



SPECIAL MARRIAGE ACT-THE INTERCEPTED MARRIAGE

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Abstract:

In modern times, families continue to 'fix' marriages based on religion, caste, gotra, astrological alignment, skin colour, family background, and social standing. Marriages must take place not only within the same faith, but also within the same caste, according to endogamy rules.

The Special Marriage Act was passed in 1954 to help people who were in interfaith relationships or just wanted a secular marriage. Couples must give a 30-day notice to the marriage officer, who is normally a district magistrate, and a copy of the notification must be displayed in "any visible position" in the marriage officer's office. This was done for the sake of transparency and to allow people with real issues, such as an existing spouse, to come forward. There are many issues faced by the couples including, Invasion of Privacy, Societal Pressure, Delay in Marriage due to given time period leads to Threatening to Life & it also goes against human dignity and the autonomy of two people who have the ability to make decisions. A notice period is intended to ensure transparency. However, these requirements—neither party must have a surviving spouse, both parties must be of sound mind, and so on—appear in religious marriages as well. So, if religious marriages are not put to the test, then why a marriage

under the Special Marriage Act. This paper mainly focuses on the Public Notice under Special Marriage Act and the issues revolving around it. The main idea behind special marriage act is to reduce barriers to inter-faith and inter-caste marriages, promoting secularism and equality as a result. In this research paper we are discussing how public notice of 30 days in the act is violating the privacy rights of couples, threat to their life and the lacking behind the main purpose of special marriage act.

Key Words: Public Notice, Special Marriage Act, Right to Privacy, Hindu Marriage Act, Marriage Registration

Introduction:

Marriage is a culturally accepted relationship in between male and a female in which they are legally bound to one another as a married couple. It is a significant social institution that meets men and women's "physical, social, psychological, cultural, and economic" requirements. Marriage is viewed as a socio-religious duty created to achieve three key life goals: duty, sensual pleasure, and progeny. In Indian legal system marriage is covered under two different aspects. The first aspect in which marriages are covered under personal laws and distinct for every religion in India. For Example, Hindu Marriage Act, Muslim Personal Law (shariat) Application Act etc. Second aspect in which marriages are covered under civil marriages like Special Marriage Act, 1954.

In the issue of *Puttuswamy v. Union of India*¹, a nine-judge SC bench decided that the "right to privacy" is a basic right

¹ K.S. Puttaswamy (Privacy-9J.) v. Union of India, (2017) 10 SCC 1



safeguarded in Part III of the Indian Constitution. Though primarily concerned with an individual's right to sue the government for violating their privacy, this landmark decision will have ramifications for both state and non-state actors, and will almost certainly culminate in the passage of a thorough privacy law.

Requirement for mandatory publishing of notice, based on a "simplistic reading" of the law in special marriage act, "would infringe the Right to Privacy of an individual, which include freedom to choose for getting married without intervention from state and private actors of the concerned persons.

Objectives

- To understand the purpose of issuing public notice under special marriage act.
- To understand how public notice violets privacy of couples.
- To understand how public notice leads to societal pressure.

Hypothesis

H1: - Not sending intending marriage notice to the home and residence of the bride or groom will secure the privacy and rescue the threat to the couple.

Background:

The SMA has been revised numerous times since its beginnings in India. It back to the pre-independence period, when first introduced in 1872. After the 1st law commission in pre-independence India suggested it, the SMA of 1872 was passed.

This law only applied to people who didn't follow any of the established religions in India at the period: "Hinduism, Islam, Buddhism, Jainism, Sikhism, and Paresis". The goal of this law was to encourage inter-religious weddings. In order for somebody from these faiths to marriage under SMA, they would first have to give up their beliefs and then marry within this act. In spite of the "Indian Divorce Act of 1869" being applicable to these marriages, there's no clearer picture of nullification or divorce. When this Act was changed in 1922, only "Hindus, Sikhs, Buddhists, and Jains" could marry under it. They had to give up their religion to do so. The current Marriage Act was passed by the Nehru government in 1954, just after the country became independent. The old law was abolished and this one took hold. This moment, the rule was enlarged to include inter-caste marriages as well as inter-religious marriages. It serves as a stand-in for personal laws.

The goal of this law was to encourage secular marriages in which no party is forced to change their faith because the law has no religious implications. As an outcome, each person can choose whether to marry by their own personal law or under SMA. This act eventually resolves the issue of nullification of marriages, that was not addressed in the previous law, and the "Indian Divorce Act of 1869" no longer applicable. According to the Law Commission Report, the term "Special" in the regulations should be reconsidered. The term "special" was added to this legislation when it was 1st introduced because people had to renounce their religious practice at the time, and thus the word "special" was provided to them; even so, the term "special" is no longer be required



nobody has to renounce their religion under new Act.

Invasion of Privacy:

The society is always changing to keep up with changing demands, expectations, and other factors. The very goal of legislation is to serve the public according to its needs. Law must also evolve in order to keep up with societal changes. The Court cited the *Satyawati Sharma vs Union of India*² decision, which found that law that was logical and sensible at the moment of its implementation might become arbitrary, unreasonable, and in violation of the tenet of equity with time and evolving circumstances. In such circumstances, the Court may overturn the classification if it has been discovered that the justification for classification is becoming non-existent.

Several cases were noted by the courts, including the *Puttaswamy case* [(2017) 10 SCC 1] and the *Kharak Singh vs. State of U.P.*³ case. The *Puttaswamy case* established the core principles of privacy by recognising it as a fundamental right. A portion of the verdict in the *Kharak Singh case* concluded that the right to privacy is not a protected right under the Indian Constitution. This portion of the decision was overturned. The court held that the right to privacy is a constitutionally guaranteed right that stems principally from Article 21 guarantee of life and personal liberty. At its essence, privacy protects personal feelings, the integrity of family life, marriages, procreation, residence, and sexuality. It also implies the right to be

left aside. Individual independence is protected by privacy, which acknowledges the person's ability to control key areas of his or her life. Individual decisions that control one's way of life are inextricably linked to privacy. FR's are the only constitutional safeguard against the state interfering with the core freedoms that comprise a person being's liberty. The right to privacy is unquestionably one of the most important liberties to be maintained. It is a component of liberty in the sense that the phrase "liberty" is used in Article 21. The Court accepted with the opinion that in an era of different socio-cultural norms, particularly in a varied nation like India, privacy is among the most crucial rights to be preserved. The right to privacy must be acknowledged as a basic human right. In *Lata Singh vs. State of U.P.* and another⁴ it was ruled that when an individual has become a major, they or she can marry whomever they want, and that free choice in marriage is an intrinsic component of Article 21 of the Indian Constitution. In the issue of *Shakti Vahini vs. Union of India and others*⁵, it was determined that marriage is an expression of their choice, as recognised by Articles 19 and 21 of the Constitution. In *Shafin Jahan vs. Asokan K.M. and others*⁶, it was state that neither the State nor the Legislation can determine a person's preference of spouses or limit each individual free 's free option to determine on these matters. Social approval for affectionate personal choices is not a premise for acknowledging them.

Weddings in India can take place under either distinct personal legislation or the Special

² *Satyawati Sharma v. Union of India*, (2008) 5 SCC 287

³ *Kharak Singh v. State of U.P.*, (1964) 1 SCR 332

⁴ *Lata Singh v. State of U.P.*, (2006) 5 SCC 475

⁵ *Shakti Vahini v. Union of India*, (2018) 7 SCC 192

⁶ *Shafin Jahan v. Asokan K.M.*, 2018 SCC OnLine SC 201



Marriage Act 1954. Personal laws make it optional to post a notice informing the public about the wedding and soliciting objections, if any. The Special Marriage Act of 1954, on the other hand, requires a 30-day notice period informing society about the prospective marriage. This violated the right to privacy as a result of the possibility of interference from both state and non-state actors. The requirement for mandatory notice publication appears to serve no purpose. Failure to provide notice would have no effect on any individual's rights in any way different than it would in the situation of a marriage under any personal legislation. Imposing the need of publishing an obligatory notice 30 days before to the proposed marriage would be a violation of the fundamental right to privacy.

Societal Pressure and Threatening to life:

Many couples are concerned about the societal implications that will befall them as a result of the marriage officer's notification. Sometimes parents intervene, and other times religious groups threaten the couple. Several couples have already been subjected to violence.

Because of this fear, many couples consider conversion as a more convenient option than being married under the Special Marriage Act, which negates the point of adopting a Special Marriage Act in the first place. A similar situation occurred in the case of "Safiya Sultana Thru. Husband Abhishek Kumar Pandey & Anr vs. State of U.P. Thru. Secy. Home, Lko. &Ors" in which the pair belonged to different faiths and were intended to marry under the Special Marriage Act; however, because of the 30-day notice

rule, the couple were concerned that this would invite involvement from their families, religious or social groups in society. To avoid such a significant delay in the marriage ceremony, the woman changed her religion and married. When the woman's father found out all about his daughter's converting and marriage, he detained her and refused to let her leave the home. The lady filed a Habeas Corpus writ petition via her husband.

Section 5⁷ of the Act requires the parties to notify each other of their intent to marry through the use of a notice. Section 6(1)⁸ requires the recording of notice provided under Section 5 and the entry of a true copy of it in the Marriage Notice Book. The second portion of this sentence states that such record shall be available for examination by "any person" who wishes to do so. Herein is the issue allowing "any" person to view such facts of couples has no conceivable rationale; rather, permitting such scrutiny exposes the individuals seeking to marriage to life-threatening hazards from their parents, radicals, extremists, and so on. Furthermore, the current political climate, community tension, and religious polarisation are evidence of a continually increasing intolerance to distinctions and variety among groups, religions, political groups, and on and on, which are the precise grounds for anyone to turn to this Act. In such cases, allowing examination by "any" person is tantamount to legitimately putting the intended couples to marriage in jeopardy.

Why mandatory

In September 2020, a petition was filed in the SC challenging Sections 6(2), 6(3), 7, 8, 9, and 10 of the SMA. Nandini Praveen, a

⁷ SPECIAL MARRIAGE ACT, 1954 §5

⁸ SPECIAL MARRIAGE ACT, 1954 §6(1)



student from Kerala, filed the petition in the case. The petition was accepted by the SC, but the Chief Justice made the following observations:

“Your plea is that this is a violation of the privacy of the couples. But imagine if children run away to get married, how the parents would know about the whereabouts of their children? If wife runs away, how would the husband come to know?

For example, if one or both persons intending to get married have run away from their respective spouses, should it be kept secret by the marriage officer, who has an obligation under law to inquire into the legitimacy of the alliance by inviting objections from the public by putting up the information on the notice board? The moment that provision is deleted, it could lead to abuse of existing marriages. You must also suggest a solution.”

Suggestions:

There will be a requirement for an interim certificate to be issued to the husband and wife for a time frame of 45-60 days; during this moment, the marriage officer may release the notice and invite opposition. Until then, any objections received by the official can be researched. There will be an increase in the fines imposed for false liabilities or obligations. The clause of certificates will provide couples with a feeling of safety, as after obtaining the certificate, publishing of the same on the official will not be a problem for the couple.

This may be an ideal option than closing the registration and solemnization gaps. The author agrees that thirty days are needed to verify for any opposition, particularly in

situations of "bigamy or Sapinda" relationships since there is no society intervention at huge to make sure exact same thing; even so, in needed to shield the liberty of the married people, two things must be done; laws, and a requirement of the interim certificate.

Conclusions:

It is critical to recognise that when we discuss a marriage that is not governed by personal legislation, certain basic standards must be met as additional protections for the partners. The same logic is employed when discussing the Special Marriage Act's 30-day public notice rule. Rather than eliminating the idea of additional safeguards, dedicated legislation enacting penal action against any such fringe components and groups will be implemented to confront the societal repercussions of a same. This is what the Committee Report was attempting to suggest as well; they even presumed that the timeframe should be excluded, but their main recommendations focused on enacting an action-based legislation against the offenders.

Even within my view, that's a more reasonable remedy than expelling the public notice requirement, because after solemnization, there could be intervention from parents or social organizations, so withdrawing the public notice requirement would not resolve the major problem. Even the Allahabad HC decision on the SMA 30-day requirement came after a husband and wife filed a writ petition for Habeas Corpus.



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