
AN ANALYTICAL STUDY OF THE CHRISTIAN MARRIAGE ACT

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Introduction –

In India, a land of diverse religions, each faith has historically been governed by its own customs and religious practices. Prior to the colonial period and the enactment of statutory laws, most religions in India were guided by a tapestry of customary laws, religious traditions, and cultural norms. However, this was not the case for Indian Christians from the very beginning. The unique situation of Indian Christians, who were primarily converts from Hinduism and Islam rather than original Christians from Britain or other Western countries, created a complex legal and cultural landscape. These converts found themselves grappling between Western culture and their original traditions while trying to follow Christianity in India. This hybrid identity posed challenges in applying existing legal frameworks. Recognizing the need for a standardized legal structure for Christian marriages in India, the British colonial government enacted the Christian Marriage Act of 1872 (Agnes, 2011). This legislation aimed to provide a unified framework for the diverse practices of various Christian sects, ensuring that marriages were properly solemnized with due legal recognition. The Act was particularly significant as it addressed the unique needs of Indian Christians, differentiating them from both their previous religious laws and British personal laws. Unlike the canon law that influenced Western Christianity, the Christian Marriage Act of 1872 was primarily based on civil law. It demanded the governance of marriages according to codified laws and proper legal formalities, though some elements of canon law and Indian Christian culture were incorporated. The Act stipulated certain prerequisites and procedural requirements for a valid marriage, including who could solemnize the marriage and the qualifications required. The enactment of this Act was crucial during the colonial period, as it provided Indian Christians with their own legal identity. It ensured that they were not judged by their previous religious laws while also recognizing that British personal laws could not be directly applied to them. This was in line with the British policy of non-interference with religious laws and practices, which had initially created a legal limbo for Indian Christians. The Act's provisions were

tailored to meet the local requirements of Indian Christians while also incorporating elements from British law. It addressed issues such as succession, which had been particularly challenging due to the converts' cultural roots and the absence of exclusive religious laws for Indian Christians. This research aims to provide an analytical study of the Christian Marriage Act of 1872, examining its historical context, legal provisions, and contemporary relevance. The study will explore how the Act unified diverse Christian practices under a common legal framework and how it balanced Western legal concepts with Indian cultural norms. Additionally, the research will compare the Act with Western Christian marriage laws to understand the differences and similarities in legal governance.

Objectives of the Research –

1. To analyse the historical significance of the present legislation and its current relevance in the Indian subcontinent, the potential areas of reform or amendment in the light of evolving societal norms and legal standards in India.
2. To study the comparison of The Indian Christian Marriage Act, 1872 with the marriage laws of other Western and European countries, the interplay between Customary Christian practices and the Civil Law for marriage amongst Christians.

Analysis –

1. Historical Background of the enactment of the Christian Marriage Act, 1872-

Christianity in India is not evolved in India as the native religion of its own rather it came into existence after Britishers came to India and they started ruling the country, indeed it does not mean that before that Christianity was not there but it was in smaller amount¹ and that time those Christians used to follow their own practices according their religious denominations but the time when Britishers were ruling over the country the native of the country converted into the Christianity and those were turned mainly from the Hindus and the Muslims who were following their own religious practices rather than following any codified laws in case of Marriage and Succession, but in the case of these newly formed Christians the courts could no longer govern them according to their previous religions and on the other hand they were not

¹ Pynhunlang N.M. Shullai, Colonialism, *Christianity and Mission Activities in India: A Postcolonial Perspective*, 3 Int'l J. Humanities & Soc. Sci. Stud. 324, 324-334 (2017).

the natives Britain and thus could not be governed purely by the British laws particularly in cases such as Marriage², in case of inheritance they were continuously being governed by their previous religious practices and customs and that was totally going against the spirit of the Christianity and unlike Hindus and Muslims there was nothing as Christian religious laws and this made it very uncertain for them to follow a particular religion because even though they were Christians after conversion, they also wanted to be known by their previous religion in matters concerning the Succession and thus, a legal vacuum was created for them and the need to prove their identity and otherness resulted in the need of finding the solution. Various attempts were taken to cater the religious problems of Christians related to their marriages and other religious identities but a comprehensive solution was needed.

1.1 Enactment of The Native Converts Marriage Dissolution Act in 1886 addressing converts' changing marriage patterns in 19th century -

The enactment of this act was an attempt to encounter the issue of marriage because in this time period Britishers faced many problems. In the beginning of the 19th century Christian Missionaries started more and more faced the situation in which one spouse is a converted Christian, especially men while the other is not³ and often after the conversion or in conversion whose marriage was betrothed in childhood did not want to live anymore with the spouse and to consummate their marriages. The main point comes here is that in Hindu law another spouse's baptism did not dissolve the marriage but the party to the marriage who was a Hindu was allowed one more time the right to marry one more time in this type of situation⁴. This situation made the situation very hard for the Hindu converts because polygamy is strictly prohibited in Christianity and they were officially married to their Hindu spouse, followed by this a large number of petitions started gathering due to the lack of the regulations for the converts in regard of the marriage.

Finally, this thing was answered in the year 1866 and it was clearly said that if the non-converted spouse does not want to live with the converted spouse and if it is clearly said before

² Christian Law Regarding Marriage and Divorce in India: Indian Christian Marriage Act, 1872, available at: <https://www.legalserviceindia.com/legal/article-1764-christian-law-regarding-marriage-and-divorce-in-india-indian-christian-marriage-act-1872.html>.

³ Aleena Joshy & Kamalika KC, *Evolving Christian Matrimony: A Contemporary Analysis of Indian Christian Marriage Laws*, Volume 12, SJIF, 36, 2023.

⁴ Anna Drwal, *The Formation of Christian Personal Law in British India from 1865 to 1872*, 6 The Person and the Challenges: The Journal of Theology, Education, Canon Law and Social Studies Inspired by Pope John Paul II 103 (2016).

the court then court will allow the 12 months period to the married couple and if after the completion of the period the non-converted spouse still wants the divorce then the court will allow the divorce and the right to the converted person to remarry⁵. Thus, it was the law which mainly allowed for the remarriage or the marriage of the converts alongside the dissolution of the marriage. But even though this law was introduced it did not wholly solve the problems relating to the converted marriages and continuously it came to be the need to enact the new laws. So, considering all the problems the new act with the idea off catering the marriage laws was enacted.

1.2 The Christian Marriage Act, Establishment and Sources –

The act was drafted by Viceroy Lord Mayo and passed by the then governor general in Imperial Legislative Council which was the primary legislative body in British India, the bill for Indian Christian Marriage was debated and introduced in the Legislative Council and after passing it through the process it received the assent on July 18, 1872 and then the act came into force on the same day. The act is based on certain earlier statutory legislations of the British Parliament and on Central Act 8 of 1852 and 5 of 1865 and 25 of 1864 (now repealed). This particular act was based on the Civil Law of marriage in which legal documentation and the registration of marriage was required rather than on ecclesiastical law.

Earlier the Roman Catholic Church was the only law for governing the matrimonial relations and this used to be the main guiding structure for regulating the marriages and for the beginning and setting up of their culture but with time in the European nations made great efforts to modify the law based on the changing Cultural and Social conditions and then marriage came to be the civil transaction⁶ and these changes had great impact on the development of the Indian Christian Marriage Act because British laws regards the civil law but not purely and thus, somewhere in the British law and the Indian Christian law elements of Ecclesiastical law or Canon law are available such as Free Consent of both the parties to the marriage, the solemnization should be performed by the minister or the clergy, the marriage should take place in the Church and the appropriate timings for the solemnisation of the marriage. So, the law for

⁵ 1 FLAVIA AGNES, FAMILY LAW AND CONSTITUTIONAL CLAIMS, 65-67 (2011).

⁶ Encyclopaedia Britannica, Inc., marriage laws, ENCYCLOPAEDIA BRITANNICA (08 March, 2024), <https://www.britannica.comhttps://www.britannica.com/topic/marriage-law>.

Christian marriages in India is a mixture of various laws and international traditions and indeed the British influence.

2. The Significance and Current Relevance of The Christian Marriage Act: Potential Areas for Reforms and Amendments –

2.1 The Importance, Suitability and Relevance of the Christian Marriage Legislation in India according to the prevailing situations-

The Indian Christian Marriage Act of 1872, introduced by the British, provided much-needed uniformity for Christian marriages in India by explicitly defining a Christian and ensuring consistent practices across the country. This was crucial at a time when converted Christians followed their former religious laws, leading to inconsistencies⁷. The Act mandated that marriages be performed by an ordained minister, solemnized between 6 a.m. and 7 p.m. in a church, and required notice and registration, thus providing a cohesive structure. In today's context, the Act aligns well with India's religious structure, where communities rely on specific legislation for marriage despite having their own customs.

It sets minimum age requirements (18 for brides and 21 for grooms), mandates free and voluntary consent, and prohibits bigamy, thus protecting individuals from exploitation. The mandatory registration of marriages provides legal backing and ensures proper documentation, essential for civil matters (India Filings , 2021). However, certain provisions need updating to reflect modern societal norms. For instance, Section 88, which invalidates marriages within prohibited degrees according to previous religious laws, is impractical today. Christianity has evolved into a distinct religion, and tracing ancestral religions is often impossible. This provision should be amended to establish clear guidelines within the Christian context. Overall, while the Act remains relevant and significant, it must evolve to address contemporary needs and align with modern values, ensuring it continues to serve the Christian community effectively within India's diverse legal and cultural landscape.

The Indian Christian Marriage Act of 1872 remains significantly relevant to India's current legal and social landscape. Initially introduced to provide uniformity for Christian marriages, the Act defined a Christian as anyone professing the Christian religion, including

⁷ 1 FLAVIA AGNES, FAMILY LAW AND CONSTITUTIONAL CLAIMS, 65-67 (2011).

descendants of native Indians converted to Christianity. This was crucial at a time when converted Christians followed their former religious laws, leading to inconsistencies.

The Act mandated uniform practices such as the presence of an ordained minister, specific times for solemnization, and the necessity of notice and registration. **In today's context, the Act aligns well with India's diverse religious structure**, where communities rely on specific legislation for marriage despite having their own customs. **For example**, the Act requires the consent of the father or guardian, reflecting traditional customs prevalent in India. This makes the Act adaptable and relevant to societal needs, ensuring it can coexist within the Indian legal framework. However, certain provisions need updating to reflect contemporary societal norms. **Section 88, which invalidates marriages within prohibited degrees according to previous religious laws⁸, is impractical today. Christianity has evolved into a distinct religion, and tracing ancestral religions is often impossible.** This provision should be amended to establish clear guidelines within the Christian context to avoid the risk of relationships or marriages within prohibited degrees. Overall, while the Act remains relevant and significant, it must evolve to address modern needs and align with current values. By doing so, it can continue to serve the Christian community effectively within India's diverse legal and cultural landscape.

2.2 Potential areas of reforms or amendments in the light of evolving societal norms and legal standards in India –

In the present legislation there should be various changes made (Changes in Christian Personal Laws and Uniform Civil Code) because when it was freshly enacted it was to a high extent involved the foreign requisites and different laws of different churches and indeed that time it was required for the proper legislation of the converted Christians in India and who can solemnise their marriages such as solemnised by the clergy of Church of England, clergy of Church of Rome or of church of Scotland. But if we see the present legislation of Christian Marriage in India then it is found that over the years it has taken its own form and majorly all the marriages in India are solemnised by the native ordained ministers then it shows there is no need to include such specifications that clergy of which church could solemnise the marriage and how it can solemnise.

⁸ The Christian Marriage Act, S 88, Act No. 15, Acts of Parliament, 1872 (India).

Indian Christians have their own laws with customs such as Indian Christian Marriage act in **Section 9 Says that marriage can even be solemnised in the house of the bride's mother**⁹ which directly relates to the Indian Customs of different religions whether Hindus or Muslims and on the other hand it directly goes against the civil and ecclesiastical laws which mandates the solemnisation of marriage at the church another thing is that if the ceremony is performed at the house of bride's mother then there is no mandate to mention the entry of marriage in the register which directly goes against the civil law of marriage which in every aspect mandates registration of any type. So, it can be said that over the years with the mixed Indian culture in Christianity a form of India's own Church system has been developed thus, the definitions such Church of England, Church of Scotland, Church of Rome should be replaced with India's own developed Church system and importance should be given to that.

Other thing which we encounter in **Section 19 of the act is that the act still talks about the minor**¹⁰ (Raghunath, 2023) in respect of the consent given at the time of the marriage which is a requirement in Christian Marriage, **where on one side the law explicitly mentions and mandate that the age of the Bride and Groom should be not less than 18 and 21 years respectively** then why this type of provisions are still included in the act which says that if at the time of minors marriage if he/she has not father or any guardian to give consent then his/her mother will give then consent. So, the act should be amended in this respect as now this **directly goes against the essentials to be fulfilled for Christian marriage as well against the well settled penal laws of the country.**

Section 10 in its three sub sections explicitly mentions that if the marriage is being solemnised by the clergyman of the Church of England under a special licence permits him to solemnise marriages at any hour that is without any restriction of time that is from morning 7 to evening 6 and in case if the marriage is being solemnised by the clergyman of church of Rome then in that case there is a time bar as above, if in case it is being solemnised by the clergyman of Church of Scotland then it will be solemnised according to their customs and rituals. So, this analysis of section 10 in the Christian Marriage Act shows that even though the act was enacted for ensuring the uniformity of Christian marriage law in India this classification under section 10 is creating big differences of solemnisation within its own

⁹ The Christian Marriage Act, S 9, Act No. 15, Acts of Parliament, 1872 (India).

⁹ *'A Christian Marriage can also take place at the house of bride's mother and in that case the signing of Marriage Register is not essential under the Act; AIR 1960 Ori 164'*.

¹⁰ Namrata Madhu Raghunath, Indian Christian Personal Laws: A critique, JCLJ, 76, 79-80 (2023).

and for different institutes there are different rules. According to the present time India is in the position to frame its own law keeping in mind the true spirit of Christianity along with giving it unity in every aspect. This is the major change which should be considered.

The present legislation of Christian marriage act is not extended to the region of Travancore and Kochin which now comes under the state of Kerela because there Christians follow their own legislation the **reason behind this is that Syrian Christian population forms a considerable proportion there and they are governed by a customary laws of marriage which are ancient, and differs from that in force among other Christian communities**, and for the reason that should not be disturbed they were not included but same as all the Christians over the time have been evolved in the country whether they are converted Christians or those belong to Travancore- kochin region and thus, after evolvement everyone should be on the equal footing and hence, they should also be covered under the current legislation for ensuring the uniformity.

The gist of all the proposed amendments is that either they do not meet the current landcape of Indian norms, standards and laws or they are giving more relevance to the British laws which part should now be outlawed except the religious significance of something and in order to ensure uniformity and inclusion the collective efforts should be taken.

3. The comparative analysis of the Indian Christian Marriage Laws with the Western or other European Marriage Laws: Interplay between Customary and the Civil Laws-

3.1 Customary and Civil Laws over the Time and Place-

The foundation of Christian marriage laws in Western Europe was primarily based on Roman Canon Law or Ecclesiastical Laws. These laws governed matrimonial relations among Christians until the Reformation. Canon law, which was not codified at the time, regarded marriage as a sacrament, emphasizing the union of male and female as "one flesh." (Britanica Online Encyclopaedia , 2024) Under this framework, the female was considered entirely dependent on the male after marriage. The completion of marriage required both consent and consummation between baptized persons¹¹. Over time, countries began to reform their marriage laws, blending customary practices with civil law. This evolution led to the modern concept of

¹¹ Encyclopaedia Britannica, Inc., marriage laws, ENCYCLOPAEDIA BRITANNICA (08 March, 2024), <https://www.britannica.comhttps://www.britannica.com/topic/marriage-law>.

marriage as a contract rather than a sacrament. Britain, for instance, has developed a civil law framework for marriage, a trend followed by many other countries. In India, while civil law governs Christian marriages, there are notable differences compared to Western and European countries where civil law is prevalent.

3.2 Comparison between the Indian and Western/European Christian Marriage Practices-

- **Solemnization and Clergy -**

In India, Section 10(1) of The Indian Christian Marriage Act, 1872¹², stipulates that there is no time restriction for solemnizing a marriage if it is performed by a clergyman of the Church of England with a special license. However, in practice, marriages are predominantly solemnized by native Indian ministers of the church. This has become a customary practice in Indian Christian marriages. Conversely, in Britain, the clergyman of the Church of England can perform marriage rituals at any time without any time restrictions. Additionally, in India, marriages can be performed either at the bride's home or in a church, whereas in Britain, it is mandated that the marriage be performed in a church.

- **Pre-Wedding Rituals-**

India has developed its own unique pre-wedding rituals that are integral to Christian marriages. One such ritual is the *Roce ceremony*, which takes place on the eve of the wedding day. This ceremony involves the parents blessing the bride and groom, who are anointed with roce, a mixture of coconut milk and coconut oil. The ceremony is followed by a roce prayer and a dinner party. The traditions may vary depending on regional origins. Another ritual is *Mylanchi Ideal*, which is the beautification of the bride. In this ceremony, henna is applied to the bride, and she is given *Paachoru* (cooked rice in coconut milk) by her relatives. Similarly, *Chantham Chaarthu* is the beautification of the groom, where he receives a ceremonial shave and is given *Paachoru* by his relatives. These ceremonies are akin to the Haldi and Mehendi ceremonies in Hindu culture. Such pre-wedding rituals are not performed in Western and other European countries.

¹² The Christian Marriage Act, S 10, Act No. 15, Acts of Parliament, 1872 (India).

- **Age of Marriage -**

In most Western and European countries, the legal age for marriage is the same for both males and females, typically set at 18 years, which is considered the age of maturity. In contrast, in India, the legal age for marriage differs for males and females. The minimum age is 21 for males and 18 for females.

- **Notice Period for Marriage -**

In Britain, the Marriage Act 1949 governs marriages and requires that the marriage be solemnized within twelve months of giving notice. In India, however, the notice period for solemnizing a marriage is only two months. If the marriage is not solemnized within this period, the notice is rejected or discarded. This highlights a significant difference between the Christian marriage laws of the two domains, despite their common origin in Britain, which enacted laws for both India and itself.

- **Recognition of Same-Sex Marriage -**

The Christian religion, which was introduced to India from the West, has diverged significantly in terms of marriage laws. For instance, **Britain legalized same-sex marriage** with the Marriage (Same Sex Couples) Act 2013. In contrast, **same-sex marriages are not legally recognized in India.**

So, these are the areas where India is very different from the Western and the European world whether in terms of its developed customary laws for native Christians over the time and even if they are governed by the civil law then India is very different from the Civil laws of other countries and it has framed itself according to the requirements of the current Indian societal needs.

Conclusive Remarks –

The Indian Christian Marriage Act, 1872, was a major legislative step on the part of the British colonial government in order to give a standardized legal regulation to Christian marriages in India. This, therefore, made the Act a pivotal point for addressing the specific needs of Indian Christians, a majority of whom are converts from Hinduism and Islam and hence having a complicated legal and cultural context. The acts were not based on the canon law that

influenced Western Christianity, where it was based on civil law and included a mixture of canon law and Indian Christian cultural specifications in itself. These practices have also come up with changes over time, from its pre-wedding ritual practices including Roce ceremony, *Mylandhi Ideal*, and *Chantham Chaarthu*, which are not practiced or seen in the Western or European countries. With respect to the clergy, marriage venue, pre-marriage ceremonies, age, notice periods, and recognition of same-sex marriages, some major differences in practices exist between Indian Christians and Western/European Christians. While the western countries have restructured their marriage laws giving more emphasis on a civil marriage framework and by recognizing same-sex marriages, the Indian laws stayed put with a mixture of civil and customary marriage system. Now though these things are a bit opposite to each other, the Indian Christian Marriage Act would remain valid. Nevertheless, some of its provisions have to be looked after so that they can be in sync with current social standards. If it could fall in line with those segments, the mentioned Act could stay effective in delivering Christian society even within the legal-cultural heterogeneity of India, or at all events be in line with the values and needs of the present time.

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