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Challenging the Special Marriage Act, 1954

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The Special Marriage Act, 1955 was enacted in independent India along the lines of the colonial statute. As the Right to Marry is also recognized as a Fundamental Right under the Right to Life and Personal Liberty under Article 21 of the Constitution, the government of the newly independent India's only justification for passing this special legislation was to find a viable alternative remedy for those who desired distinct specific provisions for registering weddings through such a civil contract and solemnizing marriages. The rules that were created during the colonial era and afterward incorporated into specific legislation do, however, contain a number of defects and do not perfectly fit inside the Indian constitution of the present day. As a result, they desperately need to be changed to conform to the needs of the current society. Article 21 of our Constitution states. In the well-known case of K.S. Puttaswamy v Union of India, a nine-judge bench found that the crucial Right to Privacy is a part of the Right to Life. The SMA, 1955, however, contains a number of clauses that are wholly in conflict with the said right to privacy that couples wanting to wed under this act have. In order to emphasize the challenges with a constitutional and judicial viewpoint on various sections under the Special Marriage Act, this article seeks to present a general understanding and analysis on Special Marriages. Besides that, an effort is made to highlight the necessity of resolving some contentious provisions.

Keywords: *right to marry, article 21, marriages, right to privacy, registration of marriage.*

INTRODUCTION

Caste or religion are no longer factors that should be taken into account at all because it is the couple who must spend their entire lives with their mate. Why are the people belonging to the

lower classes seen here with shame and contempt when our caste or religion is something we are given by birth just not by choice? The younger generation today has their own opinions and prefers to wed someone that they get along with better than someone from one's caste or religion. The time had passed when people would naively marry off their children wherever their parents wanted. Given that all religions are equal, marriage between various religions shouldn't be a major point of contention. As a necessary consequence, a special statute known as the Special Marriage Act was passed to allow for a special kind of marriage by registering in which neither party must renounce their religion.

Under the relevant personal legislation Hindu Marriage Act, 1955, Muslim Marriage Act, 1954, or Special Marriage Act, 1954, all marriages in India may be registered. Regardless of the religion or creed practised by either party, civil marriage is permitted by the Special Marriage Act 1954, an Act of India's Parliament. This Act applies to all Indian citizens living abroad as well as to those who are citizens of India. The SMA is a statute that permits marriages to be solemnised devoid of any religious rites or traditions. People from two distinct religious backgrounds are able to unite in a marriage under the Special Marriage Act of 1954. The Act specifies how marriages where one or both partners aren't Hindus, Buddhists, Jains, or Sikhs should be solemnised and registered. It makes it possible for two people to make a legal agreement to legally wed one another. The Act does not mandate the observance of religious rites. The judiciary has a responsibility to make sure that both the husband and wife's rights are protected.

BACKGROUND

Since the colonial era, India's religious laws, such as The Hindu Marriage Act of 1955 or even the registration of married couples under Muslim personal laws, have not been capable of accommodating or regulating marriages between interfaith or inter-caste couples who do not wish to associate with or solemnise their marriage in accordance with any particular religious laws. The British Government in India passed The Special Marriage Act, 1872, in order to address this obstacle that prevented two consenting, eligible adults from getting married and protect the renowned principle of secularism in society. The difference between the Hindu

Marriage Act and the Special Marriage Act is that: The Hindu Marriage Act only applies to Hindus, whereas the Special Marriage Act extends to all Indian citizens.¹

WHAT IS THE SPECIAL MARRIAGE ACT, 1954?

An Act to provide a special form of marriage in certain cases, for the registration of such and certain other marriages, and for divorce.² Under this act, two people of different castes or creeds may marry. Any person they want to marry is their choice. However, there are some requirements for getting married. To put it bluntly, this act recognises inter-caste and inter-religious marriages (interfaith marriages). Marriage is not required to be performed in accordance with wedding rituals. Unlike in the past, one can marry whomever they want without being forced to do so because their parents told them to. The Special Marriage Act, 1954 is an Act of the Parliament of India that provides for civil marriage (or "registered marriage") for Indian citizens and Indian nationals living abroad, irrespective of either party's practise of a particular religion or faith. Personal laws do not apply to marriages performed under the Special Marriage Act.

According to this act, we are generally not required to follow the traditions, customs, rituals, and religious rites that our families have been adhering to for decades in order to get married. Nothing can stand in the way. Such marriages only need consent from both parties. The couple need not belong to the same religion, caste, or creed for such a marriage to occur. The Special Marriage Act of 1954 was established to protect the rights of those who choose to wed outsiders of their caste or religion in defiance of traditional norms.

AIM OF THE ACT

A national statute called the Special Marriage Act was passed in India in order to legalise and record inter-religious and inter-caste marriages. It permits two persons to get into a civil contract to formally end their marriage. In order to address inter-caste and inter-religious marriages,

¹ Sonali Chauhan, 'A Brief Guide to Special Marriage Act' (*iPleaders*, 11 October 2019) <https://blog.ipleaders.in/special-marriage-act/#The_General_and_Legal_understanding> accessed 15 September 2022

² Special Marriage Act 1954

marriage must be established as a secular institution free of all religious requirements and requiring just registration. (To legitimize and solemnize marriage as a non-religious institution).

MARRIAGE REGISTRATION UNDER SMA

The vast majority of people are unaware of the precise steps involved in registering a marriage in our nation. While everyone should be well-informed as to how to apply for marriage, how to do so in various circumstances, and which categories marriages fall under within our legal system. Many individuals believe that a lawyer is necessary in order to register a marriage under the SMA. But, that is untrue. No advocate is necessary for this process. As soon as we get to the registrar's office, it may be completed easily.

Firstly, the marriage can be registered without a lawyer. The registrar's office has people who will assist you to register the marriage for remuneration.

Secondly, a lawyer will undoubtedly charge you for his services if you go to him and he agrees to help you register your marriage. The lawyer's fee is separate from any costs incurred during the process. There is no cheating going on here. They are fully entitled to choose their own fee. If you find it unfair or unaffordable, you have the option of seeking another counsel or completing the entire process without the assistance of a lawyer.

This Act requires couples to give the marriage officer a notice 30 days before the planned marriage date, together with any necessary documentation. However, while this process has been enabled online at <https://www.onlinemarriageregistration.com/>, the couple will have to visit the marriage officer for the solemnization of marriage.³ If not, the duo could fill out the district marriage officer's online application.

Eligibility: Both parties must be Indian citizens in order to qualify. At the time of the marriage, none of the parties may have a spouse who is still alive. If one or both couples have been married before, it is essential that the prior marriage be properly dissolved before registering here under the Act. The intended parties must adhere to the age restriction outlined in this Act. When

³ 'What is Special Marriage Act, all you need to know' (*India Today*, 6 March 2021) <<https://www.indiatoday.in/information/story/what-is-special-marriage-act-all-you-need-to-know-1776395-2021-03-06>> accessed 15 September 2022

applying for marriage, the female must not be below 18 years old, and the male must not be 21 years of age.

SPECIFIED PROVISIONS FOR SOLEMNISING SPECIAL MARRIAGE

Any two people may get married under this Act as long as the following requirements are met:

No party's spouse is still living, according to Section 4; neither party is incapable of consenting to the relationship due to mental incapacity; or, even if they are capable of consenting, they have a mental disorder that makes them unfit for marriage and having children; or they have experienced recurrent episodes of insanity. The parties are not in a forbidden relationship because the male is twenty-one years old and the female is eighteen years old.

Section 5 states that couples getting married under it must notify the Marriage Officer 30 days in advance of the marriage.

Section 6 states that the Marriage Notice Book kept by the Marriage Officer must contain a notice, which can be viewed by "any person desiring to inspect the same." Every such notice must be published by the marriage officer by attaching a copy to a prominent location inside his office.

Section 7 states that any person may object to the marriage on the grounds that it would violate one or more of the conditions outlined in Section 4 before the period of time of thirty days following the date on which any such notification has been issued under subsection (2) of Section 6 has passed.

Because these requirements infringed on personal liberty, some interfaith couples petitioned the Court, arguing that Sections 6 and 7 of the Act were unconstitutional.

CHALLENGING THE SECTIONS 5 TO 10

Why are Sections 6 to 10 of the Special Marriage Act under scrutiny? How are these provisions being misused?

The Special Marriage Act (SMA), 1954's requirement that couples send a notice of their plan to marry 30 days prior to their wedding was challenged in a writ case that the Supreme Court denied on Monday. The provision in section 5 that refers to a month hiatus should be repealed

in order to protect the parties from harassment. Instead, as soon as the registration process is complete, the marriage must be solemnised. Anti-social groups have utilised public signs to harass couples who are getting married. The couple that must get married is looked down upon by society for these 30 days (or one month), as stated in Section 5, and they may lose their dignity.

Despite the fact that we live in a much more advanced generation, people still have the same thinking and are hesitant to accept such marriages. Because of these reasons, they cannot support such a marriage and are incompatible. Their perspective remains the same. In order to escape parental pressure, many eloping couples choose to wed outside of their local jurisdiction. Despite the fact that there are rules that permit this, notices are nevertheless issued to the district's local marriage officer. Couples (particularly interfaith couples) have become the focus of harassment from vigilante groups and their families as a result of these demonstrations. The Special Marriage Act's inclusion of such a clause is discriminatory and in violation of the right to equality because such a clause is missing if one intends to wed under personal law (Article 14).

Section 6(2) says notice must be affixed at a visible location in the marriage officer's office. The couples' personal information is accessible to any person because the notice is posted where it can be seen by everyone. This clearly violates Article 19 of the Indian Constitution- The right to Freedom and Personal Liberty. These clauses are open invites for the parties to be harassed because it is possible that those who oppose the marriage have the intention of intimidating the couple before the marriage and even pressuring them to call off their plans.

It has frequently been seen that certain enthusiastic marriage officers have sent notices to the parties' permanent residences and asked the Station House Officer to verify the addresses, which is not at all required by the Act. Being a secular Act, it is crucial in releasing people from the historically oppressive requirements of marriage. Many of its provisions, meanwhile, conflict with its goals. Our Parliament is aware of the practical issues, but despite the urgent need for appropriate modifications, it has not demonstrated any sincerity in addressing them. Any person may object here to marriage under Section 7(1) after 30 days of publishing of the notice; otherwise, a marriage may be solemnised by Section 7(2).

Three witnesses are required for a union there under the Special Marriage Act, as opposed to the two required for a marriage registered under personal laws. As a result of their ability to be asked to testify in the event that any objections are expressed within the 30-day notice period, witnesses play a crucial role under the Act. One would hesitate before agreeing to serve as a witness as a result of the additional obligation, which would complicate the procedure altogether. Any person is free to object to a couple's marriage if they feel it is unreasonable. Additionally, it violates Article 21 - Right to life of the Constitution of India. In spite of these concerns, individuals who choose to use the Special Marriage Act find that the process is not transparent and complicated.

ATHIRA'S CASE: Athira Sujatha Radhakrishnan, a victim targeted by such a campaign, recently shared her predicament on social media. She claimed that the government's negligence had an impact on the rights to life, privacy, and freedom of matrimonial relationships. Athira felt that it was even appropriate to abolish the need that couples to give the act's required prior notice before getting married. How will the government safeguard such couples from the widespread abuse of such readily accessible personally identifiable information?

It must be noted that there are a lot of these instances. The instance of Athira was merely one. Due to such weddings, the pair occasionally experiences harassment and abuse in our nation. The Legislation was created to protect these couples' rights and safeguard their interests, but the unpleasant truth is that the pair considers getting married under a separate act or their own personal laws. Imagine the struggles such couples would face. It is necessary to safeguard the confidentiality of matters pertaining to marriage. They must be the exclusive decision-makers of their marriage, yet the communal groups forcefully sway them and they are severely affected by such groupings. In order to protect their confidentiality, the government must handle such matters.

CONCERNS WITH INTERFAITH MARRIAGES

The parties getting married under SMA are not required to switch castes. Even after marriage, they remain members of the caste that were born into. Hinduism exclusively permits monogamy, and those who wish to remarry must complete intensive training. The only way to

marry a non-Muslim, according to Muslim personal law, is to convert to their religion. Interfaith marriages are thought to involve one partner being coerced into a conversion (mostly women). For such purposes of marriage, neither party is required to convert to another religion through the couples wanting to get married under SMA are of various religious backgrounds. Even after their marriage has been legally recognised, they continue to practise the faith that their biological families allocated them to or which they converted to. SMA is also used to formally register inter-caste marriages.

SUCCESSION RIGHTS AND LEGITIMACY OF CHILDREN UNDER SMA

The Indian Succession Act, 1925 governs the couple married under SMA in terms of the succession of their offspring. Therefore, the property that the married party acquires is transferred to their children through a secular law of inheritance called, the India Succession Act. Ancestral Property can be inherited. The rights to intestate succession are unaffected because caste and religion have not changed. Property is passed on through personal laws that are governed by each person's religion. Therefore, if a Hindu lady marries a Christian man, she will still be entitled to the ancestral property of her family as provided for in the Hindu Succession Act, 2005.

The legitimacy of Children: Children born to parents that are married so under SMA are recognised as legitimate under Section 26. Children from such marriages are ineligible to inherit property. Even after the claimed marriage was declared invalid, they still have rights to the property. Only a part of their parents' independently acquired or ancestral property is available to them.

According to Section 19, any adherent of the Hindu, Sikh, Buddhist, or Jain religions who marries under this Act is judged to have severed himself from his undivided family. They are legally separated from the intact family after marriage. However, they continue to retain the same rights with regard to the transfer of ancestral property.

LOVE JIHAD AND ANTI-CONVERSION LAW

"Love Jihad," is a term used by these groups to suggest Muslim men seek to deceive Hindu women through marriage and convert them to Islam.⁴ Love Jihad, is a right-wing myth among Hindus that asserts that youthful Hindu women are tricked into marrying Muslims in order to convert to Islam. It is challenging for interfaith spouses to get married because of the anti-conversion legislation in place. Religious conversion for getting married without previous state consent is now outlawed in three federal states of India. Additionally, it requires a time-consuming process to gain state approval before marrying someone who practises a different religion.

In order to preserve the caste system, these regulations were enacted to soothe caste Hindus' fears regarding conversions to Christianity and Islam. Later, they were used to prevent lower castes from converting to Buddhism.⁵ Is religious conversion necessary for the solemnization of interfaith marriages in India? NOT AT ALL. The Special Marriage Act of 1954 (also known as the "SMA") governs the marriage ceremony and solemnization of interfaith couples. Several of its principles have drawn criticism since it was enacted.

Marriage has become challenging for interfaith couples without the assistance of their parents due to the complicated process involved in getting married. Although the SMA appears to be a liberal, progressive law that respects an individual's right to freedom of expression, its administrative procedures have allowed for harassment based on caste and community. Only 56% of diverse applications of Uttar Pradesh led to the solemnization of marriage, according to recent research. Nevertheless, interfaith couples appear to prefer being married under personal laws, even if it necessitates a conversion to another religion, to having to deal with the arduous bureaucratic structure and procedures of the SMA. In order to stop "Love Jihad," the states of India passed anti-conversion legislation that unfairly targeted those going to convert to Muslim. As a result, there is unintentional religious discrimination. Additionally, it gives rise to

⁴ Sanjeev Gupta, 'India's 'love jihad' anti-conversion laws aim to further oppress minorities, and it's working' (*The Conversation*, 3 September 2021) <<https://theconversation.com/indias-love-jihad-anti-conversion-laws-aim-to-further-oppress-minorities-and-its-working-166746>> accessed 15 September 2022

⁵ *Ibid*

allegations of violations of the rights to equality (Article 14) and the prohibition of religious discrimination (Article 15).

The Supreme Court is now hearing arguments over the anti-conversion laws. However, the original request for a temporary halt to the laws' implementation and operation was turned down. Nothing has changed in the case. On the contrary hand, the present political environment is enticing other states led by that of the nationalists, and Hindu-right party to create and approve like legislation. The Supreme Court must rule on the validity of this legislation and stop the problem in its tracks before it escalates to a national level. The fundamental principles of the Indian Constitution – liberty, equality, and freedom – are disrespected and violated by the anti-conversion legislation. An essential component of a constitution guaranteeing and upholding a liberal democracy is the principles that the Constitution as well as the fundamental language embody. It isn't enough for these ideals to be expressed in the constitutional language; it is also crucial for state and citizen actions to bring these values to life.

HOW DOES THE COUPLE BECOME VULNERABLE?

According to the SMA, each marriage registration office must publish a prior notice of the marriage before it takes place. The Kerala Registration Department began issuing such notices, which even include images of couples, on the department's website last year as a part of its efforts to move towards online registration activities. However, other couples were taken aback when their photos were shared on social media with the hashtag 'love jihad,' as either of them belonged to the Muslim community, particularly the male.

A large number of similar occurrences, involving honour killings as witnessed in the seminal case, *Lata Singh v State of U.P.*, where the couple had to endure extreme harassment only for identifying someone of their choosing, have occurred throughout history.⁶ A large number of similar occurrences, involving honour killings as witnessed in the seminal case, *Lata Singh v State of U.P.*, where the couple had to endure extreme harassment only for identifying someone

⁶ Akash Sharma, 'Special Marriage Act, 1954: A panacea for Indian society?' (*The Daily Guardian*, 15 October 2021) <<https://thedailyguardian.com/special-marriage-act-1954-a-panacea-for-indian-society/>> accessed 15 September 2022

of their choosing, have occurred throughout history.⁷ Marriage authorities have occasionally violated the law by sending such notices to the couple's parents, which resulted in one Muslim lady in Delhi being locked inside her home by family members in March 2020 until her partner petitioned the Delhi High Court for a writ of habeas corpus. Following another plea, the Delhi government warned all SDMs in the State and issued a contempt notice to the SDM.

The Haryana government has established 16 prerequisites, including the requirement that couples publish notices in newspapers and provide copies of such notices to their parents. The Government of Kerala and the Maharashtra Dept of Registration and Stamps openly shared the information of couples getting married under SMA on their websites up until Athira talked up and highlighted that this gave communitarian factors access to personal data and allowed them to harm and harass couples. In some states, couples are required to ask their parents for a no-objection certificate. Many people also criticise the conduct of the SDM employees, who frequently delay or delete applications, discourage couples from getting married under SMA, and persuade couples to convert at an Arya Samaj. Now that anti-conversion (or so-called love-jihad) policies have been approved in as many as 11 states, parents and the government are armed to punish and harass these couples.

RECENT SUPREME COURT PETITION

The Special Marriage Act (SMA), which requires parties to the marriage to publicize their private information, available for public examination, before thirty days of the proposed marriage, has recently been rejected by the Supreme Court.

The recent petition seeks:

- Article 21: This provision in the act violates the right to privacy of the parties.
- Article 14: The requirement violates the **right to equality** of the Constitution.⁸

⁷ *Ibid*

⁸ Rintu Mariam Bajaj, 'Challenging the Special Marriage Act, 1954' (*Live Law*, 31 August 2022) <<https://www.insightsonindia.com/2022/08/31/challenging-the-special-marriage-act-1954/>> accessed 15 September 2022

The petition specifically disputed Sections 6(2), 6(3) [Both provisions on notice of intended marriage]; 7 [Objection to marriage]; Section 9 and Section 10.

During the hearing, Justices Dinesh Maheshwari and Bela M Trivedi queried, "Challenging the constitutional validity in this petition is abstract. See, you are not an aggrieved person. We are trying to understand, if we take up this constitutional validity at your instance and pronounce on it that it is valid against you, would that bind everybody? Where is the genuine litigant who has got a grievance against these provisions?"

For the petitioner, senior counsel Ravi Shankar Jandhyala stated that he had married an individual of a different religion in accordance with the SMA. Then it ceases to be a PIL", the Bench said. "If it is your personal cause, it ceases to be a PIL." Reiterating its earlier query, the Bench proceeded, *"We hope we are clear in our question, supposing we take up this challenge to these provisions in the abstract at your instance and pronounce against you, would that bind everybody, including a person who may have a genuine grievance to raise?"*⁹ The petition was ultimately dismissed by the bench. The SC Rejected the petition on the grounds that the petitioner was **no longer an aggrieved party** as she had **already solemnised her marriage under SMA**.¹⁰

The petition also addressed the aforementioned SMA provisions because they violate citizens' fundamental rights guaranteed by Articles 14, 15, and 21 of the Indian Constitution. Furthermore, the petition claimed that the aforementioned laws infringe upon the basic rights of a couple planning to wed by denying them one's right to privacy as provided by Article 21 in the Indian Constitution.

CONCLUSION

Marriage is revered as a sacred, heavenly union in India and is regarded as a holy bond. We are aware that in many parts of our society, the degree of impact that rank as well as religion still exert on people is considered unfathomable. Everyone is expected to marry within one's class; anyone who does so breaks the social norms is shunned and prohibited from marriage. There are many common and regrettably exposed admirations for homicides, and they are also glad

⁹ *Ibid*

¹⁰ 'Special Marriage Act, 1954' (*Drishti IAS*, 31 Aug 2022) <<https://www.drishtiiias.com/daily-updates/daily-news-analysis/special-marriage-act-1954-2>> accessed 15 September 2022

to carry them out. Therefore, the Special Marriage Act, 1954 was adopted by the Parliament for all Indian citizens living abroad as well as for Indian citizens living in India, regardless of their rank or religion.

Every individual has the legal right to be married and live happily ever after with the spouse of their choice. But many disagree with and support this viewpoint. This condition was brought about by the effect of arranged marriages on love marriages, which, despite increasingly frequent judgements and legislation in this regard, hasn't led to a significant shift in the mindset of those who favour weddings within caste and religion. While it is generally believed that only marriages performed within one's own caste are sacred and auspicious, the legal considerations raised here do not alter the fact that marriages are still sanctified or valid under this legislation. Couples now face even greater challenges in order to protect their lives and safety from being violated as a result of the problems caused by various vigilante organisations. Marriage has traditionally held a holy significance in Indian civilization, where people place the joining of two people as a pair on a very high pedestal. Contrarily, inter-religious marriages are frowned upon, and some people have even been publicly ridiculed or socially shunned for choosing to wed someone who does not share their religious convictions. Every year, India receives reports of honour killings. It's eye-opening to note that according to UN data, India accounts for one out of every five honour killings worldwide each year.

In light of this, the Act is not being executed as intended. In contrast, several of its provisions run counter to its objectives.