any right to stop any person to marry with their choice. Inter-religion marriage traditionally called “mixed marriage” is a marriage between persons of different religion, who are free to profess and propose their partner's religion; these marriages are governed under the special law. Likewise rivers, ponds, lakes and streams, they have different names but all contains water, similarly religion have different names but they all contains truth and faith. Inter-religion marriage are so very colorful and sparkling because there is a blend of religion, tradition, customs and rituals with deeper hope and faith in different families but still these marriages are unacceptable by the society. When God creates men and women, he has not assigned any religion and caste on them, So how we can the human being divide god created world into religion caste and communities, This research paper gives a voice to those couples who have different religious tendencies and want to get married, they can marry under the special law. The Special Marriage Act of 1954 governs inter-religious and inter-caste

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marriages. The act allows the people of different castes or religion to marry, without changing their religion. The Constitution guarantees an individual's independence and the right to marry whomever they choose. In 2020 ruling government in Uttar Pradesh passed laws that prohibited forced conversion. Due to this Anti-Conversion law become more and more challenging for an Inter-religion couple to get married. The researcher enlightened the provision under the Uttar Pradesh Prohibition of Unlawful Conversion of Religious Ordinance Bill, 2020. The researcher will also examine, the Indian laws governing alternative dispute resolution as well as their related aspects.

Keywords: Inter-religion Marriage, Special Marriage Act, 1954, Anti-Conversion law, Alternative Dispute Resolution, India

1. INTRODUCTION

India is a united country where people of different castes, cultures, faith, and religion reside. As the Religion census 2011, shows the population growth of different religion in the country. The Population rate of various religions has come down in the last decade (2001-2011). Hindu Population Growth rate slowed down to 16.76 % from previous decade figure of 19.92% while Muslim witness sharp fall in growth rate to 24.60% (2001-2011) from the previous figure of 29.52 % (1991-2001). Such sharp fall in population growth rate for Muslims didn't happened in the last 6 decades. Christian Population growth was at 15.5% while Sikh population growth rate stood at 8.4%. The most educated and wealthy community of Jains registered least growth rate in 2001-2011 with figure of just 5.4%.

The Growth rate of Hindus, Muslims and Christian is expected to fall more in upcoming 2021 census while other religions like Sikhism, Jainism and Buddhism are expected to remain stable for next 2 decades considering already slowed down growth rate of these religions. The data shows that India is a secular country where people of different religions are united, but when it comes to marriages the perspectives of every caste and religion are different. The marriage of different religions performed under their personal laws.²

²Available at: <https://www.census2011.co.in/religion.php#> last accessed on October 15, 2022

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1.1.Indian Marriages performed under Personal Laws.

Hindu Marriage Act of 1955 provides that the Act, applies to anyone who practices Hinduism, Buddhism, Jainism, or Sikhism as a religion. However, with the passage of time Sikhs now have their own unique law regarding marriage i.e. Anand Marriage (Amendment) Bill, that was passed in 2012. In India, Hindus marriage is a sacrament and it is lawful when it is performed in conformity with the traditional rites and ceremonies of either party. If such rituals and ceremonies involve the saptapadi and binding, the seven steps are taken, and then the marriage is considered to be complete.³

In the case of *Bibba v. Ramkali* (1982⁴) the court determined that performing certain ceremonies merely with the objective of considering the couple married does not constitute performing the legal rituals. Depending on each person's customs, the ceremonies may differ.

Muslim Marriage Act, 1955 regulates the solemnization of marriages among the Muslim community in India. Muslim marriage is basically a formal binding contract verbal or on paper between the bride and bridegroom, where the bride and bridegroom gave their free consent for the marriage i.e. (Nikah).⁵

Indian Christian Marriage Act provides that Christian marriage is legitimate if at least one of the parties is Christian. A marriage registrar or a special licensee may get an aspiring couple married under the act, the legal age of a bridegroom is 21 and bride is 18, the marriage may take place in a church between the times of 6 a.m. to 7 p.m. When marriage is performed the marriage performers issue a marriage certificate to the parties.⁶

Parsi Marriage Act of 1936 regulates the solemnization of Parsi marriages among the Parsi community. Parsi marriages is a contract marriage where an Ashirvad religious ceremony will take place, a prayer or God's call to the parties to comply with their marital duties of trust.⁷

³ Hindu Marriage Act, 1955

⁴ AIR 1982 All 248

⁵ Muslim Marriage Act, 1955

⁶ Christian Marriage Act, 1872

⁷ Parsi Marriage Act, 1936

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1.2. Indian marriage performed under Secular Law

The survey found that only 15.8% Muslim women are married to a blood relative (first or second cousin from either father's or mother's side, an uncle or other blood relatives), but in over 80% of the cases, the spouses were not related at all. The Buddhist Neo Buddhist community followed with 14.5% consanguineous marriages, Christians with 11.9% and Hindus with 10.1%.

Overall, on a national level, 11% of Indian women are reportedly married to their blood relatives, further establishing that Muslims aren't significantly ahead of the national average.

In India, number of studies were conducted by various research scholars, and they found that inter-religion marriage have a limited impact on a society at large. For instance, student and faculty of the Central Government- run International Institute for Population Science had presented a paper on Inter-religion or Inter-faith marriages in India in 2013 by analyzing data from the (Indian Human Development Survey) IHDS data, 2005 to explore the extent of mixed marriages in India.

The survey conducted by IHDS gave their perspective regarding the rapid increase of inter-religion marriage among different age group. The highest percentage of a married woman age between 15-19 that marrying outside their religion is (2.8%) whereas, the married woman between the age of 20-24 are decreased to (2.3%) and then woman between the age of 25-29 is (2%) and woman above 30 years of age (1.9%). It is noticed that woman in urban areas have did more inter-religion marriage i.e. (2.9%) in contrast to the women in rural areas i.e. (1.8%).⁸

The study shows that most of the people married beyond their caste and religion. The marriage is performed between the spouses of different religion, that marriage called Special Marriage or Inter-religion Marriage. In India, Inter-religion Marriages are governed under the Special Marriage Act, 1954. This Act protects the interest of those couples who want to marry beyond their caste and religion.

STATEMENT OF PROBLEM

⁸Available at, <https://www.studyiq.com/articles/interfaith-marriage-india-burning-issues> last accessed on October 16, 2022.

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1. Whether Special Marriage Act, 1954 is a challenge for inter-religion couple?
2. Whether society accepts the Inter-religion marriages or not?
3. Whether provisions of Uttar Pradesh Prohibition of Unlawful Conversion of Religious Ordinance Bill, 2020 infringe numerous judicial precedents?
4. Whether the Alternative Dispute Resolution mechanism is recourse to resolve matrimonial disputes?

OBJECTIVE OF THE STUDY

1. To identify the process involved into Inter-religious and Inter- Faith Civil marriages.
2. To outline the Special Marriage rules and procedure applies to Inter-religion marriages under Special Marriage Act, 1954.
 - Who can get married under Special marriage law?
 - Who is not eligible to marriage under Special marriage law?
3. To enlightened what does the Anti-Conversion law hold with special reference to Uttar Pradesh Ordinance Bill, 2020?
 - Prohibition of Unlawful Religion Conversion 2020
4. To identify the role of Alternative Dispute Resolution mechanism in Inter-religion marriages disputes.

RESEARCH METHODOLOGY

This paper was created after various extensive research on all relevant aspects and after considering or analyzing numerous judgments and recent amendments This paper is based on non-empirical research, the data for this paper is collected from secondary sources. Data collection methods are:

- a. Books and Bare Acts
- b. Journals
- c. Articles

2. SPECIAL MARRIAGE ACT, 1954

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After independence Indian Government took an initiative to frame the Special Marriage Act, 1954. The Act controls the marriages which could not be solemnized due to caste, culture and religious traditions. The Act applies to whole India except Jammu and Kashmir, the person who has domiciled in other states but residing in Jammu and Kashmir would also be eligible under these provisions. Anyone irrespective of religion, caste and faith can lawfully marry any one of opposite caste, religion or faith under the act. Marriages solemnized under this act is not governed under the personal laws, it governed under the secular laws.

The main purpose behind the enactment of the Special Marriage Act, 1954 was to provide a special form of marriage for the citizen of India, and also the citizen of India residing in foreign countries, irrespective of the castes, religions or faiths followed by either party, to perform the intended marriage.

The Act intended to protect basic rights of those people who want to marry across caste and religions, by forming a system of Inter-religion marriages. Legal provisions that are included under the Act is lawful marriage, prerequisites for a valid marriage, dissolution of an inter-religion marriage, marriage registration, and other regulation. The Act also intends to reduce the threat of societal ills such as honor killing and love jihad.⁹

2.1. Who is not entitled to marry under the Act?

Under the Act, if any person i.e. Hindus by religion want marry any Hindus having different caste so, he or she can married if they are not comes under the conditions of Schedule I of the Act are as follows:-

- That the persons married to another Hindu comes under the prohibited degree i.e. if he or she have any relationship by “half or uterine blood as well as by full blood”, such person is not liable to married each other because they are descendent from a common ancestors but by different wives.¹⁰

⁹Available at, <https://blog.ipleaders.in/special-marriage-act/> last accessed at October 18, 2022

¹⁰Available at, <https://www.drishtiias.com/daily-updates/daily-news-analysis/special-marriage-act-1954> last accessed on October 20, 2022.

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- That any person who has illegitimate relationship as well as legitimate relationship with the partner whom he or she wants to marry is also has a prohibited degree under the Act.
- That any person who has relationship by adoption as well as by blood is comes under prohibited degree and not entitled to marry.

Section-4, of the Act deals with the certain conditions that are relating to solemnization of marriage:

- i. There is no “Monogamy” permissible under this act, the term monogamy means that if any party has spouse living at the time of marriage, then he/she not entitled to married.
- ii. That party should be capable to give his or her free consent, they are not of unsound mind at the time of marriage
- iii. Parties complete his or her legal age, i.e., the age of bridegroom should be 21 years and the age of bride should be 18 years at the time of marriage.
- iv. The parties are not comes under the prohibited degree that is mentioned in Schedule I of the Act.
- v. The parties should not have Sapinda relationship with each other.
- vi. If the marriage is solemnized in the state of Jammu and Kashmir both parties should be the citizen of India, domiciled in the territories to which this Act extends.¹¹

2.2.Procedure under the Special Marriage Act, 1954

- **Section 5** of the Act describes that the parties must give a written notice to the registered marriage officer of the District. And Schedule II of the Act specifies that one of the parties must have lived in the district for at least 30 days immediately before the date of such notification.¹²
- **Section 6** of the Act specifies that the marriage officer shall keep the notice give under section 5 on record in a marriage registrar book and publish a notice in the newspaper of

¹¹Available at,https://legislative.gov.in/sites/default/files/A1954-43_1last accessed on October 20, 2022.

¹² Section 5 of Special Marriage Act, 1954

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district the parties are permanently residing, and also publish a notice outside of his office, which if any person has any objection related to that marriage can come within 30 days of aforesaid marriage.¹³

- **Section 7** of the Act specifies that if any person has any objection may come before the expiration of thirty days, that objection shall be recorded in writing by the marriage officer in the marriage notice book.
- **Section 8** of the Act stipulates that any person object to the said intended marriage after the notice is published. When a registered marriage officer receives any objections, he or she must do the necessary investigation.
- **Section 11** of the Act describes that before the marriage is solemnized, the parties with three witnesses sign a declaration form specified in Schedule III of the Act, in the presence of Marriage officer.
- **Section 12** of the Act specifies that the marriage may be solemnized in the marriage officer's office or within a reasonable distance of the office. If marriage is solemnized outside the distance of marriage officer's office than there should be additional costs paid by the parties.
- **Section 13** of the Act deals with the marriage certification. The marriage officer enters the solemnized marriage in the Marriage Certification Book and issue a Marriage Certificate to the Parties after the solemnization of the marriage.¹⁴

2.3.Challenges Faced by Inter-religion couple under the Special Marriage Act, 1954

*“Right to be let alone; the right of a person to be free from any unwarranted publicity; the right to live without any unwarranted interference by the public in matters with which the public is not necessarily concerned”.*¹⁵

There is one major loophole in the Special Marriage Act, 1954 is that, the act infringed the Right to Privacy of an individual. The mandatory publication of notice in the newspaper or copy of this notice is send to the permanent residing address of the parties, which violate their right to

¹³ Section 6 of Special Marriage Act, 1954

¹⁴ Available at, https://www.indiacode.nic.in/handle/123456789/1387?sam_handle=123456789/1362 last accessed on October 30, 2022.

¹⁵ Black's Law Dictionary

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privacy. The Article-21, of the Constitution of India describe that Right to Privacy is a fundamental right of an individual.

In *Safiya Sultana vs. State of U.P.* 2021, case the young couple expressed that they could have solemnized their marriage under the Special Marriage Act, 1954 but the said Act requires a 30 days' notice to be published and objections to be invited from the public at large. They expressed that any such notice would be an invasion in their privacy and would have definitely caused unnecessary social pressure/interference in their free choice with regard to their marriage. The personal laws do not impose any such condition of publication of notice, inviting and deciding objections before solemnizing any marriage. They further state that such a challenge is being faced by a large number of similarly situated persons who desire to build a life with a partner of their own choice. Learned counsel for petitioners also stated that the situation may become more critical with notification of Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020, as the same prohibits conversion of religion by marriage to be unlawful. Learned counsel for petitioners further argues that looking into the changing pattern of the society, amendments made to the Special Marriage Act, 1954 as well as the law declared by the Supreme Court in the last around a decade with regard to privacy, liberty and freedom of choice of a person, provisions of Special Marriage Act, 1954, directing publication of a notice before marriage and inviting public objections, require a revisit to understand whether now with the said change they are to be treated as mandatory or directory in nature.¹⁶

Mayra Alice Vaishnavi vs. State of U.P. 2021, in this case the objection raised by the learned counsel for the petitioner that the Special Marriage Act, in the changed circumstances, where society has progressed considerably, in the backdrop of expanding secular space and mobility of the citizen, the Special Marriage Act, mandating notice, declaration of all particulars and inviting objections thereupon, subjecting it to public scrutiny is violate the fundamental right of liberty and privacy granted to the petitioners under the Constitution.¹⁷

2.3.1. Challenges

¹⁶HABEAUS CORPUS No. 16907 of 2020

¹⁷WRIT-C No. - 14896 of 2021

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- Section 5 of the SMA requires couple getting married give a 30 days prior notice for the date of marriage to the Marriage Officer.
- Section 6 of the SMA requires such notice to be then entered into the Marriage Notice Book maintained by Marriage Officer, which can be inspected by any person desirous of inspecting the same. These notices have to be also published in the newspaper and affixed at a conspicuous place in the office of Marriage Officer so that anyone can raise an objection to the marriage.
- Section 7 of the SMA provides the process for making an objection such as if either party has a living spouse, parties incapable of giving his or her free consent, suffering from any mental disorder. It's resulting that person is being unfit for marriage.

2.3.2. Why these provisions are Controversial?

- The provisions of the Special Marriage Act expose the individual's personal information to public observation. This may emerge vigilantism.
- This seriously damages one's right to control his or her personal information and its accessibility.
- By making the personal details of the couples accessible to everyone, the right of the couple to be the decision-makers of their marriage is being hampered by the state.
- These public notices have been used by anti-social elements to harass the couples getting married.
- Under the Special Marriage Act, many states share the details of the married couple publicly on their official websites.
- As many states passing anti-conversion laws, parents and states are now armed to punish and harass such couples.¹⁸

3. SOCIETIES REACTION ON INTER-RELIGION MARRIAGES

One of the report published in the famous newspaper "The Wire", has shown that the Indian generation is free to practice and profess their religion in any part of the country whereas; when it comes to marriages they had a very firm approach to marry within their caste. They are not

¹⁸Available at, <https://www.insightsonindia.com/2022/08/31/challenging-the-special-marriage-act-1954/> last accessed on November 4, 2022.

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ready to mix up their religion with any other religion. The data shown in the report depicts that roughly two-thirds of Hindus interviewed in India want to prevent inter-religious marriages of Hindu women (67%) or Hindu men (65%). The share goes higher among Muslims – 80% say it is very important to stop Muslim women from marrying outside their religion, and 76% say it is very important to stop Muslim men from doing so.¹⁹

4. UTTAR PRADESH PROHIBITION OF UNLAWFUL CONVERSION OF RELIGIOUS ORDINANCE BILL, 2020

As, there is loophole in the Special Marriage Act, 1954 for the infringement of Article 21 of the Constitution of India i.e. Right to Privacy,²⁰ the act infringe the privacy of the individual by publishing a mandatory notice in the notice board and the newspaper for objection. This involves society at large and the society will interfere in the marriage of the couple and harass them to not to do inter-religion marriage. So, the Inter-religion couples shift to convert their religion for the sake of marriage. Before the Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance Bill, 2020 the cases related to conversion and “love jihad” was rising in the state. To breakoff this unlawful conversion for the sake of marriage the Uttar Pradesh Government passed a ordinance bill in the loksabha, i.e. Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020.

The Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020, which is subsequently, became The Uttar Pradesh of Unlawful Conversion of Religion Act, 2021 on approval of the Uttar Pradesh state legislature on 5th March, 2021.

This law tries to prevent religious conversion which is on the basis of any force, fraud, allurements, misrepresentation, or by any marriage. Any conversion that, according to this law, has been done unlawfully, any conversion done by marriage, coercion, by allurement, if any of these factors are involved then, such a conversion will be illegal. The marriage on the basis of conversion shall also be void. “Allurement” is a new term which is not a legal term, it refers to

¹⁹ Available at, <https://thewire.in/religion/majority-of-indians-across-religions-oppose-inter-religious-marriagelast> accessed on November 4, 2022.

²⁰ Article 21 of Indian Constitution

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somebody converting a person by tempting or alluring them with any gift or money or exchange of any other goods or even a better life or employment.

Section 5 of the ordinance deals with the provisions of Punishments,²¹

S.no.	Offence type	Term of Imprisonment	Fine Amount
1.	Conversion of Religion(Section3)	1-5 Years	Fine not less than Rs. 15000/-
2.	Conversion of a Minor, Woman, or person belong to SC or ST	2-10 Years	Fine not less than Rs. 20000/-
3.	Mass Conversion (A defined u/s 2(f) of the ordinance) of two or more persons	3-10 Years	Fine not less than Rs. 50000/-

Moreover, it is provided that court shall grant a maximum compensation of Rs. 5,00,000/- payable by accused to the victim of said conversion.

Section 6 of the Ordinance specifies that if a man of one religion married a woman of another religion for the sole purpose of unlawful conversion, such marriage declared void.

Section 7 of the Ordinance describes that the offences under this ordinance are cognizable and non-bailable and Triable by the Court of Session.

As per Section 8 and 9, the ordinance prescribes the procedure for legalizing the conversion of religion by making a declaration in this regard before and after the conversion.

- i. A person wants to convert his/her religion has to make an application to the District Magistrate in advance. The District Magistrate will take that application and conduct a detailed inquiry along with the police, regarding the whereabouts of the person, the family, residence and all other details.

²¹Available at, https://prindia.org/files/bills_acts/acts_states/uttar-pradesh/2021/Act%20 last accessed on November 8, 2022.

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- ii. Simultaneously, even the religious converter has to give a declaration to the District Magistrate in advance saying that such and such person has applied for conversion. Only after the inquiry of the District Magistrate, the approval will be given.
- iii. After the conversion, within 60 days converted person is required to file declaration to the District Magistrate and within 21 days the District Magistrate establish his or her identity and confirm the contents of declaration.

After the implementation of Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021 numerous cases was filed. According to the document submitted by the state government in the Allahabad High Court on October 22, 2021 in “The Hindu”, 79 cases was booked and 50 charge sheets were filed, while final report of seven cases were filed, against the forcefully and unlawful conversion under the Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021. Out of the 78 FIRs lodged, most of them were registered in Bareilly zone i.e. 21, Meerut zone 15, Gorakhpur 12, Agra 7 and 5 in Prayagraj.

The first, final report was submitted in Moradabad case, where Pinki’s mother filed a complaint against the Rashid husband of Pinki and her husband’s brother, and alleged that Rashid had induced her into marriage and converted her religion for the sake of marriage. At that time Pinki was pregnant and kept temporarily in the government shelter, during that time Pinki suffered miscarriage. After that Pinki said to the court that they both are adult and the marriage is done with the consent of both.

The Second, final report was submitted in Shajahanpur case, where Ram LakhanVerma, filed a complaint against five person, including two Christian and two Dalit’s, alleged that they were trying to converting him into Christianity with the promise of jobs and free education for children.²²

According to the “Times of India” report it states that a 26 years carpenter kidnapped a 16 years old girl for the purpose of unlawful conversion, the Additional Judge of Amroha

²²Available at, <https://www.thehindu.com/news/national/79-cases-booked-under-unlawful-conversion-law-in-up/article37127689.ece> last accessed on November 10, 2022.

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District(POCSO) court Justice KapilRaghav, announced the sentenced of 5 year imprisonment and also imposed a penalty of Rs. 40000/- on the carpenter under the law.²³

It is stated that if there is an unlawful conversion or forceful conversion happen for the sake of marriage or without the will of the person then, there is an imprisonment and penalty upon the convertor as mentioned above.

4.1.Whether ordinance infringe numerous judicial precedent or not?

The Supreme Court in the case of *ShafinJahan v. Ashokan K.M.*²⁴ case held that:

The right to marry a person of one's choice is integral to Article 21 of the Constitution. The Constitution guarantees the right to life. This right cannot be taken away except through a law which is substantively and procedurally fair, just and reasonable. Intrinsic to the liberty which the Constitution guarantees as a fundamental right is the ability of each individual to take decisions on matters central to the pursuit of happiness.

The present Ordinance by involving the provision of section 3 of the act deals with the pre-post conversion declaration where the burden of proof is on the accused and this provision allowed the parents, brother/sister, or any person related by blood can filed an FIR. This section was challenged by the Supreme Court's emphasis on freedom to choose a life partner.

Further, in *Justice K.S Putuswamy v. Union of India*²⁵, the apex court while stating that the right to choose a life partner was a dimension of right to privacy. Every conversion was supposed to be illegal by the law, and it was the converted person's responsibility to validate that their conversion was legal.

Further, the Allahabad High Court opposed this Ordinance in the case of *Salamat Ansari v. State of U.P.*²⁶, wherein the court held that: if the law permits the two persons to live whomever they want with their free will. Neither a society nor a family have the right to interfere in their

²³Available at, <https://timesofindia.indiatimes.com/city/lucknow/in-a-1st-man-gets-5-years-in-jail-under-uttar-pradeshs-anti-conversion-law/articleshow/94274807.cms> last accessed on November 14, 2022.

²⁴ AIR 2018 SC 357

²⁵ Supra note 10.

²⁶ 2020 SCC Online All 1382

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personal choice, if they do so they infringed the Article 21 of Constitution of India that describes Right to life and personal liberty as a fundamental right that includes the right to choose a life partner a fundamental right and live your life with dignity.

Similarly, the bench of Allahabad High Court in the recent case of *Smt. Safiya Sultana v. State of U.P.*²⁷, stating that the procedure of mandatory publication of notice and inviting objection under section 5 of Special Marriage Act, invade the fundamental rights of liberty and privacy of an individual. This court in their judgment mandated that the publication of notice shall be optional for the parties to intended marriage. In case they don't make such publications of notice in writing, the marriage officer shall not publish any such notice; proceed with the solemnization of marriage without entertaining any objection.

Thus the Ordinance punishes and prohibits when conversion is done for the sole purpose of marriage or any conversion is done by force, misrepresentation, allurement such conversion in this law is unlawful. The law however, does not apply to those persons who are married under the Special Marriage Act, 1954; this act doesn't require any pre- marriage enquiry by the District Magistrate, the recent judgment of the Allahabad High Court in the case of *Smt. Safiya Sultana* case made it clear that publication of notice is directory or optional in nature.

Although, the Ordinance seems to be against the fundamental principles of the law and Judicial precedents, but that alone doesn't make it unconstitutional.

5. ALTERNATIVE DISPUTE RESOLUTION

The devoutness of wedlock isn't only justified by the spiritual manuals but also the statute. The Indian licit response on matrimony holds the relationship to extreme unassailable devoutness. Marital controversies repeatedly involve cases are commended to divorce lawsuits, where the parties contend irretrievable breakdown of the marriage and choose to move forward with legal separation. Disputations or disharmonies are vigorous in character and are normally decided inside a courtroom (litigation) or outside (non-litigation) it.

²⁷ HABEAUS CORPUS No. 16907 of 2020

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Litigation refers to conduct opposed in a court that involves a pretension, a controversy, and the application of a distinct establishment (the court) to settle a dispute. It also requires the enforcement of statutes to wrap up disharmonies. The litigation paradigm is intertwined around palm and loss.

According to National Judicial Data Grid (NJDG), a portal that tracks data relating to cases pending and emplaced of in all districts and taluka courts of the country, the civil court is overburdened. An aggregate of 47 million cases are nowadays pending across various courts in the country as a result of a hefty backlog of 4.15 crore cases (3.06 crore criminal cases and 1.08 crore civil cases) in various district courts or inferior courts. Out of this, 59 lakh cases (17 lakh criminal cases and 42 lakh civil cases) are pending before the High Courts and another, 70000 before the Hon'ble Apex Court.²⁸

Indian legal system is one of the oldest systems in the world, dating back to the Neolithic age. It's a system that is constantly evolving, conforming, and accommodating to the requirements of society. As one of the pillars of the Indian republic, the bar has always sided with the displeased parties to secure their rights, fighting against shafts, inequality, atrocity, and exploitation.

Justice Ramana, highlighting that India's court system is a complex and very expensive delivering mechanism. In *Sheela Barse v. State of Maharashtra*²⁹ (1983) case, the Supreme Court noted that nothing annoys a human heart more than a feeling of injustice, the court observed that speedy trial is a fundamental right guaranteed under Article 21 of the Indian Constitution.

In *Hussainara Khatoon v. State of Bihar*³⁰, case the observed that the right to speedy trial is an inalienable right and has an important dimension of the right to life and personal liberty under Article 21 of Indian Constitution.

In India, opting litigation for dispute has its own sets of challenges, as in litigation solving a dispute is a very lengthy, time consuming and costly process. Settlements of legal disputes by the

²⁸ Available at, <https://njdg.ecourts.gov.in/njdgnew/index.php> last accessed on November 16, 2022.

²⁹ AIR 1983 SC 378

³⁰ 1979 AIR 1369, 1979 SCR (3) 532

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courts are binding on the parties, the justice provided by the courts is symbolic justice, resulting in disappointment of loser and happiness for the winner, and this potentially leads to retribution.

To reduce such obstacles, Alternative Dispute Resolution to be opted, it protect the relationship between the couples and even the general familial disputes, the law encourages the alternative means of dispute resolution to resolve legal disputes for an efficient cost and provide speedy mechanism to the parties.

Alternative Dispute Resolution refers to a set of practices and ways aimed at permitting amicable resolution of legal controversies outside courtrooms. It includes agreement, arbitration, negotiation, reconciliation, and a multiplicity of "hybrid" procedures by which a neutral person who's appointed by the parties in the controversies, facilitates the resolution of legal controversies through agreement.

5.1.Ways to resolve conflict

- Mediation

Mediation is a negotiation facilitated by a neutral third party, called the mediator, who does not have a stake in the outcome of a dispute. Instead, the mediator helps the parties find common ground and assists with drafting a settlement agreement. Mediation is voluntary to both parties and is nonbinding, i.e. the mediator cannot force either party to follow a certain course of action, or do something that either refuses to do. Basically mediator helps the parties to reach a mutually agreeable settlement by identifying issues, exploring areas of agreement, and finding areas of compromise. Mediation is a cost effective way of resolving disputes, it's a much quicker process than litigation, it provide confidential forum for resolving disputes³¹.

- Conciliation

Conciliation means settling disputes without litigation, in an informal way. Conciliation is a process where a third party tries to bring the disputants to agreement. It tries to lowering the tension , improving the communication, by interpreting issues, providing

³¹Available at, <https://blog.ipleaders.in/arbitration-conciliation-and-mediation/> last accessed on November 17, 2022.
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them technical assistance and exploring solutions for negotiated settlement before the parties. Conciliation is a cheap process as compared to litigation, it is a time consuming and cost effective process for solving disputes of the parties.

- LokAdalat

If LokAdalat is constituted in compliance with Section 19 of the Legal Services Authorities Act, 1987, it is also a non-adjudicatory mechanism. However, if LokAdalat is created in accordance with Section 22B of the Legal Services Authorities Act, 1987, it has both conciliation and adjudicatory powers. In this situation, the presiding officer will be an unbiased party. A case may be sent to LokAdalat without the parties' consent. Under Section 21 of the Legal Services Authorities Act of 1987, the LokAdalat award is applicable as though it were a civil court's judgment. The decision cannot be challenged. The negotiation's scope is constrained in LokAdalat, and the parties are not actively and directly involved. Additionally, confidentiality is not upheld.

Section 34(2), of the Special Marriage Act, 1954 aims to facilitate reconciliation between parties. Further, Section 2(3) of the Act gives the court the power to postpone proceedings for any reasonable amount of time and for attempt to reach an agreement if there is a reasonable chance for doing so. This provision supports the court in facilitating reconciliation.³²

5.2.Benefits of Alternative Dispute Resolution

- Alternative Dispute Resolution mechanism is a time consuming process in comparison to civil courts, it gives speedy solution to the disputed parties.
- Alternative Dispute Resolution is a Cost effective Mechanism because, it avoid unnecessary court fees and litigation fees.
- Alternative Dispute Resolution promotes harmonious relationship among parties.
- With the help of Mediation, Conciliation, Arbitration, and LokAdalat ADR settle the disputes among the parties and provide them a speedy solution
- Alternative Dispute Resolution makes the information of parties confidential.

³²Available at, <https://www.mondaq.com/india/arbitration-dispute-resolution/1199420/alternative-dispute-resolution-as-a-solution-for-family-disputes> last accessed on November 20, 2022.

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6. CONCLUSION

India is a united country where people of different castes, cultures, faith, and religion reside. As, marriage play a very important role in everyone's life, the Indian Constitution gives fundamental rights to choose a life partner or right to life and personal liberty, Every individual in a country can marry under personal laws or special laws it's the choice of person. Personal laws deal with specific religion, while Special law deals with Special Marriage Act, 1954. Where, persons of different religions can marry except Hindus who are having prohibited degree under Schedule I of the Act or having Sapinda relationship. This Act, infringed the right to privacy of an individual by mandatory publishing a notice in the newspaper or outside the Marriage Officer's office for raising objections, this publication of notice invites society at large for interfere in the life of the persons who are marrying under the Act. So, to safeguards themselves from society the persons shifted to conversion and they convert themselves with their partner's religion for the sake of marriage. Then, the ruling government, of Uttar Pradesh passed an Ordinance to prohibit the unlawful religion conversion for the sake of marriage. If the people do so for the sake of marriage the UP government imposes punishments and penalties from them. In *Safiya Sultana v. State of U.P.* case the court observed that publication of notice involves society at large and infringe the right to privacy of individual so, the court declare that publication of notice is optional or directory in nature. This law also violate the Article 14 of Indian Constitution, that the Article 14 describes that no person shall be discriminated under this Act but the UP conversion law discriminate the punishments, likewise, it impose separate punishments for woman and children, and separate punishments for SCs and STs. This law also violates the Article 25 of Indian Constitution as the couple must inform the District Magistrate and local police two months earlier. These two months could become an opportunity for harassment and torment of the couple, by family and the society at large.

When it comes to Inter-religion marriage, every marriage has pros and cons or every marriage is disputed among the parties. If any matrimonial disputed arise in marriages rather go to civil court go to Alternative Dispute Resolution mechanism which provides speedy

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solution to parties, it is a time consuming and cost effective mechanism in comparison to civil courts.

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