

What every Hindu Girl marrying a Muslim should know:

Inter-faith marriages are getting common in India. It is important for both, especially the girl, to know her rights post marriage, what is the law in case the marriage does not work out and how would marriage affect inheritance.

Recently, a 30 something Gujarati Jain girl (say Nitya-MBA in Finance), wanted to discuss a very personal matter. She said that she was "going steady" with a Sunni Muslim colleague and both of them are seriously contemplating marriage. She comes from a conservative Gujarati family, her parents are against the idea but she believes that post wedding they will come around.

The boy's parents were ok with the match but preferred she converts to Islam and the marriage ceremony should be by way of a Nikah to keep the relatives happy.

She wanted to take an informed decision after knowing the law on the subject such that her interests are protected.

I told Niya that as a lawyer I would tell her the law, and pros and cons. Since this was an interesting subject, I decided to convert our conversation into a question answer format and share it. This would prevent ordinary people becoming victims of misinformation spread by those with vested interests.

Every attempt has been made to be as factual (based on law) as possible but law being law, it is subject to different interpretations. The purpose of this FAQ is to inform and not arouse. When we take informed decisions, we might be able to deal with the consequences better.

The conversation was as under:

Niya - In my situation, what are the different ways to get married?

A1. There are 3 ways in which you can get married Niya.

One, is under the Special Marriages Act where neither you nor your husband convert and both of you get equal rights in the marriage.

Two, is under Muslim Law where you will have a Nikah.

For that you have to first become a Muslim because Nikah can only be between Muslims. When you change your religion your name also changes.

However, for the world (not legal documents) you can continue to use your maiden name like some film actresses do for example the much respected Sharmila Tagore continues to be called by that name even after converting to Islam and having the name Ayesha Begum.

Three, Salim can become a Hindu and get married under the Hindu Marriage Act.

Niya: If I convert to Islam then what law am I governed by?

A2. You are governed by Muslim Personal Law which has been made applicable by the Muslim Personal Law (Shariat) Application Act, 1937.

Niya: What would be my & husband's rights under the Muslim Personal law ?

A3. Muslim Personal Law (Shariat) Application Act, 1937 permits polygamy means your boyfriend /

husband (Say Salim) can marry four times and have four wives at the same time. As a wife, you cannot protest or resist sharing your husband with three other women.

I do not want to prejudice you but more than one marriage happens. Salim may never go for it but he is entitled under his Personal law to do that without divorcing you. In such an event you should be able to handle the situation.

Further, a marriage under the Muslim personal law is a contract. Its terms and conditions are governed by the Nikanama which Shariat has not codified to date.

Niya: What is Shariyat?

A4. Shariyat or Shariah means Law governing Muslims. It is not codified. The provisions are often vague and undefined. Also, it lacks uniformity across numerous Islamic sects. Primarily the interpretation of Shariah is based upon the "hukums" and "fatwas" issued by the Maulvis of different sects from time to time.

Niya: What is a Nikanama? What are the terms and conditions contained in the Nikanama?

A5. There is no standard format of a Nikanama. It is mostly drafted in a one sided manner, by the Moulvis and Mullas, from the boys side. These contracts contain clauses relating to compensation "Dower" to be paid at the time of marriage and "Mehr" to be paid on divorce, right to inheritance etc.

Niya: What is the law relating to having more than one wife by Salim if we were to get married under the Hindu Law and the other Special Marriage Act?

A6. Now if Salim becomes a Hindu, and you get married under the Hindu Marriage Act, or neither of you get converted and get married under the Special Marriage Act, he cannot have more than one legally wedded wife.

That means that Salim cannot legally marry another woman during the subsistence of the first marriage with you Niya. Both the parties are treated equally.

Under Hindu law, Marriage is considered as a holy union. Even if you get married under the Special Marriage Act, polygamy is prohibited. If during your lifetime, Salim remarries without divorcing you, the second marriage will be considered void. The second wife will not inherit anything and the rights of the first wife (you) will not be affected.

Niya: What is the law relating to Divorce under the Hindu Law and the Special Marriage Act?

A7. Now if you get married under the Special Marriage Act, 1954 where neither of you convert or under the Hindu Marriage Act, 1955 where your boyfriend converts to Hinduism, the divorce process would be under the provisions of the said Laws where only the Family Court constituted under the Family Courts Act, 1984 will have the jurisdiction to dissolve your marriage at the instance of either side subject to your making out a good case for divorce as per the provisions made therein.

This Court will also have the jurisdiction to decide about your children's maintenance and Alimony to be paid by the Husband during the pendency of the proceedings as also after the dissolution of your marriage. Maintenance and Alimony is decided by the Court depending on the financial status and income of the Husband.

Niya: What is the law relating to Divorce under the Muslim Law? How can I divorce my husband?

A8. The Dissolution of Muslim Marriages Act, 1939 deals with the circumstances under which Muslim women can obtain divorce and rights of Muslim women who have been divorced by their husband in a court of law and related matters. A woman can seek divorce in the circumstances described in the Act. It is however legal for the husband to pronounce Talaq and divorce his wife without approaching any court or authority.

Niya: How can a Husband divorce under Muslim Law?

A9. Though Instant divorce has been held to be illegal and punishable recently, the process of divorce by the man is very easy.

Talaq can be given during three menstrual cycles which is known as three terms of Iddat. If the wife is pregnant then the period of Iddat is till she delivers her child.

Rest of the terms and conditions like alimony and maintenance of wife are governed by the provisions of the Nikanama contract. There would be a pre-determined "Mehr" (compensation payable by the Husband to the wife on happening of Divorce).

Niya: What are the consequences of a Divorce on me and my children under the Muslim Law?

A10. Muslim Women (Protection of Rights on Divorce Act), 1986, governs the law relating to maintenance and alimony for women on Divorce.

It is necessary for the husband to pay alimony to his wife, but only during the period of iddat, that is 90 days after divorce. Liability for maintenance reverts to her parental family after the iddat period is over. However, if her children are in a position to support her, the responsibility falls on them.

If there is no other person in her maternal family who can support her and then the Magistrate, where her application for maintenance is pending, may direct the State Wakf Board to pay such maintenance as determined by him.

Niya: What are the consequences of a Divorce on me and my children under Hindu Law and the Special Marriage Act?

A11. Now if Salim becomes a Hindu, or you get married under the Special Marriage Act, the process for divorce is different.

Divorce can be obtained under the provisions of Section 13 of the Hindu Marriage Act, 1955 the provisions are equal for both husband and wife. Cause of action to divorce are equal for husband and wife. A petition for divorce can be filed by either of the Spouse under section 27 of the Special Marriage Act, 1954 or a Petition for divorce by mutual consent under section 28 of the Act.

Niya: What are the rules of Inheritance for me if I convert to Islam & marry under Sharia?

A12. A wife receive 1/8th of the property of her husband on his death if they have children. In case there are no children borne out of marriage, she is entitled to 1/4th of the property. A daughter will receive half of the share of a son.

Husband will receive 1/4th of the property of his wife on her death if they have children. In case there are no children borne out of the marriage, he is entitled to half the property. A son receives double the share of the daughter.

A Muslim mother is entitled to inherit from her children if they are independent. She is eligible to

inherit one-sixth of her dead child's property if her son is a father as well. In the absence of grandchildren, she would get the one-third share. However, she cannot give away more than one-third share of her property and if her husband is the only heir, she can give two-third of the property by will.

If a Hindu woman marries a Muslim man without converting to Islam before, she would not be entitled to inherit the property of her husband as the marriage would neither be 'regular' nor 'valid', under the existing laws. While she will be entitled to Mehr, she cannot inherit her husband's property.

In a case recently decided by the Supreme Court it was held that "the marriage of a Muslim man with an idolater or fire worshipper is neither a valid (sahih) nor a void (batil) marriage, but is merely an irregular (fasid) marriage. Any child born out of such wedlock (fasid marriage) is entitled to claim a share in his father's property but not the wife." Also read here

Niya: What are the rules of Inheritance for me if Salim becomes a Hindu and we marry under the Hindu Marriage Act?

A13. A wife i.e. you Niya would be entitled to an equal share of your husband's properties like other surviving, entitled heirs. If there are no other sharers, the wife has full right to inherit the entire property of her deceased husband. Note under the Hindu Marriage Act, Hindu includes Buddhist, Jains and Sikhs too.

A married Hindu woman also has exclusive rights over her individual property. She is also entitled to maintenance, support and shelter from her husband, and if they stay in a joint family, then from the joint family.

If the couple is divorced, all issues related to maintenance and permanent alimony are ordinarily decided at the time of divorce. Divorce leads to total severance with husband and the wife does not have any right in his estate if he dies without a will.

If during the lifetime of the first wife, the husband remarries without a divorce, the second marriage will be considered void. The second wife will not inherit anything and the rights of the first wife will not be affected.

However, the children from second marriage will get a share along with other legal heirs. In case of an inter-faith marriage, the wife is entitled to inheritance as per the personal laws applicable to the religion of her husband.

Niya: What are the rules of Inheritance for me if we marry under the Special Marriage Act?

A14. Where a Muslim contracts his marriage under the Special Marriage Act, 1954, he ceases to be a Muslim for purposes of inheritance.

Accordingly, after the death of such a Muslim his (or her) properties do not devolve under Muslim law of inheritance. The inheritance of the properties of such Muslims is governed by the provisions of the Indian Succession Act, 1925 and Muslim law of inheritance is not applicable. The heirs inherit equally, irrespective of the gender. In case of an inter-faith marriage under the Special Marriage Act, the wife is entitled to inheritance as all the Class I legal heirs i.e. along with all her children equally.

Niya: I have heard this word Halala. What does this mean?

A15. Under the Islamic law, a husband may divorce by simply announcing talaq three times at one

time itself (triple talaq). However, this method of triple (instant) talaq has been made unlawful recently. The permitted way of talaq still is in force where the husband pronounce talaq thrice during each menstrual cycle of the woman. The divorce becomes final after the three talaq waiting period is over. However if the couple desires to remarry either after the triple talaq or after the regular talaq, the woman will be required to marry a third person, consummate the marriage, get divorced and again remarry the original husband. This is known as tahlil or nikahhalala.

Niya: I want to get married to Salim. What do you think would be the best option for me?

A16. Niya, if you decide to marry Salim, you should prevail upon him to agree for a marriage under the Special Marriage Act.

As stated earlier, your marriage under the Muslim Personal Law without converting to Islam would be "fasid" i.e. irregular which irregularity can be removed only by your conversion. Once you get converted all the liabilities and inequalities as indicated earlier will come into play.

Niya: What kind of problems do you think that I may face if I marry Salim under the Special Marriage Act as suggested by you?

A17. Niya, I have advised you based on the provisions of law. It is for you to think through these provisions carefully.

Even if you marry under the Special Marriage Act, there may be a lot of pressure that could be brought upon you to convert. I have not met Salim, he may be a nice guy and modern too.

However, when one comes under pressure from family and society few are able to resist. I don't know their family they may be good people, however, you would be living with your in-laws who may not like the fact their daughter-in-law is not Muslim. You have to think of societal pressures. These are the possibilities.

You have to decide yourself. You have to contemplate probable life situations 10, 20, 30, 40 years from now. Optimistically all should go well but realistically you must also visualise if things do not work out what would be your options, the situation for your children?

We have seen many inter-faith marriages where the girl is stuck in the marriage because she married against parent's wishes. Parents (especially Hindu parents) normally come around and support the decision of their children BUT you have to also think of the eventuality when they are no more.

With this conversation our meeting ended. Niya said will think through and revert.

A few days later Niya called to say that she has decided to get married under a neutral law i.e. The Special Marriage Act. She also shared the above FAQ with her parents who agreed with her decision.

Now comes a twist in the story.

Niya shared this FAQ with her boyfriend. Post reading the note he became reluctant to get married under the Special Marriage Act.

He said his family is not agreeable to the proposal. Salim told Niya that in their relationship trust is very important. She should have 100% trust and confidence in him and not suspect his love for her.

He wanted her to convert just for namesake and that she would be free to practice her religion and way of life as she is doing at present. He is also prepared to draft out the Nikanamah in the manner she wants but the marriage will have to be a Nikah.

Niya called off the marriage plans and was crying when I called. After all it is better to cry today i.e. before Nikah than later.

As a lawyer, am only an advisor, the final decision has to be yours.

- Author is a lawyer with over thirty years' experience.