



## RESPONSES TO INFORMATION REQUESTS (RIRs)

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09 January 2006

### IND100661.EX

In a 14 November 2005 telephone interview with the Research Directorate, a professor of Asian Studies, who is also a specialist in India, explained that marriages in India are most often arranged, and the choice of partner is usually as much a family choice as it is an individual choice.

According to several sources, inter-religious (Associate Professor of Law 20 Oct. 2005; Professor of Asian Studies 14 Nov. 2005; Associate Professor of Social and Cultural Anthropology 3 Nov. 2005; PUCL 30 Oct. 2005; Lawyer 27 Oct. 2005; Senior Director 23 Oct. 2005) and inter-caste (Professor of Asian Studies 14 Nov. 2005; Associate Professor of Social and Cultural Anthropology 3 Nov. 2005; PUCL 30 Oct. 2005; Lawyer 27 Oct. 2005; VFA 23 Oct. 2005; Chowdhry 2004, 55) marriages are legal in India and are governed by the *Special Marriage Act 1954* (Associate Professor of Law 20 Oct. 2005; Associate Professor of Social and Cultural Anthropology 3 Nov. 2005; Law Office of Sheela Murthy 1 Aug. 2003).

Marriage between couples across caste and religious lines may be sanctified under the *Special Marriage Act 1954* if the following conditions are fulfilled at the time of the marriage:

- a) [n]either party has a spouse living;
- b) neither party
  - i. is incapable of giving a valid consent to it in consequence of unsoundness of mind, or
  - ii. though capable of giving a valid consent, has been suffering from [a] mental disorder of such a kind or to such an extent to be unfit for marriage and the procreation of children; or
  - iii. has been subject to recurrent attacks of insanity or epilepsy;
- c) the male has [reached] the age of twenty-one years and the female [has reached] the age of eighteen years;
- d) the parties are not within the degrees of prohibited relationship [by blood or adoption];
  - i. Provided that where a custom governing at least one of the parties permits of a marriage between them, such marriage may be solemnized, notwithstanding that they are within the degrees of prohibited relationship: and
- e) where the marriage is solemnized in the State of Jammu and Kashmir, both parties are citizens of India domiciled in the territories to which this Act extends (India 1954, Art. 4).

Inter-caste marriages are also permitted under the *Hindu Marriage Act 1955*, as the legal restrictions on marriage of two adult Hindus are "almost non-existent" under this act (Chowdhry 2004, 55).

### Inter-Religious Marriage

India is a secular state, prohibiting discrimination based on religion (India 26 Nov. 1949, Art. 15; AFP 10 July 2004), and "government policy does not favor any [particular] religious group" (*Country Reports 2001* 4 Mar. 2002, Sec. 2.c.). Despite these provisions, in 2002, state and municipal government officials only "partially respect[ed] religious freedom" (ibid.) and in 2004, religious differences "deeply divided" Indian society (*Country Reports 2004* 28 Feb. 2005, Sec. 5).

*Country Reports 2001*, *Country Reports 2002* and *Country Reports 2003* reported that the 2001 *Indian Divorce Act* placed "limitations" on inter-religious marriages, though these reports failed to explain the details of these limitations (*Country Reports 2001* 4 Mar. 2002, Sec. 2.c.; *Country Reports 2002* 31 Mar. 2003, Sec. 5; *Country Reports 2003* 25 Feb. 2004, Sec. 5). Articles constraining inter-religious marriages could not be found in the 2001 *Indian Divorce Act* (India 2001). On the contrary, news articles reported celebrations of the law as it improves gender equality in filing for divorce and raises the ceiling on the amount of alimony payments for

Christian women (*Anglican Journal* Oct. 2001; AWID Jan. 2005), but this would be the case for non-Christian women (India 2001).

According to a professor of Asian Studies who specializes in Indian affairs, inter-religious marriages are more common between students and among professionals in urban areas, and are less likely in rural areas (Professor of Asian Studies 14 Nov. 2005). This professor also commented that marriages between Sikhs and Hindus are "not uncommon" in the state of Punjab, where the majority of Sikhs reside (Specialist on India 23 Nov. 2005), since Hindus have always numbered prominently there (Professor of Asian Studies 14 Nov. 2005).

This professor added that in his opinion, the general societal attitude toward inter-religious married couples in India is "not favourable" (*ibid.*). In correspondence to the Research Directorate, an India-based lawyer agreed that society in general disapproves of inter-religious marriages but added that the treatment of married couples with different religious backgrounds depends on their location and social levels (27 Oct. 2005), and an associate professor of social and cultural anthropology added that "social attitudes often [cause people to] ostracize and discriminate against such unions" (3 Nov. 2005). A July 2004 news article stated that society is "deeply opposed" to inter-religious marriages, and highlighted that such attitudes are prevalent in Gujarat, where relations between Muslims and Hindus became "polarized" after Hindu-instigated violence against Muslims in 2002, in which 2,000 people, mainly of Muslim faith, died (*The Times* 6 July 2004; AI 25 Feb. 2005). The news article also highlighted parents' opposition to inter-religious marriage (*The Times* 6 July 2004). Additional information on inter-religious marriage in India could not be found among the sources consulted for this Response.

### **Inter-Caste Marriage**

In India, the caste system divides society into groups or levels based on "ritual purity" (HRW Sept. 2001). The caste system comprises four categories: "the Brahmins (priests and teachers), the Kshatriyas (rulers and soldiers), the Vais (merchants and traders), and the Shudras (labourers and artisans)" (*ibid.*). People are born into a certain category and remain a member of that group until death (*ibid.*). The Dalits are those who are not considered part of the caste system; they are referred to as "untouchables" and often live in segregation from the rest of society (*ibid.*). In a 2001 study on caste discrimination, Human Rights Watch commented that Dalits "endure near complete social ostracization" in India as they are prohibited from entering areas occupied by higher castes, from using the same wells, and from visiting the same temples, among other restrictions (*ibid.*).

The Indian Constitution recognizes the existence of castes only with regard to affirmative action programs for some communities (BBC 7 Mar. 2000). In the opinion of Laura Dudley Jenkins, the author of *Identity and Identification in India: Defining the Disadvantaged in India*, besides for the purposes of such affirmative action programs and the national census, "[t]he government does not have many legitimate reasons to categorize its citizens by caste" (Dudley Jenkins 7 Nov. 2005). Although the caste code is not legally binding and is not followed by all citizens (Deshpande 2001, 131), "social intermingling" between individuals of different castes is uncommon (AP 24 Feb. 2005). *Country Reports 2004* commented that in 2004, the caste system deeply divided Indian society, with reports of inter-caste violence in the states of Uttar Pradesh, Bihar and Tamil Nadu (28 Feb. 2005, Sec. 5).

According to Laura Dudley Jenkins, the notion that caste stratification influences marriage practices in India is socially accepted and expected (Dudley Jenkins 7 Nov. 2005; *ibid.* 2003, 32). The existence of such societal thinking is corroborated by the director of the Center for the History of Religious and Political Pluralism at the University of Leicester, Richard Bonney, who notes that "inter-caste marriage is rare" (Bonney 2004, 29). Likewise, Prem Chowdhry, a fellow at the Nehru Memorial Museum and Library in New Delhi, in a study on inter-caste and uncustomary marriages in rural north India concluded that parties to marriages in most parts of north India are from within the same caste categories, but from different villages and clans (Chowdhry 2004, 55). However, despite "strong socio-cultural taboos" against such practices, a growing number of Indians are marrying outside of their caste and, according to Laura Dudley Jenkins, doing so has been "facilitated by increasingly diverse universities and workplaces resulting from [affirmative action] policies" (Dudley Jenkins 2003, 32).

According to Prem Chowdhry, such marriages have increased "many fold" since 1990, and 80 per cent of couples in such unions are from towns, while 20 per cent are from villages (Chowdhry 2004, 75, 77). A 2000 news article focussing on the eastern state of Orissa stated that "[d]espite a strong backlash, inter-caste weddings involving Dalits [have been] on the rise" since the mid 1990s, even in traditionally conservative regions where they were "unthinkable" ten years ago (*The Hindu* 6 Feb. 2000).

News articles reported that couples registered such marriages under the Hindu Marriage Registration Rules (*Frontline* 12 Sept. 2003) and under the 1954 *Special Marriage Act* (*ibid.* 13 Feb. 2004). Notice of these marriages must be given one month in advance, and the couple must provide proof of their age and residence (Chowdhry 2004, 71). Others opt for an Arya Samaj wedding ceremony, which is still legal, but for which notice is given closer to the wedding date than it is for a civil marriage (*ibid.*).

### **Societal Attitudes**

According to a professor of Asian studies, who is a specialist in India, the general attitude to inter-caste marriages in India is "not favourable" (14 Nov. 2005). The Senior Director of Voices of Freedom, Asia, a fellow at the Nehru Memorial Center in New Delhi and an India-based lawyer all agree that, in general, society disapproves

of inter-caste marriages (VFA 23 Oct. 2005; Lawyer 27 Oct. 2005; Chowdhry 2004, 77). An associate professor of social and cultural anthropology in the United States, who specializes in India, stated in correspondence to the Research Directorate that society often "ostracize[s] and discriminate[s]" against couples in inter-caste marriages (3 Nov. 2005). Human Rights Watch corroborated this information and added that the condemnation can escalate to as high as "punitive violence" (HRW Sept. 2001). The vice-president of the All India Democratic Women's Association added that members of many communities in India consider inter-caste marriage a "crime" (*Frontline* 15 July 2005). However, the general secretary of an India-based non-governmental human rights organization stated in correspondence to the Research Directorate that traditional members of all communities disapprove of inter-caste marriages, but "generally the matter stops at that" (PUCL 30 Oct. 2005).

There is opposition to inter-caste marriages not only in rural areas, but also in urban areas (Chowdhry 2004, 77), and, according to Laura Dudley Jenkins, "even educated upper class urban families routinely take caste into consideration when planning marriages" (Dudley Jenkins 7 Nov. 2005). She continued that "[a]lthough more liberal minded families may support them, couples in intercaste marriages can expect negative attitudes from their communities and even some immediate family members. Such negative attitudes can range from mild disapproval to extreme violence" (ibid.) or various forms of harassment and violence (*Frontline* 13 Feb. 2004).

News articles reported parents' opposition to the inter-caste marriage of their children (*The Tribune* 14 Feb. 2005; ibid. 10 Jan. 2005), as well as the opposition of other family members to such unions (*The Tribune* 14 Feb. 2005), in particular, in the case of higher status women marrying lower status men (Dudley Jenkins 7 Nov. 2005; *The Tribune* 13 Apr. 2004). Marrying outside of one's caste results in the loss of honour to one's family (*The Hindu* 2 Nov. 2003) and in some cases is treated as the equivalent of the death of one's child (ibid. 6 Feb. 2000), or as grounds for disowning one's child (Chowdhry 2004, 75).

A survey of various sources uncovered several examples of "honour killings" of children or couples who had married outside of their caste (*Frontline* 13 Feb. 2004; ibid. 12 Sept. 2003; Dudley Jenkins 7 Nov. 2005; *Country Reports 2004* 28 Feb. 2005, Sec. 5; *The Tribune* 12 Jan. 2005; ibid. 10 Jan. 2005; VFA 23 Oct. 2005; HRW Sept. 2001; BBC 8 Aug. 2001; *The Hindu* 14 July 2003; ibid. 2 Nov. 2003; Chowdhry 2004, 79). According to Prem Chowdhry, the inclusion in society of children of those who have married across caste lines is difficult, and "the elimination of such a body remains the only 'honourable' way out" (ibid. 83-84). A news article states that government records do not document honour killings, and most such cases go unreported (*Frontline* 13 Feb. 2004).

Other societal reactions to inter-caste marriages include refusal to register the marriage of such couples (ibid.); the filing of complaints with police (AFP 10 July 2004; *The Hindu* 6 Feb. 2000; *The Tribune* 14 Feb. 2005); the arrest of the inter-caste married couple (*The Hindu* 2 Nov. 2003; AP 24 Feb. 2005); shunning of the families that the inter-caste married couple belong to (*The Hindu* 6 Feb. 2000; ibid. 2 Nov. 2003; HRW Sept. 2001; *Frontline* 13 Feb. 2004; PUCL 30 Oct. 2005), physical abuse of the inter-caste married couple (*The Tribune* 14 Feb. 2004; ibid. 1 Feb. 2005; ibid. 10 Jan. 2005; *Country Reports 2004* 28 Feb. 2005, Sec. 5; Chowdhry 2004, 79) and rape of family members of the inter-caste married couple (AFP 10 July 2004; *Country Reports 2004* 28 Feb. 2005, Sec. 5; *Frontline* 13 Feb. 2004).

In the opinion of Prem Chowdhry, couples who are determined to marry across caste lines are therefore "forced to run away," (Chowdhry 2004, 56, 77). Indeed, a lawyer in Haryana state, who deals with "runaway" marriage cases, says most of these couples belong to different castes (ibid. 75).

In the case of a runaway marriage, the police may receive a complaint filed by the bride's male guardian, after which police file a First Information Report (FIR) for abduction, kidnapping and/or rape of the woman (ibid., 56).

In the face of the potential consequences, some inter-caste couples commit suicide (*The Hindu* 2 Nov. 2003; Chowdhry 2004, 79) while others move elsewhere in India (*The Tribune* 13 April 2004; ibid. 10 Jan. 2005; *The Hindu* 2 Nov. 2003). One media report described how a family changed their residence because of a "life-threatening situation," that developed after their child married across caste lines (*The Hindu* 6 Feb. 2000).

Despite this societal hostility, some members of society have a positive attitude towards inter-caste marriage, including the political party "Lovers' Green-Globalist God-Free Humanist Party of India," the leader of which is in an inter-caste marriage himself, and advocates and solemnizes inter-caste marriage (*The Tribune* 31 Aug. 2003). One news article reported that leaders of the Inter-Caste Couples Welfare Association performed an inter-religious marriage of a Hindu and a Muslim (*The Hindu* 27 July 2004). There were also media reports of parental support for such marriage (ibid.; *Frontline* 13 Feb. 2004); of "peaceful" inter-caste marriages (*The Hindu* 6 Feb. 2000); and of a mass wedding, in which 13 inter-caste marriages were performed (ibid. 7 Nov. 2005).

### **Treatment by Government Authorities**

The government of India promotes inter-caste marriages by offering such couples a monetary reward of 25,000 rupees (approximately CAD\$640 [XE.com 23 Nov. 2005] (India n.d.b.; Chowdhry 2004, 77; *The Tribune* 19 June 2005). The aim of this program is to "assuage casteist sentimentalism" (*The Tribune* 14 Sept. 2003) and to "abolish caste and community feelings based on birth" (India n.d.a). In addition, the government reserves a percentage of government positions and university admissions for members of particular caste groups (Dudley

Jenkins 7 Nov. 2005). However, in the opinion of Laura Dudley Jenkins, "[b]ecause [inter-caste] couples and, especially, their children do not fit neatly into one of the groups listed ... they may face challenges when trying to benefit from reserved government jobs or university admissions" (Dudley Jenkins 7 Nov. 2005), and as a result, "[affirmative action policies] could be self-defeating by discouraging intercaste marriages" (Dudley Jenkins 2003, 34).

In correspondence to the Research Directorate, Laura Dudley Jenkins commented that it is

hard to generalize about government authorities, and it is possible that one could have interactions with a government authority without an intercaste marriage becoming obvious to them. An authority might assume from the family name that the husband's caste is the caste of the whole family, for example (7 Nov. 2005).

Other sources believed it was possible to generalize: the general secretary of an India-based non-governmental human rights organization stated that the government does not discriminate against those in inter-religious and inter-caste marriages (PUCL 30 Oct. 2005), and an India-based lawyer stated that the government "cannot take action against these people or their children" (Lawyer 27 Oct. 2005). An associate professor of social and cultural anthropology disagreed and explained that the "[s]tate authorities may discriminate against [inter-caste couples], depending on the political climate, cultural and socioeconomic context" (Associate Professor of Social and Cultural Anthropology 3 Nov. 2005).

In the case of mistreatment, inter-caste couples may apply to the National Human Rights Commission (NHRC); the People's Union for Civil Liberties (PUCL), a non-governmental human rights organization based in Delhi, assists inter-caste couples in lodging and defending cases at the NHRC (PUCL 30 Oct. 2005; see also *The Tribune* 14 Feb. 2005).

One news article reported that an inter-caste couple filed a complaint with police and the case was registered, though no details of the type of complaint or the outcome were given (*The Tribune* 1 Feb. 2005). Another article stated that the murder of an inter-caste married couple was reported to police, and one of the fathers was eventually arrested (*Frontline* 12 Sept. 2003). Also, after the revenge rape of the family members of a son in an inter-caste marriage, police arrested eight suspects and were searching for others (AFP 10 July 2004). Police arrested seven people after an inter-caste couple was hanged (BBC 8 Aug. 2001). However, arrests are not always the case as the killing of inter-caste married couples "often [goes] unnoticed," with no investigation (*The Hindu* 2 Nov. 2003). Prem Chowdhry concludes that "[t]he patriarchal norms of society influence State agencies: the police ... is very dextrous in retrieving the girl, sabotaging her marriage and later in pleading helplessness in saving her life" (Chowdhry 2004, 83).

In correspondence to the Research Directorate the senior director of Voices for Freedom Asia stated that the Indian government generally avoids interfering in inter-caste marriages, but that the courts do offer protection to such couples (23 Oct. 2005). According to a public prosecutor at the High Court in New Delhi, the court hears approximately 15 new cases every month of the "abduction" and "rape" of women who married by choice, and most of these cases, according to the public prosecutor, are "decided in the favour of the women"; however, this public prosecutor cautions that "this does not guarantee [women's] safety outside of the court" (*The Hindu* 2 Nov. 2003).

In a case concerning inter-caste marriage, the Indian Supreme Court ruled that there is "no biological difference between Hindu castes," and in this judgement criticised the consideration of caste for the purposes of marriage (BBC 7 Mar. 2000). In an "historic judgement," an Indian court instructed a father not to interfere with the married life of his daughter (Chowdhry 2004, 74). In another case, the Supreme Court also directed Haryana police to provide "adequate protection" to an inter-caste married couple and demanded a report on state government action taken on the matter (*The Tribune* 8 Dec. 2004).

In one case, the court disallowed an inter-caste marriage since the woman did not have proof of her age (Chowdhry 2004, 73-74). As a result, the man was charged with abduction and rape while the woman was sent to a rehabilitation home, since she did not want to return to her parents' home (ibid., 74). In another case, even when the guilty parties confessed to killing a member of an inter-caste couple, no conviction followed (ibid., 79-80). Prem Chowdhry conducted an analysis of a series of court cases in Haryana state involving inter-caste runaway couples, and concluded that "legal intervention not only delegitimizes such individual attempts at breaking out of the traditional system of marriage alliances, it also criminalizes all such attempts ... [with judgements] premised upon moral and ethical grounds overriding questions of legal and human rights of individuals" (ibid., 57).

### **Situation of Children Resulting from Inter-Community Marriages**

Children born of inter-caste marriages are legitimate (India 1954, Chap. 3 Art. 18; Lawyer 27 Oct. 2005). Government practices of categorizing children of inter-caste marriages vary, but the tendency "would be to consider children to be the caste of their father, or to have the status of the lower of the two castes in the marriage"

(Dudley Jenkins 7 Nov. 2005). Dudley Jenkins continues that "intercommunity couples have little say in the classification of their children, and even cases involving matriarchal communities are likely to be standardized in a

patriarchal way, as the presumption is that the father's identity trumps the mother's" (Dudley Jenkins 2003, 77). Further information on the situation of children resulting from inter-religious and inter-caste marriages could not be found among the sources consulted for this Response.

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of additional sources consulted in researching this Information Request.

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