



BREAKING BARRIERS, BUILDING BRIDGES - SPECIAL MARRIAGE ACT, 1954

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Abstract:

The Special Marriage Act, 1954 is an Act enacted by the Parliament of India to provide a new dimension of marriages for the residents of India and all Indian nationals in overseas countries, irrespective of the faith or religion followed by either party. The Act originated from the legislation proposed during the 19th century in India. Marriages that are solemnized under Special Marriage Act of India are not governed by their respective personal laws. It harmonises a common marriage of two Indians, without the want of denying their separate faith/religion. The Act comprises of a common marriage that authorises people to get married irrespective of their individual group instructions and their various community based laws. It precludes station or spiritual boundaries to marriage and gave a truly common and non – formal stately marriage. The one of a type characteristic of the Special Marriage Act, 1954 is that any marriage solemnized in a few other forms like underneath some other personal law, Indian or non-native, between any people can be enlisted below the Act. The marriage conducted under this Act is widely accepted. People who plan to get married under the Special Marriage Act might serve a notice in writing to the Marriage Officer of the location in the predetermined form. The important objectives of the new enactment under The Special Marriage Act are, to provide special form of marriage, to provide

registration of marriages and to provide divorce.

Introduction:

India, a country where there are numerous religions, cultures, traditions and rituals are celebrated. It gave nativity to many faiths other than Hinduism, consisting of Sikhism, Buddhism, Jainism, etc. There are people from many religions inhabiting in India like Muslims, Christians, and Parsis bringing the concept of diversity in India where the country celebrates the concept of secularism which is one of the major factors in governing the policies of India.

Marriage is one of the most sacred institutions celebrated around the globe. Earlier, the communities in India believed in the concept of arranged marriages either within their community or in their respective caste and strongly condemned the idea of inter caste marriages and remarriages. Today, due to globalisation and rapid development of law and legislation around the globe few communities and few groups of society has started accepting the inter caste and inter religious marriages and also India has a proper legislation to regulate such marriages and to prevent the unlawful practices that still prevail in few parts of India.

In 1872, Henry Sumner Maine first introduced the Act III of 1872, which would give permission to dissenters to marry whom so ever they choose under a new civil marriage law. Later in the final wording, the regulation sought to legitimize marriages for those inclined to renounce their faith altogether ("I do not profess the Hindu, Christian, Jewish, etc. religion") and can follow inter caste marriages.^[1] Overall, the view of the local governments and the



administrators was that they unanimously opposed to Maine's Bill and believed that this regulation is recommending marriages based on lust, which leads to immorality. [2] Later, in 1954 the Parliament enacted The Special Marriage Act to provide the validation and registration of the special form of marriage in India.

This article aims to furnish a general outlook and analysis on the Special Marriages highlighting the problems with judicial perspective on numerous problems under the Special Marriage Act.

In a case it was held that the caste system is like a curse on the nation and the sooner it's suppressed it's better for the nation. In fact, the caste system in India is misinterpreted and is

[1] <http://blog.ipleaders.in/10-things-every-indian-should-know-about-the-special-marriage-act1954/>

[2] Pervez Mody, "Love and the Law: Love-Marriage in Delhi," *Modern Asian Studies* 36:1 (2002): 223-256

the cause for the division of nation all time where one needs to be united to face the upcoming challenges of our country. Hence it was held that, inter-caste marriages are in fact within the national interest as it will help our nation to stay united as a result in destroying the caste system. [3]

Personal Laws with respect to Special Marriage Act:

India being the land of diversity and with celebrates various religions has various personal laws at the same time and also every religion has a different procedure for marriage which follows different religious ceremonies and rituals for solemnization of their marriage.

Hindu Law:

The Hindu Marriage Act which was laid down in 1955 provides us the conditions for the solemnization of marriage are under the Section 5 of the Act. The conditions mentioned in Section 5(i),5 (ii),5 (iii) and 5(iv) are somewhat corresponding to that of conditions that are laid down under Section 4 of the Special Marriage Act, 1954 with minute variance like

- The violation of a condition mentioned in section 5(iii) [4] of Hindu Marriage Act, 1955 will not result in making the marriage void whereas the violation of Section 4(c) of the Special Marriage Act, 1954 will amount to make the marriage void under Section 24(1) (1) [5] of the Special Marriage Act, 1954.
- Section 5(iv) and 5(v) of Hindu Marriage Act, 1955 and Section 4(iv) of the Special Marriage Act, 1954 both defines the degree of prohibited relationship but The Special Marriage Act, 1954 provides relaxation in the degree of prohibited relationship than in Hindu Marriage Act. Section 7 of The Hindu Marriage Act, 1955 provides with the ceremonies of the marriage and performance of the certain religious rituals which are to be conducted mandatorily in order to make the marriage a valid one otherwise the

[3] Markandeya Katju, J., SC., *Lata Singh v. State of UP* AIR 2006 SC 2522

[4] 9 S.5 a marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely: (iii) the bridegroom has completed the age of one years and the bride, the age of eighteen years at the time of the marriage.

[5] (1) Any marriage solemnized under this Act shall be null and void and may, on a petition presented by either party thereto



against the other party, be so declared by a decree of nullity if- (i) any of the conditions specified in clauses (a), (b), (c) and (d) of section 4 has not been fulfilled;

marriage will be considered as a void marriage.^[6] There also exists a provision for the registration of marriages under the Section 8 of The Hindu Marriage Act, 1955 which is again left up to the discretion of the parties whether to solemnize their marriage before the sub-registrar directly or either register their marriage after performing their marriage according to their conformity with Hindu Beliefs and the State Government may make rules accordingly to facilitate the proof of Hindu marriages.

Muslim Law:

According to the Muslim Law of marriage, the nature of marriage is considered to be a contractual one. There is a system of private registration of marriages with the kazis which has mostly been prevailed among the Muslims residing in India. Though the principle Islamic Law states that solemnization of marriage does not require any rituals among the Muslims of India but the marriages are invariably solemnized by their religious officials known as the “kazi” in a short ceremony performed by them known as “nikah”, which begins with obtaining consent of the parties formally – first from the bride and then from the groom which later ends with recitation from the Holy Quran followed by prayers. Then a nikah-nama i.e. a marriage certificate is prepared by the Kazi either before the conduct of nikah, or immediately after the ceremony, which contains all the details of the parties and is signed by both of them, and by two witnesses. The nikah-nama is then authenticated by the signatures of the Kazi

and later putting a seal on it. The printed forms of the standard nikah-nama which contains the details of the marriages they solemnize preserve the copy of the same in their in Hindi and Urdu and issue the same copies to both the parties. Under the Indian Law the nikah-namas issued by the kazis are treated to be admissible in evidence.^[7] Thus Muslim Law recognises private registration by signing a nikah-nama by both the parties and witnesses which can be taken as a proof of marriage.

[6] S. 7(2) – where such rites and ceremonies include the saptapadi (that is the taking of seven steps by the bridegroom and the bride jointly before the sacred fire), the marriage becomes complete and binding when the seventh step is taken.

[7] Government of India, Law Commission of India, Laws on Registration of Marriage and Divorce – A Proposal for Consolidation and Reform.

Christian Law:

The Indian Christian Marriage Act passed in 1872 provides that every marriage where either both the parties are, or an either party being a Christian shall be solemnized in accordance with its provisions only.^[8] The Indian Christian Marriage Act, 1872 makes a clear distinction between “Christians” (defined as “persons who are professing Christian religion”) and “Indian Christians” (defined as “persons are who got converted into Christian as converts and are also the decedents of the native Indians are Indian Christians”). It also makes separate provisions for followers of various Churches which includes Church of England (called Anglican Church), Church of Scotland and Church of Rome (so called as Roman Catholic Church). The Indian Christian Act



provides separate rules for the solemnization and registration of marriages for Indian Christians and as well as other Christians, and also for the followers of various Churches. [9] Due to such classification and distinctions the system of registration of marriages provided by the Act is quite complicated. According to the Act, marriages may be solemnized by the following: [10]

1. Ministers of Church who has received Episcopal ordination;
2. Clergymen of the Church of Scotland;
3. Ministers of Religion who got licensed under this Act;
4. Marriage Registrars appointed under this Act; and
5. Persons who are licensed under the Act to grant certificates of marriage between "Indian Christians". Indian Christian Marriage Act, 1872, laid down certain conditions [11] for the certification of marriage. These are –

1. The age of the man intending to be married shall be above 21 years and age of the woman intending to be married shall be above 18 years;
2. Neither of the persons intending to be married shall have a spouse still living;

[8] Parts I, Section 4, Indian Christian Marriage Act, 1872.

[9] Government of India, Law Commission of India, Laws on Registration of Marriage and Divorce – A Proposal for Consolidation and Reform. Accessed from <http://lawcommissionofindia.nic.in/reports/report211.pdf>

[10] Part I, Section 5, Indian Christian Marriage Act, 1872.

[11] Part VI, Section 60, Indian Christian Marriage Act, 1872.

3. In the presence of a person licensed under Section 9, and of at least two credible witnesses other than such person, each of the parties shall say to the other –

‘I call upon these persons here present to witness that I, AB, in the presence of Almighty God, and in the name of our Lord Jesus Christ, do take thee, CD, to be my lawful wedded wife or husband’ or words to the like effect. Under Christian law marriage with a cousin may be permitted by a special dispensation by the Church. Part IV of the Act (Sections 27-37) contains elaborate provisions for registration of marriages solemnized by Ministers and Clergymen covered by categories (i) to (iii) above.

There are in this Part separate registration provisions for marriages of Christians in general and of Indian or Native Christians. Part V of the Act (Sections 38-59) provides rules for solemnization-cum-registration of marriages directly by Marriage Registrars appointed under the Act. Part VI (Sections 60-65) relates to marriages of "Indian Christians" solemnized by licensees under the Act and provides rules for certification. [12] This Act, thus, has a very complicated system of registration of marriages solemnized under this Act and it suffers from a tremendous lack of uniformity. The Indian Christian Marriage Act provides for compulsory registration.

Parsi Law:

The Parsi Marriage and Divorce Act was first enacted in 1865 which was later replaced by a new Act bearing the same name in 1936 and also was amended in few aspects in 1988. Parsi marriages are to be solemnized under The Parsi marriage and Divorce Act by the Parsi priests who are required to certify them in a prescribed form which is to be signed by the priest, the contracting parties and two



witnesses^[13]. According to the Act the priests are required to periodically transmit their records to Marriage Registrars appointed under the Act. A priest who neglects either to so certify a marriage or to transmit its copy to the Marriage Registrar will be made guilty of an offence punishable with simple imprisonment up to three months, or with fine up to a hundred rupees, or with both.^[14]

[12] Government of India, Law Commission of India, Laws on Registration of Marriage and Divorce – A Proposal for Consolidation and Reform. Accessed from <http://lawcommissionofindia.nic.in/reports/report211.pdf> on

[13] Part III, Section 6, Parsi Marriage and Divorce Act, 1936.

[14] Part III, Section 12, Parsi Marriage and Divorce Act, 1936.

Section 3 of Parsi Marriage and Divorce Act, 1936 provides the conditions for valid marriage. The Parsi Marriage and Divorce Act, 1936 makes necessary Registration of Marriages but non – registration also does not affect the validity of marriage.

The Special Marriage Act, 1954 acts as a boon to the society which aids the citizens of India in overcoming the constraints posed by their respective personal laws. The Special Marriage Act, 1954 with respect to marriage and its registration mainly, worked for the welfare of citizens by protecting their matrimonial rights. The Special Marriage Act, 1954 proved to be a rescuer in cases where there were various ceremonies to be conducted by the families of the parties and also found a way and held support in inter caste marriages. Section 7 of the Hindu Marriage Act, 1955 provides for various ceremonies for a Hindu marriage to be valid. In the case of *Kanwal Ram v Himachal Pradesh Administration*^[15] the court held that

a marriage is not proved valid unless the essential ceremonies required for its solemnization are proved to have been performed.

Thus, rites and ceremonies in Hindu marriage proved to be essential requirement of a valid marriage and any fault or mistake on the part of parties at the time of solemnization of the marriage will led to a void marriage. Here in such cases the Special Marriage Act, 1954 proved itself to be an alternative as no such ceremonies are required under the Act. The Registration of the marriage under this act is a sufficient proof of a valid marriage.

Violation of condition i.e. mentioned in section (iii)^[16] of Hindu Marriage act, 1955 will not make the marriage void while the violation of section 4(c) of the Special Marriage Act, 1954 will make the marriage void under Section 24(1) (i). Thus, Special marriage Act, 1954 also restrains child marriages. Similarly, The Muslim Law provides for private registration of marriage but there is no such provision for official registration. Under Muslim law if a man want to marry his divorced wife again then both the parties had to through various religious customs like the wife to undergo through her Iddat Period of three months whereas under this act there are no such rituals to be followed. The Parsi Marriage and Divorce Act, 1936 provides for compulsory registration of marriage but they do not allow inter – religion

[15] [AIR 1966 SC 614]

[16] S.5 A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely: (iii) the bridegroom has completed the age of one years and the bride, the age of eighteen years at the time of the marriage.



marriage whereas The Special Marriage Act, 1954 again provides them with the platform for solemnization of marriage for inter religion marriage. The compulsory registration of marriage under Special Marriage Act, 1954 ensures that the registered marriage cannot be declared as void in any circumstances and also makes sure that the children born to their parents out of the wedlock will be regarded as their legitimate children. Thus, the Act protects the interest of the parties in marriage, the children born to the parties and the compulsory registration also keeps a check on bigamy and child marriages.

The Special Marriage Act, 1954 and Its Scope:

The Special Marriage Act, 1954 came into force from 1st January 1955 and contains 51 sections which are systematically divided into 8 chapters. Under this act, there is a special legislation to provide for a special type of marriage [as one does not need to convert or renounce their religion] via registration. Unlike the conventional type of arranged marriages which usually take place between two families belonging to same caste or community, this act focuses at the inter alia providing for legalising inter-religious or inter- castes marriages. The Certificate of registration under the Act has been considered as a universal proof of marriage. The Act as stated inside the preamble affords a unique form of marriage in definite cases, for the registration of such and certain other marriages and for divorce. The foremost goals which may be culled out from the Preamble of the Act are:

- (i) a special type of marriage in certain occasions,

- (ii) for registration of certain marriages,
- (iii) For divorce.

Application of the Special Marriage Act:

The Special Marriage Act applies to the whole of India except in the state of Jammu and Kashmir^[17] but presently as per the new changes being made by scrapping the Article 370 from the constitution this Special Marriage Act might be applicable in the states of Jammu and Kashmir also. Besides Indians this Act also extends to the Indian nationals residing in foreign countries. The basic requirement for a valid marriage under this act is the consent of both the parties where it doesn't require any kind of rituals, ceremonies or customs to be

[17] Special Marriage Act, 1954, Chapter 1 Section 1(2)

performed as any marriage conducted under this act is considered as a civil contract. Any kind of caste, community sections or spiritual variations cannot terminate their union of marriage. Parties connoting to marry regardless of the religion/faith they follow may be a Hindu, Sikh, Jew, Muslim, Christian, Buddhist, Jain or Parsi can execute their marriage under this Act. Thus, The Special Marriage Act 1954 applies to all individuals of all religions. This legislation enables the parties to marry each other irrespective of all religions, caste or community. In case if the parties move for divorce, it needs to be governed via The Special Marriage Act, 1954. The Act in divergence with various other personal marriage laws authorizes marriage without converting to the other partner's religion. The Act provides for solemnization of special marriages, registration thereof, effects of marriage under the Act, restitution of conjugal rights,^[18] judicial separation and



nullity of marriage and divorce. It also provides for jurisdiction of Courts and procedure to be followed.

In **Robin v. Jasbir Kaur**,^[19] the husband is a Christian whereas the wife is a Sikh and the Marriage was performed as per the Hindu rites between them. In this case it was held that a Hindu can marry a Christian under the special Marriage Act and such marriage cannot be held void only on the basis that it was not performed as per the provisions given under Section 6 of the Indian Christian Marriage Act, 1872. The High Court ruled that it cannot be held that the marriage between the husband who is a Christian and the wife, who comes under the definition of a Hindu, is not valid for purposes to grant the relief u/s 125 Cr.P.C.

Responsibility/Duty of the Marriage Officer:

The Marriage Officer on receipt of the application filed under Section 15 of The Special Marriage Act has to present a public notice as prescribed under the given rules. The Marriage Officer is bounded by his duty to give 30 days for filing objections.^[20] The Marriage Officer has to hear the objections received within the time stipulated and has to make sure that all the conditions mentioned under section 15 are satisfied, he shall enter the Certificate of Marriage in the Marriage Certificate Book, as specified under the fifth schedule. Certificate of Marriage needs to be signed by the parties to the marriage and by the three witnesses.

[18] Section 22 of the Special Marriage Act, 1954

[19] Robin v Jasbir Kaur decided by Punjab & Haryana High court on 3rd June, 2016 available at

<https://indiankanoon.org/doc/27367589/>

[20] Chapter II, Section 5, the Special Marriage Act, 1954

The Marriage Officer when takes a decision under Section 16 read with Rule 7 and 6(b), he is exercising a quasi-judicial function. The Rule obliges the Marriage Officer to record the evidence and his decision on the objection and the reasons in his own handwriting. On satisfying all the conditions mentioned under Section 15, the Marriage Officer shall enter a Certificate of Marriage in the form specified in the Fifth Schedule of the act and this form shall be signed by the respective parties provided with their three witnesses. The statutory form, prescribed in the fifth schedule of the act deals with the manner in which the Marriage Officer, the husband, the wife and their three witnesses has to sign the certificate of marriage and the mode in which the declaration has to be made by the parties. A declaration, that a ceremony of marriage has been performed between the parties and that they have been living together as husband and wife since the time of marriage and that in accordance with their will to have their marriage registered under the Act, on a particular date, has to be made jointly by the husband and wife in the presence of the Marriage Officer and their three witnesses. The requirements in our view should be statutory in nature and mandatory in character. Neither the Marriage Officer nor the parties can deviate from the statutory provisions given under the act. Recognizing the recent traits in India, the Courts opined that there's no impediment for marriage between an Indian bride groom and a foreign national (bride).

In **Krishna Das v. State of Kerala**^[21] the petitioner, a citizen of India, was predetermined to marry a foreign national. Though he approached the Marriage Officer concerned under The Special Marriage Act



with the notice of the intended marriage, the Marriage Officer refused to accept the notice given by him. The High Court of Kerala has directed the Marriage Officer to take notice of the marriage under The Special Marriage Act, 1954.

Eligibility for Special Marriage:

The Special Marriage Act, 1954 has laid down few conditions on the parties to be eligible for marriage. [22] Section 4 of the Special Marriage Act, 1954 provides the conditions relating to any kind of solemnization of special marriages between the parties. A marriage between any two individuals can be solemnized under this act, only if the at the time of marriage the following conditions are satisfied:

[21] Krishna das v. State of Kerala WP(C).No. 23081 of 2016 (I) Kerala High Court available at

<https://indiankanoon.org/doc/27570184/>

[22] Section 4 of the Special Marriage Act, 1954.

1. Neither of the parties should have other subsisting valid marriage in other words the resulting marriage should be monogamous for either of the parties.^[23]
2. Neither of the parties should be of unsound mind i.e. both the parties should be competent enough to make a contract of marriage and should be of sane mind when giving the consent.^[24]
3. Neither of the parties should be affected with any mental disorder which renders them unfit for marriage and for procreation of children.
4. The minimum age that a girl/female should attain is 18 years and a boy/male should attain is of 21 years of age.^[25]
5. The consent made by the parties for marriage should be free i.e. the consent should be without any undue influence.

6. The parties should not fall within the purview of the degrees of prohibited relationship i.e. the parties should not be related to each other by blood and other prohibited relations stipulated by the legislation.^[26]

If the following conditions given under The Special Marriage Act are not satisfied then the marriage can be termed as void and will not be considered as a valid marriage.

Registration of Marriages:

In **Smt. Seema v. Ashwani Kumar** [27] the Supreme Court of India has observed that all the persons who are the citizens of India irrespective of their religion have to be made their marriages compulsorily registrable in their respective States, where the marriage is solemnized. Thus the Supreme Court has directed the Central as well as the State Governments to take the following steps:

- The registration procedure of the respective states should be notified within the three months from the date given.)

[23] Chapter II, Section 4(a), the Special Marriage Act, 1954.

[24] Chapter II, Section 4(b), the Special Marriage Act, 1954.

[25] Chapter II, Section 4(c), the Special Marriage Act, 1954.

[26] Chapter II, Section 4(d), the Special Marriage Act, 1954.

[27] Smt. Seema v. Ashwani Kumar AIR 2006 S C 1158

This task can be done by amending the prevailing rules or by framing new rules. However these changes will bring unrest among people and objections from various sections of the society so thus the matter shall



be kept open to the public to raise objections for a period of one month as on the day it was open. On the expiry of the given period, the States shall issue appropriate notification bringing the Rules into force in their respective States.

- The officer shall be appointed as per the said Rules of The State who shall be duly authorized to register the marriages under this act. The age and the marital status i.e. unmarried or divorced shall be also clearly stated thereby.

If in case in any circumstance there is non-registration of marriages or if there is a filing of false declaration by the officer in charged the consequences of the same are provided in the said Rules and the object of the Rules stated shall be performed as per the directions of the respective Court.

- If the Central Government as and when enacts a comprehensive statute, the same shall be scrutinized before the courts of law.
- To ensure that that the directions given herein are put into force immediately and are carried out fruitfully there are various learned counsels established for various States and Union Territories in India.

The, the Supreme Court of India has highlighted the need for registering all types of marriages of Indian Citizens belonging to various communities, religion and various States immediately after the solemnization of marriage. Thus, keeping in note of the above given directions by the Supreme Court, all the State Governments had to amend the Rules providing the provision for compulsory registration of the marriage (but not compulsory after the performance of the ceremonial marriage as per their respective customs, irrespective of their religion and caste etc.).

Prohibited Relationship under Law:

The provision provided under Section 4 of the Special Marriage Act deals with the prohibited degrees of relationship between the parties.

It says that,

If there is at least a custom prevailing that governs one of the parties, then it permits the execution of marriage between them, such marriage can be solemnized provided should not fall within the degrees of prohibited relationship.

Thus, it was held that there is no bar to an inter-caste marriage in any circumstance under the Hindu Marriage Act or any other such prevailing set of personal laws.^[28]

The boy and the girl i.e. either of the parties should not fall under any of the provisions of the prohibited relationship. The prohibited degrees of relationship are defined completely different in purview of The Special Marriage Act, 1954. Few of the prohibited degrees of relationship defined under this act are as follows:

- All the first cousins either as of the paternal or maternal side or of parallel and cross falls in the category of prohibited marital relationship but it does not place any second cousin in its two lists of prohibited degrees provided that custom governing to at least one of the parties permits.
- But as per the Muslim Personal Law marriage between the first cousins is allowed i.e. all the first cousin both on the paternal and the maternal sides doesn't come inside the purviews of the prohibited degrees of marriage.
- Also under the Christian Marriage Law, the marriage with the first cousin may be permitted by an exception given by the Church. Thus, if the expression custom is defined in the Special Marriage Act, 1954 and would include the personal law of the



parties then a condition of the recognition by the State Government through a Gazette Notification should be satisfied.^[29] The boy and the girl i.e. either of the parties should not fall under any of the provisions of the prohibited relationship.^[11] The prohibited degrees of relationship are defined completely different in purview of The Special Marriage Act, 1954. Few of the prohibited degrees of relationship defined under this act are as follows:

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[28] Markandeya Katju, J., SC., Lata Singh v. State of UP AIR 2006 SC 2522

[29] Section 4(d) of the Special Marriage Act, 1954

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- Also under the Christian Marriage Law, the marriage with the first cousin may be permitted by an exception given by the Church.

Thus, if the expression custom is defined in the Special Marriage Act, 1954 and would include the personal law of the parties then a condition of the recognition by the State Government through a Gazette Notification should be satisfied.^[30]

But at the same time this act ignores the discrimination that is prevailing among the different Communities of India. For instance,

under The Hindu Marriage Act, 1955 there is a restriction known as the as Sapinda relationship marriage^[31] which states that the marriage with the second cousin is not allowed whereas in The Special Marriage Act, 1954 it is clearly stated that, marriage with the second cousins is valid. Thus, if a Hindu, Sikh, Jain or a Buddhist can marry a second cousin if he wants to under this Special Marriage Act, though it's not permitted in their respective personal laws. Similarly in Muslim Personal Law, the law here permits a marriage with a first cousin whereas it's not permitted in The Special Marriage Act.^[32] This act also specifies a minimum age of the male and a female i.e. 21 years and 18 years respectively. It also states that for a special marriage to be valid the parties should be of sound mind and should be capable of giving a valid consent and the marriage between the parties should be monogamous at the time of conduct of the marriage i.e. either divorced or unmarried and should not have a spouse living during the conduct of the marriage.

Jurisdiction of Courts with respect to Transfer of Cases

Every petition that shall be made under the Chapter V and Chapter VI shall be presented to the District Court with their local limits of whose original civil jurisdiction.^[33]

[30] Laws of Civil Marriages in India – A Proposal to Resolve Certain Conflicts, Report 212, October

2008, Chapter IV - Prohibited degrees.

[31] See Section 5(V) of Hindu Marriage Act, 1955. — Saha pinda bandhavya nishedhahall

[32] Laws of Civil Marriages in India – A Proposal to Resolve Certain Conflicts, Report 212, October



2008, Chapter IV -Prohibited degrees
[33] Subs. By the marriage laws amendment act, 1976(68 of 1976) Sec. 3

There are various cases that are involved with respect to Jurisdiction of Courts and Transfer of Cases related to it. One of the cases that deal with it is discussed below:

In a case namely Vandana Sharma v. Rakesh Kumar Sharma ^[34] involved a transfer petition filed by the wife named Vandana. She sought the transfer of the case filed by her husband which was pending in the Court of Additional District Judge, Tis Hazari Courts, Delhi to the Court of District Judge, Panchkula (Haryana) stating that wife/petitioner had two minor daughters staying with her and the younger one was only 7 months' old and thus it would be difficult for her to attend the Court sessions held at Delhi from her residence in Haryana with the absence of any male member. The Apex Court has directed the Additional District Judge, Tis Hazari Courts, Delhi, to transmit the records of the case within one month from the date of supply of a copy of the order.

Divorce:

India, being governed by various personal laws based on their religion and the same are legislated by the Central Government by India. ^[35] Different religious groups in India are governed by their respective religious codes and by customary laws of their respective communities. The Hindu Marriages and Divorces are governed by the Hindu Marriage Act, 1955 which also applies to all the other communities that comes under the definition of a Hindu namely, Buddhist, Jains and Sikhs etc. ^[36] Apart from this there are separate laws which govern with the family matters of Muslims ^[37] and Christians ^[38]. And later to bring uniformity in the

nation there is also a Special Marriage Act enacted which allows for marriage between members of any religion affiliation and also governs with divorce at the

[34] 2008 (11) SCC 768

[35] Family matters are in the concurrent list of the Indian constitution which means that either the states or the central government can legislate on family matters. However, central legislation takes precedence and supersedes any state legislation. For matters related to marriage and divorce, as there are existing central legislations, the state's legislative role has been limited (Garg 1998).

[36] Hindu Marriage Act was enacted in 1955 and subsequently amended in 1976 to include cruelty, desertion and mutual consent as grounds for divorce (Law Commission of India 1978).

[37] Muslim family matters are governed by the Muslim Personal Law [Shariat] Application Act of 1937 and Dissolution of Muslim Marriages Act of 1939

[38] Christian marriages are governed by the Christian Marriage Act of 1872 and the India Divorce Act of 1869. The provisions related to grounds for divorce largely remained unchanged for over a century. An amendment to the India Divorce Act in 2001 expanded divorce rights and made the provisions gender equal (Law Commission of India 1983; Subramanian 2008).

same time. ^[39] The Hindu Marriage Act and The Special Marriage Act have similar grounds for granting a divorce to the parties. Few of the main grounds for granting a divorce to the parties can be summarized under the following categories: matrimonial fault, special circumstances and by mutual consent. The first ground of matrimonial fault includes adultery (with stringent proof), Cruelty ^[40], Desertion for not less than two



years, unsound mind, communicable venereal diseases, incurable leprosy, renunciation of the world by entering religious orders, has not been seen alive for period of seven or more years.

The Act provides wife for additional grounds of divorce under special circumstance such as if the husband has been found guilty of rape, sodomy or bestiality or if the marriage was solemnized before the woman turned 15 and she repudiates the marriage before age 18. Finally divorce can also be granted by mutual consent. There is no provision under Hindu Marriage Act or Special Marriage Act to grant divorce due to irretrievable breakdown of marriage or to grant divorce without mutual consent that does not involve fault or special circumstances.

One of the important aspects of Hindu Marriage Act and Special Marriage Act is that it recognizes customary divorce which can be granted through customary ways by village councils, caste organization, quasi-legal and non-formal institutions. Hindu Marriage Act states that —[Nothing contained in this Act shall be deemed to affect any right recognized by custom or conferred by any special enactment to obtain the dissolution of a Hindu marriage...] with a liberal interpretation of custom.^[41] Such recognition of customary laws interprets that divorce to the parties can be granted without any judicial involvement.

Similarly, for Muslims in India, Sharia remains largely un-codified law and marriage is treated to be a contract and can be terminated if the contract is valid or not valid.

[39] Special Marriage Act allows marriages in which both parties are from different religions or from the same religion or no religion. This is an optional law and serves as

an alternative to different religious personal laws (Law Commission of India 2008b).

[40] Courts have differed in their interpretation of cruelty. Partying to acne problems have been ruled as form of cruelty to the spouse and a reason for divorce (BBC 2015). The Supreme Court of India in recent judgments has noted that cruelty must be judged on the “intensity, gravity, and stigmatic impact of it when meted out even once and the deleterious effect of it on the mental attitude, necessary for maintaining a conducive matrimonial home” (Law Commission of India 2009: 17). For Supreme Court’s interpretation of cruelty and other aspects of the HMA, see Kohli 2010.

[41] Hindu Marriage Act, 1955, Chapter 1: Definitions.

Earlier, the marriage would be repudiated by husband pronouncing talaq three times, for any or no cause, in the presence or absence of wife, is binding and irrecoverable either in oral or written form,^[42] but as per the new amendment the triple talaq is not valid. Whereas, a wife can repudiate a marriage only if the husband grants her the power to do so or if the wife has negotiated to have such powers in the marriage contract. Wife and husband can also initiate divorce through mutual consent known as Khul or Khula. Wife can also seek divorce known as faskh from a qazi (religious teacher) or third parties if there is no mutual consent. Only women, can also seek unilateral divorce under the Dissolution of Muslim Marriages Act (DMMA) of 1939 under specified conditions like apostasy, failure to provide maintenance, unknown whereabouts, cruelty, failure to perform marital obligation without reasonable cause, impotence, insanity, severe disease or any grounds recognized by Muslim law.



In India we can observe that the matrimonial laws specially relating to divorce and separation have been greatly influenced by the English matrimonial law viz., the Matrimonial Causes Act, 1857. The Special Marriage Act, 1954 as amended under the Marriage Laws (Amendment) Act, 1976 recognises the following eight fault grounds for divorce ^[43]:

- a. Adultery
- b. Desertion
- c. Imprisonment for 7 years
- d. Cruelty
- e. Unsound mind and mental disorder
- f. Venereal disease
- g. Leprosy
- h. Respondent not heard for 7 years

Apart from these there are special grounds provided for wife only namely, ^[44]

[42] Muslim Personal Law (shariat) application act, 1937

[43] As under S. 27(1) of the SM Act

[44] As under S. 27(1A) of the SM Act

- The husband, since the solemnization of marriage has been guilty of rape, sodomy or bestiality, and
- Cohabitation has not been resumed for one year or more after an order of maintenance has been passed under section 125 of the Criminal Procedure Code.

In a case, *Suman Kundra vs. Sanjeev Kundra*, ^[45] the parties were married as per Hindu rites and ceremonies on 29th October, 1986. However, their love marriage did not continue very long and the marriage dissolved by a decree of divorce on 02nd June, 1988. The parties re-married for the second time before the Marriage Officer under SM Act on 03rd May, 1990. However, the parties could not reconcile their

inherent differences and the husband filed a petition for dissolution of marriage under Section 13(1) (a) and (b) of the HM Act on 21st July, 2005. The wife challenged the maintainability of the petition. This Court held that since the parties were married under the SM Act, their conduct with regard to the grant of divorce or relationship would be covered under the SM Act only.

Conclusions and Suggestions:

Marriage is considered as one of the sacred institution in India and is an integral part of our culture. India being a diverse country has people residing from several religions and cultures which also influences the caste and religion in our country. The Inter-Caste marriages performed in India are still considered as a taboo. India follows a very rigid structure of the caste system where people are expected to marry within their caste and within their respective communities and to follow their traditional barriers otherwise when not followed are shunned by the society which also is a cause for increase in number of honour killings reported on daily basis. Thus to safe guard the society from such evils, the Special Marriage Act, 1954 was enacted in the interest for the public which helps the people to come over their orthodox and unnecessary religious practices and also helps in lifting the barrier in performance of inter-caste marriages. So the Parliament enacted the Special Marriage Act in 1954 which provides for a special form of marriage for the people of India and all Indian nationals in foreign countries, irrespective of the caste and religion.

[45] AIR 2015 Del 124

Thus, we can conclude that, Registration plays an important component of marriage when it comes to Special Marriage Act. The



Act provides for compulsory registration as without the registration marriage will not be valid and thus be considered as void. The unique feature of this Act is that any marriage solemnized in any other form under or under any other personal law, Indian or foreigner, between any two persons can be registered under the Act. The Indian Christian Marriages Act, 1872 makes it compulsory for the marriage to get registered under The Special Marriage Act, 1954. Parsi Marriage and Divorce Act, 1936 makes necessary Registration of Marriages but without the registration also marriage is considered as a valid one. In Muslim law, a marriage is regarded as a civil contract and the Qazi, or the officiating priest, also records the terms of the marriage in a nikah nama or marriage certificate, which is handed over to the parties i.e. a provision of private registration of marriage. Also there exists a provision under Section 8 of the Hindu Marriage Act, 1954 for registration of marriages but it's left to the contracting parties to either solemnize the marriage before the sub-registrar or register it after performing the ceremony according to their Hindu beliefs.

Compulsory registration helps in protecting the interest of the parties in marriage and also helps in encountering and preventing few problems which exists in society like bigamy, child marriage and desertion. Few of the suggestions that can be taken into consideration is that the registration under Hindu Marriage Act, 1955 should be made compulsory and every state should take necessary steps to make laws for compulsory registration in their state as provided under section 8 of Hindu Marriage Act. Similarly, in the Muslim society they follow a system of private registration of marriages by the kazis, which needs to be streamlined and linked

with registration of marriage with State Registry. In very few States it has been observed that all the marriages irrespective of the law under which these may have been solemnized have to be compulsorily registered under this Act. The majority of States in India have not enacted any general law on marriage registration which is applicable to all the communities. It is also observed that the States where there are laws for compulsory registration of all marriages, such laws are highly ineffective and are not taken care by the legislative thus acting as faulty laws. People generally residing there do not adhere to such laws, as non-registration entails only fine of a petty amount. So, punishment for non – registration of marriage should be given importance and at the same time should be strengthened and the laws should be strictly and effectively implemented.
