

## Procedural Requirements for Performance of Marriage under The Special Marriage Act, 1954

*-Abhigna Valusa*

*2<sup>nd</sup> year student of Amity University, Mumbai.*



### Abstract

The Special Marriage Act, 1954 involves various procedures for the registration of the marriages performed under the Act. The Special Marriage Act, 1954, enabling a unique concept of marriage for all Indians and Indian residents abroad, regardless of the caste and faith. The Special Marriage Act, 1954 allows inter- caste and inter-religious marriages. This research work aims to study the background of Special Marriages in India irrespective of castes and religion. Also aims to provide a detailed study on marriages and its registrations under Special Marriage Act. This study is limited to analysis of procedural requirements for performance of marriages under The Special Marriage Act. The purpose of this study is to understand or interpret the role of Special Marriages in India. This research work will be useful for academicians and law students in understanding the background of The Special Marriage Act, 1954.

## Introduction

India is a country of unity in diversity having different faiths, religions, cast, creed, languages, cultures etc. Hence, it is felt by our lawmakers that there is a need to have a special statute to provide for marriages between different religions.

The Special Marriage Act, 1954 (the Act) deals with marriages of various castes or different religions. Inter-caste marriages take place between two persons of different castes. The Act is a specific statute, which facilitates marriage between two individuals from different casts and /or religions. The Act gives the provision to get married with an individual regardless of caste and religion. Any Indian residing in India or outside India has eligibility to get married under this Act.

The Act emphasizes the role of marriage officials in solemnization and registration of a marriage in a foreign country for the benefit of Indian diplomatic and consular officers residing abroad in pursuit of official duties. The Act derived its origin from a past piece of legislation. Under the Act, marriages are not regulated by personal laws.

The Special Marriage Act respects the person's freedom in deciding their choice of partner and is intended to allow the individual to be released from the oppressive methods in the matter of marriage. However, the conditionality attached and procedure required for marriages under the Act enable ample time and space for community, caste and society to intervene with those who wish to take recourse to the Act<sup>1</sup>.

Unlike other state legislation that regulates religious marriages, this statute allows the individuals to go through a variety of administrative processes to recognize their marriage. The couple must publish the notice for the registration of marriage by giving their private information enabling others to view and register objection, if any, within 30 days of such publishing. The marriage officer has the authority to pursue these objections.

A marriage is lawfully performed at the state's Marriage Division; there must be a sight of at least two marriage officials and three witnesses. Rituals are the most essential feature in a marriage under the

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<sup>1</sup> Diva R., *A Brief Guide to Special Marriage Act*, Ipleaders (Oct. 11, 2019), [blog.ipleaders.in/special-marriage-act/](http://blog.ipleaders.in/special-marriage-act/).

Hindu Marriage Act, 1956, without which the relationship between the two would not be established and would be null and void. In contrast, if any one wishes to get married under the Special Marriage Act, must serve a notice of their intention to the Registrar of Marriages under whose jurisdiction at least one of the couple resides at least 30 days before the date of such Notice<sup>2</sup>.

Anybody can challenge the proposed marriage, within 30 days of publication of such Notice on the ground that it is in contravention of one of the provisions of the Act. The marriage may be solemnized, once the thirty days time period had elapsed. Once the Marriage Registrar and the witnesses sign the certificate, the marriage will be declared complete and solemnized.

The Special Marriage Act, 1954 changes the perspective of the law regarding prohibited marital degrees. One of the requirements for the solemnization of planned civil marriage is that, “parties shall not fall within the range of the prohibited relationship”. However, the Act provides for a relaxation, if the tradition of one parties permits for a marriage between the parties within the prohibited degrees<sup>3</sup>.

## History

Henry Sumner Maine is the first to introduce a bill to allow any individual who wants to get married with the person of his/her choice, under civil marriage law. The Act III, 1872 was passed. The statute legitimized relationships among those who are able to repudiate their faith (“*I do not profess the Hindu, Christian, Jewish, etc. religion*”). The community administrators and local Government were against the Act. The reason behind the unconstitutionality of the Act was that the local Government and Administrators were unanimously objecting to the idea of such Act. Hence the Act III, 1872 was replaced with the new Act viz. The Special Marriage Act, 1954.

In the year 1954, the law makers felt that there is a need for such a statute, where an individual may get married with the partner of their choice irrespective of their religion. The Special Marriage Act, 1954 allows inter- caste and inter-religious marriages irrespective of their faith. Elaborate procedures were stipulated in the new.

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<sup>2</sup> The Special Marriage Act, 1954, § 5.

<sup>3</sup> The Special Marriage Act, 1954, § 4(d).

## Constitutionality of Section 6

The Special Marriage Act, 1954 allows inter-religious marriages to be recorded. The plaintiff, Nandini Praveen, a law student, filed a writ petition before the Supreme Court under Art 32 of Constitution of India, challenging the constitutional validity of the Act in general, Section 6(2), 6(3), 7, 8, 9, and 10 in particular which stipulate mandatory requirement of disclosure of personal information the notice to be issued as a prerequisite<sup>4</sup>.

She contended that certain sections breached the fundamental rights protected by the Constitution. The petition also stated that disclosing the private information regarding matrimony issues does violate Article 21 i.e. right to privacy. It is even contended that this section of the Act does violate Articles 14 and 15 guaranteed under Part III of Constitution.

### The main issues raised before Hon'ble Supreme Court were:

1. Will certain sections of the Special Marriage Act, 1954 compromise the protections guaranteed by Articles 14, 15, and 21?
2. Do the sections of the Special Marriage Act, 1954, breach the freedom to Marriage?

The Provisions of Special Marriage Act, 1954 that violates Article 14, 15 and 21 guaranteed under Part III of the Indian Constitution are as follows:

1. Section 6 (1) of the Special Marriage Act, 1954 says that the marriage officer must issue the notification of planned marriage which includes the couple's permanent residence and where they intend to live<sup>5</sup>. Section 6 (2) requires that such notice also be given to the local marriage officer of districts that the couple intend to permanently reside in upon marriage<sup>6</sup>. Section 6 (3) states that, in case, the couple do not permanently reside in the jurisdiction of the marriage officer, the notice must be sent to the marriage officer of the district in which they intend to permanently reside<sup>7</sup>.

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<sup>4</sup> *Nandini Praveen v. Union of India*, (2020), W.P. (C) No. 000983 - 000983/2020.

<sup>5</sup> The Special Marriage Act, 1954, § 6(1).

<sup>6</sup> The Special Marriage Act, 1954, § 6(2).

<sup>7</sup> The Special Marriage Act, 1954, § 6(3).

2. Section 6 of The Special Marriage Act does violate Article 14 (right to equality) and Article 15 (right against discrimination) which is guaranteed under Part III of The Constitution of India.
3. Along with Section 6 (2) and (3), Section 7, 8, 9, and 10 are still unconstitutional as these sections make illegal access to personal details obligatory and hinder the right to privacy as well as the right to life and liberty as guaranteed under Article 21.

In *Pranav Kumar Mishra Vs. Government of NCT, Delhi*, Justice s. Ravindra Bhatt held that: “The special marriage Act was enacted to enable a special form of marriage for any Indian national professing different faiths or desiring a civil form of marriage. The unwarranted disclosure of matrimonial plans by two adults entitled to solemnize it may, in certain situations, jeopardize the marriage itself. In certain instances it may even endanger the life or limb of one or the other party due to parental interference. In such circumstances, if such a procedure is being adopted by the authorities, it is completely whimsical and without authority of law.”

State/country shall not deny “equality before the law” or the “equal protection of law” in the jurisdiction of India to anybody until legislation. This rule extends to every resident and every foreigner<sup>8</sup>.

Article 15 specifies, on the “*grounds of race, religion, caste, sex and place of birth, which a state shall not discriminate against any person*”<sup>9</sup>.

The right to privacy is recognized as part of the right to life and equality and is thus protected by Article 21. “The concept of human integrity is considered which protects personal intimacy, the sanctity of the family, marriage, procreation, the home and sexual advice as well”<sup>10</sup>.

The freedom to select a life partner is a constitutional right; family/community/clan’s acceptance is not necessary for two people to get married<sup>11</sup>. There may be situations where the party’s personal information is revealed to the media, such declarations may be used by religious riots as a weapon for abuse. This personal information will not just be misused to promote communal misinformation and avoid the solemnity of the planned marriage, but will often be misused to risk lives. This section is

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<sup>8</sup> The Const. Of India, Art. 14.

<sup>9</sup> The Const. Of India, Art. 15.

<sup>10</sup> *R.Rajagopal v. State of Tamil Nadu*, (1994) 6 SCC 632.

<sup>11</sup> *Shakti Vahini v. Union of India*, (2018) 7 SCC 192.

thus collapsed colossally as it is checked against the touchstone of the marital right and the presumption of equality<sup>12</sup>.

### Marriage and its Registration under Special Marriage Act

Section 5(1) of the Special Marriage Act, 1954 specifies that every individual may lawfully marry. Only inter-religious or inter-caste marriages are recognized by this statute in India. Under this rule, a marriage must be done in the manner of a civil marriage, while parties may decide to perform their marriage in any way they please<sup>13</sup>.

Section 4 of The Special Marriage Act includes the conditions for a marriage to be solemnized. Firstly, no party should have a living spouse at the time of marriage<sup>14</sup>. Secondly, both should be capable of giving valid consent<sup>15</sup>. Thirdly, with reference to the age of the parties, the male must be at least 21 years old and the female must be at least 18 years old<sup>16</sup>. Violation of any of the above provisions would constitute the marriage void. In terms of prohibited marriage degrees, the Special Marriage Act, 1954 fully alters the situation. The prerequisite for having an approved civil marriage under this Act is that “the parties are not within the degrees of prohibited relationship.”<sup>17</sup>

The Act permits marriage between the parties according to a specific custom (the custom regulating by any individual). Getting married under this statute is, basically, like getting married in a state’s civil ceremony, and is necessary to fulfill the civil formalities. In addition, the Marriage Officer should publish the marriage notice<sup>18</sup>. Anybody can challenge the proposed marriage, within 30 days of publication of such Notice on the ground that it is in contravention of one of the provisions of the Act. The marriage may be solemnized, once the thirty days time period had elapsed. Once the Marriage

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<sup>12</sup> Ayush M., *The Unconstitutionality of the “Publication of Notice of Intended Marriage” clause under the Indian Special Marriage Act*, Oxford Human Rights (Sept.14, 2020), [ohrh.law.ox.ac.uk/the-unconstitutionality-of-the-publication-of-notice-of-intended-marriage-clause-under-the-indian-special-marriage-act/](http://ohrh.law.ox.ac.uk/the-unconstitutionality-of-the-publication-of-notice-of-intended-marriage-clause-under-the-indian-special-marriage-act/).

<sup>13</sup> The Special Marriage Act, 1954, § 12(2).

<sup>14</sup> The Special Marriage Act, 1954, § 4(a).

<sup>15</sup> The Special Marriage Act, 1954, § 4(b).

<sup>16</sup> The Special Marriage Act, 1954, § 4(c).

<sup>17</sup> The Special Marriage Act, 1954, § 4(d).

<sup>18</sup> The Special Marriage Act, 1954, § 6(2).

Registrar and the witnesses sign the certificate, the marriage will be declared complete and solemnized<sup>19</sup>.

## Personal laws

Every personal law follows different customs, religious and procedures to solemnize the marriage.

### ▪ Muslim Law:

The essence of marriage is contractual, according to the Muslim definition of marriage. The first cousins from the side of paternal as well as maternal are beyond the prohibited marriage degrees. The brief ceremony of the Kazi, called “nikah,” starts by taking the official consent first, from the bride and then from the groom, and the ceremony comes to an end by delivering the prayers from the Holy Quran. The Kazi prepares a nikah-nama (marriage certificate) before, or immediately after, the wedding, which provides full descriptions of the couple which has to be signed by them and by other two witnesses. By placing his signature and seal on it, Kazi authenticates the nikah nama. The nikah nama is printed in Urdu as well as Hindi.

### ▪ Hindu Law:

Procedures and requirements for solemnization of marriages of Hindus are prescribed in Hindu Marriage Act, 1955. The requirements stated in The Special Marriage Act and Hindu Marriage Act is similar in nature. The marriage won't be declared void in case the couple is violating section 4 of Hindu Marriage Act, but if the couple violates section 5 of The Special Marriage Act, the marriage will be considered as void.

Ceremonies of marriage and religious rites must be conducted<sup>20</sup>. Without the specified practices and ceremonies, the marriage won't be considered as legal. The marriage can be solemnized before

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<sup>19</sup> The Special Marriage Act, 1954, § 5.

<sup>20</sup> The Hindu Marriage Act, 1955, § 5.

the registrar or after the registrar conducts the marriage ceremony in compliance with Hindu beliefs. To encourage marriages in the Hindu religion, the state can make rules for registration.

▪ **Christian Law:**

The Indian Christian Marriage Act, 1872 obliges all parties to Christian marriage being solemnized according to its terms<sup>21</sup>. The Indian Christian Marriage Act, 1872 is archaic since it divides between Christian and Indian Christians. The Act establishes separate laws for marriages of Indians and Christians, and also for the adherents of different religions.

The Indian Christian Marriage Act, 1872, set out the basic measures required<sup>22</sup> to receive a marriage certificate. Those are:

1. Men must be twenty-one years old and women must be eighteen years old to marry.
2. It is not allowed for any one of the intending-to-marry contestants to have a spouse or partner still living;
3. Each party shall give the vows to the other party in the presence of two other eyewitnesses who must have license<sup>23</sup>.

▪ **Parsi Law:**

The Parsi Marriage and Divorce Act was first passed in 1865, and then in 1936 it was repealed with a revised edition. In 1988, the Act was revised in certain regions. In Parsi marriages, the ceremony takes place in front of the priests. They are expected to sign the ceremony in the specified manner. The witnesses may even be requested to sign their names to validate the event. The officials are mandated by statute to submit the supporting documentation to the Marriage Registrars. In order to preserve the marital legitimacy, a marriage may be invalid if a

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<sup>21</sup> Indian Christian Marriage Act, 1872, § 4.

<sup>22</sup> Indian Christian Marriage Act, 1872, § 60.

<sup>23</sup> Indian Christian Marriage Act, 1872, § 9.



priest ignores to sign off on the marriage. A priest who fails to administer a marriage is a convicted suspect and will serve a prison term up to 3 months and be fined a hundred rupees or will be both. Parsi Marriage and Divorce Act, 1936, specifies under what circumstances a Parsi marriage is legal<sup>24</sup>. The Parsi Marriage and Divorce Act, 1936, says, “*Marriages and divorces must be registered but that should not impact either the legitimacy of the marriage or the divorce*”.

## Conclusion

Marriage is an institution in India that is considered sacred. Marriage is a significant cultural part. India is a highly diverse region with a large religious population, leading up to different cultural values. Caste and religion has a large impact on Indian society. There are many debatable topics all over the country and Inter-caste and inter-religious marriage is one of them. Earlier, inter-religious marriages were not protected by any statute. In the year 1954, the law makers felt that there is a need for such a statute, where an individual may get married with the partner of their choice irrespective of their religion. Therefore, the Parliament passed The Special Marriage Act, 1954, enabling a unique concept of marriage for all Indians and Indian residents abroad, regardless of the caste and faith. The Special Marriage Act, 1954 allows inter- caste and inter-religious marriages. The Special Marriage Act is the only marriage law which treats child marriage as void.

Under chapter III of the Act, marriage solemnized in any other form under any law may also be registered under the Act. That means if a marriage is initially solemnized in any personal law, they can also register such marriages in Special Marriage Act.

Due to many procedures involved such as collection of various documents etc. the registration of the marriage becomes time consuming. One must go through a long procedure to register their marriage, which is considered as one of the drawbacks.

Registration of marriages must be compulsory which can reduce many crimes such as child marriage, bigamy and desertion. Every state shall enact laws to facilitate registration under the said law. Very few states have the concept of compulsory registration of solemnized marriages under different

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<sup>24</sup> Indian Christian Marriage Act, 1872, § 3.



personal laws. Due to completely different customs in different States, there is no general procedure of registering marriages under personal laws. People usually do not register their marriage, which results only in a minor fine. Thus, the courts should raise the penalty for those who have not registered their marriage and the rules should indeed be tight and efficiently followed.

