

PROCEDURE OF COURT MARRIAGES IN INDIA

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INTRODUCTION

A marriage may be defined as a union of two human beings being partners to each other in their personal lives. A marriage is constituted legally or traditionally through rituals.

If we go by the dictionary meaning of the term 'marriage', the Oxford Dictionary defines marriage as the state of being husband and wife.²

In India, there are many religions, communities exist. So, they follow their rituals, traditions and ceremonies. These religions are governed by their respective personal laws. The personal laws govern the process of marriage, divorce, etc.

Apart from marriage through traditional ways, i.e., through rituals or the rules laid down by the respective personal laws of various religions, there is another type of marriage that is the Court Marriage. In this, the couple who are to marry each other, if they wish to avoid rituals or ceremonies may opt for Court Marriage under the Special Marriage Act, 1954.

TYPES OF MARRIAGE IN INDIA

As stated earlier, there are various religions live in India who follows their respective personal laws. Following are the type of marriages that exist in India-

- Hindu Marriage (governed by Hindu Marriage Act, 1955)
- Christian Marriage (governed by the Christian Marriage Act, 1872)
- Sikh Marriage (governed under Hindu Marriage Act, 1955)
- Muslim Marriage (governed by Muslim Personal Law Application, 1937)
- Parsi Marriage (governed by the Parsi Marriage and Divorce Act, 1936)

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² Oxford Dictionary, p. 739

- Jain Marriage (governed under Hindu Marriage Act, 1955)
- Buddhist Marriage (governed by Special Marriage Act, 1954)
- Court Marriage (governed by Special Marriage Act, 1954)

COURT MARRIAGE IN INDIA

To know about the procedure of Court Marriage in India, we must first know the purpose of the Special Marriage Act, 1954. If two people who are willing to marry each other without following any ritual that their religions follow or the procedure laid down by their respective personal laws, they can get their marriage registered in Court under Special Marriage Act. This is called as the Court Marriage. In this type of marriage, 2 people of different religions, as well as different nationalities, can marry each other.

Commonly, this type of marriage is called as the 'registry marriage' where the parties to marriage get their marriage registered under the law which would make them a married couple without following any rules and regulations of their religions or personal laws.

The Special Marriage Act lays down the procedure of Court Marriage.

CONDITIONS FOR COURT MARRIAGE

Section 4 of the Special Marriage Act provides the conditions for solemnizing a marriage under this Act. The Section says that to fulfil a marriage between two persons, the following conditions must be met-

- Parties who are going to marry must not have a spouse who is living at the time of solemnization of such marriage.

In **Sushil Kumar Yadav v. Smt. Indu Devi**³, it was held that remarriage of a wife during the lifetime of the first husband is void. Merely because the second husband knows wife's first marriage would not be a ground for solemnization of the second marriage and seeking a divorce from her first husband won't obligate someone from second marriage while the first husband is living.

³ AIR 2017 Jhar 156

Therefore, such marriage where the first spouse is alive and the other spouse remarrying someone would violate Section 4(a) of the Special Marriage Act.

- Neither party during the solemnization of such marriage is-
- Unable to give consent due to their unsoundness of mind.
- Even though they are proficient of giving consent, they have been suffering from a mental disorder which makes them unsuited for marriage and procreation of children.
- Either party have been subject to periodic attacks of insanity.
- The male and female entering into marriage must have completed the age of 21 years and 18 years respectively.
- The parties to the marriage do not fall within degrees of prohibited relationship.

The term 'degrees of prohibited relationship' is explained in Section 2(b) of this Act. It provides that a man or any person mentioned in Part 1 of the 1st Schedule and a woman or any person falling within Part 2 of the same Schedule are said to be in the degrees of prohibited relations.

The Section further explains about the types of relationships and what it includes. So, a relationship includes the following-

- Relationship by-
- Half-blood, i.e., two persons descending from common father but different mothers.
- Uterine blood, i.e., two persons descending from common mother but different fathers.
- Full blood, i.e., two persons descending from common father and mother.
- Illegitimate relations and also that of the legitimate one.
- A relationship that is created by adoption and also by blood.

However, if the customs and regulations of the persons marrying allowed to marry someone who comes under degrees of a prohibited relationship then such marriage would not be void and will be solemnized.

Therefore, as per Section 24 of this Act if the conditions specified in clause (a), (b), (c) and (d) of Section 4 are not fulfilled then the marriage intended shall be void.

NOTICE OF THE MARRIAGE

The bride and the bridegroom intending to marry must give notice to the Marriage Officer of that particular district in a written form as set down in the 2nd Schedule of the Act. This section makes it compulsory for anyone of either of the parties intending to marry to reside in that particular district in which they are giving notice for at least 30 days from the date on which they are giving that notice. In **Sadhan Kumar Roy v. Saswati Roy (Banerjee)**⁴, it was held that when neither of the parties has resided under the territorial jurisdiction of the Marriage Officer who gives them the certification of marriage, then such certificate shall be without jurisdiction for contravention of this section.

Therefore, a notice of the marriage must be served to the Marriage Officer. However, in **Smt Purabi Banerjee v. Basudeb Mukherjee**⁵, Court holds that the question of a notice under this Section cannot be raised once a certificate of marriage is issued because the certificate of marriage is its conclusive proof.

Therefore, following are the requirements of documents that the bride and bridegroom that they need to submit with the notice to the Marriage Officer of that specific District-

- The application form, i.e., the notice given in the 2nd Schedule of this Act. It must be duly signed by both parties.
- Receipt of the fees for the application form that they have paid in the District Court.
- Both the party's evidence of the date of birth. Evidence may include the matriculation certificate of both the parties, or their passports, or their birth certificates.

⁴ AIR 1989 NOC 94 (Cal) (DB)

⁵ AIR 1969 Cal 293 (300) (DB)

- Affidavits from both the parties in respect to their date of birth, their marital status, i.e., whether they have been previously married or not & whether they fall under degrees of prohibited relationship.
- Passport size of the parties which must be attested by a Gazetted Officer.
- If any of the parties are divorced, the copy of divorce case's order or decree. If they are widow or widower, death certificate the spouse is required.

The Marriage Officer, then, shall keep the notices which have been given by the parties who are to marry each other in the Notice Book as mentioned in section 6 of this Act. It is to note that the Marriage Officer must keep a true copy of such notices and these notices in the Notice Book and this Notice book shall be open for any person to inspect it at any time and such person can inspect the said book without any fee. The Marriage Officer must paste such notice in any noticeable place in his office. Further, as S. 6(3) provides if any of the parties who have given notice of marriage do not reside permanently in the jurisdiction of the Marriage Officer to whom they have given the notice, then such marriage officer shall dispatch the copy of the said notice to the Marriage Officer of that district where such party resides permanently. Then, it shall be the duty of that Marriage Officer to paste that notice in some noticeable place in his office.

OBJECTION TO SUCH MARRIAGE (SECTION 7 & 8)

As stated above, the Marriage Officer will paste the notice given by the parties intending to marry in some noticeable place in his office. Any person seeing these notices may object to such marriage on the conditions mentioned in S. 4 of this Act. It is important to note that such objection must be raised before the expiry of 30 days from the date of submission and publication of such notice and after 30 days such marriage shall take place, only if, no previous objection has been raised.

The Marriage Officer must record such objection in the Notice Book in writing and it is essential then he must recite and explain such objection to the person who is making it. The person who objects must put his signature in the recorded objection in the Notice Book.

In a case in 1990, the Court held that objection by parents that their daughter was already married can be a valid ground to object.⁶

PROCEDURE OF INSPECTING BY THE MARRIAGE OFFICER ON AN OBJECTION

If an objection is received by the Marriage Officer in respect to the said marriage, then he shall investigate into the matter and shall not allow the solemnization of marriage until he is satisfied that there is no point in not allowing the parties to solemnize the marriage or the objection that was made by the person has withdrawn it. The Marriage Officer, thus, must complete such investigation and deliver his judgment in 30 days from the date on which the objection was raised.

However, if the Marriage Officer finds that such objection is maintainable and refuses solemnization of marriage of the parties, then, the parties may file an appeal in the District Court within 30 days of such refusal by the Marriage Officer. The decision of the District Court shall be held as a final decision.

Section 9 lays down the power of the Marriage Officer in regards to conducting inquiries and inspections. Following are his powers-

1. S. 9 gives all the powers to the Marriage Officer all the powers that a Civil Court may exercise under Civil Procedure Code when he is inquiring into the matter of objection raised by any person against the solemnization of marriage of the parties. Therefore, the marriage officer can try a suit only in the following matters-
2. Matters relating to summon and enforce witness' attendance and further examine them on oath.
3. Matters relating to discovery and inspection.
4. Matters relating to compelling the parties or witnesses in the production of documents.
5. Matters relating to the reception of evidence on evidence.

⁶ (1990) 2 All WC 1174 (1175)

6. Matters relating to the issuance of commission for examining witnesses.
7. Any proceeding conducted by such Marriage officer shall be deemed to be a Court proceeding under S. 193 IPC.

The section further explains that the marriage officer may enforce the attendance of any person only in his jurisdiction inside that particular district.

- If the Marriage Officer finds that the objection raised is not maintainable or was made mala fide, then, he may order that person to pay compensation in monetary means which must not be more than Rs.1000/-. The order for payment of compensation shall be made in the manner the District Court passes a decree in his jurisdiction.

DECLARATION THAT NEEDS TO BE MADE BY THE PARTIES AND THE WITNESSES TO THE MARRIAGE

S. 11 of this Act provides that before the solemnization of the said marriage, the parties to the marriage and the 3 witnesses must sign a declaration to the marriage officer while such officer is present in the form given in 3rd Schedule of this Act. Such a declaration must be signed by the marriage officer.

PLACE AND FORM IN WHICH SOLEMNIZATION OF MARRIAGE WILL BE MADE

S. 12 postulates that the marriage may be solemnized at-

- The office of the marriage officer; or
- Any place is at a reasonable distance from the office of the marriage officer. The condition to this is that parties have to pay an extra fee as the officer directs.

The form of marriage's solemnization may be in any way that the parties choose.

This section, however, provides that the marriage will not be complete if the parties don't recite "I, (A), take thee (B), to be my lawful wife (or husband)" when the marriage registrar and the 3 witnesses to that marriage are present.

MARRIAGE CERTIFICATE

The marriage officer will enter the solemnization of marriage in the form given in the 4th Schedule of this Act in a book after the solemnization is complete. This book is called the Marriage Certificate Book. The marriage certificate must be signed by the parties who have married each other and the 3 witnesses. Further, the section provides that the marriage certificate is incontestable proof of the marriage being solemnized under this Act and the formalities that the Act provides have been completed.

In **Prafulla Bala Biswas v. Ila Das**⁷, the Court held that when the Act says marriage certificate is an incontestable proof of the marriage, then, there is no scope for anyone to challenge, argue or contend or to lead evidence to show that such marriage was solemnised especially where there was no case, that certificate was forged or manufactured document.

In **Sadhan Kumar Roy v. Saswati Roy (Banerjee)**⁸, the Court holds that, “though under S. 13 (2) in view of the certificate of solemnization of marriage, the formalities in respect of signatures of witnesses may have been complied with in the declaration under S. 11 read with 3rd Schedule, these formalities will not make the marriage binding between the parties when the marriage was solemnized in a district where none of the parties ever resided, despite mandatory provisions in S. 5 read with 2nd Schedule.

In a 2008 case, the Court held that S. 13 of the Act carries certain legal effects under the marriage solemnized under this Act and particularly when the certificate is entered in the Marriage Certificate Book by the marriage officer.⁹

ISSUANCE OF NEW NOTICE

As aforesaid the parties to the marriage have to give notice to the district's marriage officer. If such marriage is not solemnized by the parties-

- within 3 months from the date they have given the notice; or
- when an appeal is filed under S. 8(2), and the marriage has not been solemnized within 3 months from the date of the decision given by the District Court.

⁷ (1997) 1 DMC 448

⁸ AIR 1989 NOC 94 (Cal)

⁹ (2008) 3 Cal HN 707

In such cases, all the previous proceedings would lapse and no such marriage will be solemnized until a new notice has been given by the parties to the marriage officer.

In a **Madhya Pradesh** case of 1983, it was held that when the marriage is not solemnised within 3 months from the notice under S. 5, the marriage officer is not alone to be blamed and the parties have to give a fresh notice under S. 5 in view of S. 14.¹⁰

REGISTRATION OF MARRIAGE

Any parties who have celebrated their marriage under this Act or any other Act, they may get their marriage registered, under S. 15, by a Marriage Officer of the district they reside in. To get their marriage registered, the following conditions have to be met:-

- The parties have celebrated their marriage in a ceremony and since then have been living as husband and wife.
- At the time of registration, neither the wife nor the husband has more than one spouse living.
- At the time of registration, neither the wife nor the husband is an idiot or a lunatic.
- At the time of registration, both the parties have completed 21 years of age.
- The parties to the marriage are not in degrees of prohibited relationship.
- The parties to the marriage have resided in that district where they will give the notice for 30 days.

In **Aulvin V. Singh v. Chandrawati**¹¹, it was decided by the Court that if neither of the parties has got their marriage registered under S. 15 or any other Act, then a petition for divorce under S. 27 is not maintainable.

¹⁰ (1983) 2 DMC 404 (405) (MP)

¹¹ AIR 1974 All 278

In a 1983 Madhya Pradesh case, the Court decided that if the marriage was solemnized cannot file a declaration under S. 11, the only course open to the parties is to make an application under S. 15.¹²

PROCEDURE OF REGISTRATION OF MARRIAGE

The marriage registrar when receives the application signed by both the parties to a marriage for registration of marriage, then he will as provided in S. 16, issue a public notice inviting the parties to register the marriage as well as the objections to that registration. If there is any objection raised, then the registrar must hear the objection and give his decision in those 30 specified days. If all the conditions given in S. 15 are met and the registrar and there is an objection for the registration, then he shall enter a certificate of marriage in the marriage certificate book signed by the parties and also by the 3 witnesses.

In **Prabir Chandra Chatterjee v. Kaveri Guha Chatterjee**,¹³ it was decided that once an entry is made in the marriage certificate book under this section, then irrelevant of the fact that how the parties celebrated earlier, the marriage shall be deemed to be solemnised under the provisions of S. 18 of this Act.

If any person has an objection to the registration of marriage under S. 16, then such person can appeal to the District Court which falls under the jurisdiction of the registrar who is registering such marriage within 30 days from the date order made by the marriage officer. The appeal shall be heard within 30 days and the decision by the District Court shall be the final decision.

CONCLUSION

Thus, even though the process of Court Marriage is long and takes somewhat 60 days for solemnizing the marriage and getting it registered, it is a less expensive method of marriage as compared to the traditional marriage. Further, it enables inter-religion marriages and the couples could also choose the ceremony to celebrate their marriage. Moreover, the marriage certificate is an incontestable proof of the marriage being solemnized than the one traditionally solemnized.

¹² (1983) 2 DMC 404 (405) (MP)

¹³ AIR 1987 Cal 191