CRITICAL ANALYSIS OF THE SPECIAL MARRIAGE ACT, 1954 IN REFERENCE TO MANDATORY PUBLICATION OF PERSONAL DETAILS BEFORE MARRIAGE

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ABSTRACT

The Special Marriage Act, 1954 was the first and only secular code governing matrimonial relations to be brought into force in a country where marriage and other personal issues had only been governed by personal laws according to religion, even during the British Raj. This act was the first to allow matrimonial relations to be established between people observing different religions without the need for conversion. However, it doesn't come without shortcomings. Section 6 of the Act mandates the marriage officer is to display a copy of a notice of intended marriage signifying the intention of the interested parties to get married in his office in a 'conspicuous place' for 30 days so that it is easily accessible to anyone that wants this information. Following this, Section 7 of the Act also invites objections to said union. This well-meaning provision, has nevertheless become a tool for harassment, violence and patriarchal control by family, community and even public religious groups and organisations who publicly oppose interfaith and even inter caste marriages and egregious acts of violence against couples who chose to opt for secular marriages in today's society. It is this drawback of the Act that we are going to study in this paper. In doing so, firstly, we understand the SMA, 1954 and its sections involved in this issue along with the social issues that they bring about. This paper also finds that besides general public, the administrative system might also be aiding to these issues. Next, we dive into the judicial developments that have taken place over the years and lastly, we conclude the paper by recommending a forward.

Keywords: Secular, notice of intended marriage, objections to notice, harassment, violence, intercaste marriages, interfaith marriages

Introduction

In a society that widely regards marriages as **"A union of two families and not just of two people",** invariably, side-lines and undermines the individual. The notion that a marriage is the coming together of two families, reinforced and popularised by the media, both print and visual and its correlation with "Indian Values" has led to this idea being accepted as a truism. The universal acceptance of this idea leaves very little room for a person to assert their personal will in a governmental setting which results in the sacrifice of a person's individual identity. This pattern of not accepting an individual's choices, even in their personal matters, is deep rooted in the Indian society and it is further exacerbated in matrimonial matters because of the aforementioned notions. Divorce being looked down upon and being considered a taboo among certain sections of the society even in today's day and age is reflective of this issue.

This brings us to the **Special Marriage Act (1954)**[1], the only secular legislation governing matrimonial relationships in India where the religion of the two parties is of no consideration. Considering the traditional Indian society and the importance that is attached to religious identities of the people, inter- faith marriages are probably one of the biggest examples of individual choices, in the backdrop of the often hostile opposition that it receives from the society. It is not just inter-faith marriages that are opposed, anything that breaks away from the 'customary' practices and is an expression of individual will be looked at with disdain, for instance inter-caste marriages. With us Indians having multiple facets to our identities, a traditional marriage involves two families from the same caste or community while a secular marriage, according to Section 4 of the Special Marriage Act recognises the marriage of "Any two persons". This, ideally should free a person from the shackles of any forceful collectivity in the matters of marriage and recognises the individual as separate from the community, not bound by any practice or standards set by it but the procedural compliances and statutory requirements of the act does not make it that easy in actuality.

Controversial Provisions and Relevant Social Issues

The main issue that is going to be discussed in this paper deals with Section 5, 6 and 7. Two parties, getting married under the Special Marriage Act, under section 5, need to submit a notice

[1] The Special Marriage Act, 1954

signifying their intention to get married[2], to a marriage officer appointed under section 3 of the act. This notice is to be under the format of the forms of Schedule 2 of the marriage officer of the district and a true copy of this notice is mandatorily required to be attached in the marriage. The most contentious issue here is "public nature" of this notice of intended marriage submitted to the magistrate. Under Section 6 of the Act, the marriage officer is to display a copy of this notice of intended marriage in his office in a 'conspicuous place' for 30 days so that it is easily accessible to anyone that wants this information. Moreover, Section 7 also allows anyone to raise objections to the marriage in the time period of 30 days from the publication of notice by submitting these objections in writing to the magistrate, who is empowered to carry out investigations to check the validity of these objections. These grounds to raise objections are only the conditions mentioned in Section 4, which are to avoid bigamy, non-consensual marriages (including those of people having an unsound mind), and relationships between prohibited degrees but we will analyse later how this provision is abused and misused. The marriage of the couple is solemnised after 30 days by the marriage officer if there are no objections. A similar situation arises when a couple wishes to get their marriage registered under the Special Marriage Act. Under Section 16, a couple wanting to register their marriage has to file an application with the marriage officer which again has to be displayed in a conspicuous place in the office for 30 days, against which objections are invited, the grounds for which are laid down under section 15 and are almost identical to the ones discussed above, mentioned in section 4.

This public notice that we mentioned above is a deeply disconcerting provision as it becomes a very tool for harassment, violence and patriarchal control by family, community and even public religious groups and organisations who publicly oppose interfaith and even inter caste marriages and egregious acts of violence against couples who chose to opt for secular marriages which has been on the rise in recent years. The notice contains personal details of both the parties of marriage and this sensitive and personal information is out in the public, easily accessible to anyone and everyone as it is deliberately displayed that way according to law. The issue is not just the risk of violation of the right to privacy of the couple and in some scenarios, the notice is also published online which was the case in some periods of the year 2020 and 2021, when the government had imposed a total lockdown due to the pandemic and

[2] Under the Special Marriage Act (1954), there is no provision for immediate marriage, as opposed to personal laws where the marriage is deemed solemnised after completion of ceremonies.

all government services were shifted online. Moreover, the requirement of having to display the notice for 30 days creates a one-month window between the marriage's solemnization and announcement which offers family, caste, and religious group members sufficient opportunity to raise objections, harass, and inflict violence upon these couples getting married. Therefore, not only does this violate the right to privacy, but it also causes apprehension of grievous hurt and even death. These acts of violence also take the form of **'Honour Killings'** at times, which is one of the most vile, inhuman and barbaric crimes to exist. In order to protect the family's honour, the members of the family kill the erring members of the family who chose to go against the wishes of the family and marry someone of their choosing. This happens usually to people choosing to marry someone from a different faith or a different caste. The display of notices creates an environment conducive for honour killings as the information about the couples is so easily accessible in the public domain. This is an extremely unsettling and shameful reality and is an abject failure of the state to protect its own citizens.

Another extremely pertinent issue that requires consideration at this point is **Section 9(2) of** the act which prescribes the punishment for making malafide objections to the marriage. T**he punishment prescribed is merely 1000 rupees**, which would be then awarded to the intending couple. This punishment as compared to the offence is whimsical and clearly not big enough of a deterrent to stop this act and hence is in dire need for reform as the object of the provision, which is to prevent baseless objections and protect the interest of the intending couples is clearly not being met.

Another matter relating to the notice and objections under Section 6 and Section 7 of the Act is that a preliminary reading of section 4 mention the only grounds upon which an objection can be raised, which are to prevent bigamy, non-consensual marriages. There is no scope or any statutory backing for objections by families of the parties or any objection as to the communal and caste identities of the parties. Yet, this provision is used by both these actors, familial and communal to first, gain knowledge of the marriage, then file fabricated objections to delay marriages and last but not the least, use extra judicial measures such as intimidation, violence and even social boycott. Which brings us to an instance in Kerala, where the notice of intention to marry filed with the marriage office was uploaded on to the official website, which was leaked on to social media, who called it proof of **'Love Jihad'** by a group of right wing activists and all their personal information was made available to everyone with an internet connection. In Kerala, it was found that such religious extremist vigilante groups had leaked

similar information about 120 other interfaith couples who got married under the special marriage act onto social media groups and were made as a target for harassment. The Kerala administration acted decisively and prohibited the uploading of notices on their website, not all state governments are jumping to protect interfaith couples. In countless instances, people from different faiths find it easier to convert their religions to avoid fulfilling the precarious requirements of the special marriage act and avoid harassment by government authorities and get married under personal laws. This **completely defeats the purpose of the Special Marriage Act** and the legislative intent behind it seems lost. In August 2021 Union Minister of State for home Ajay Kumar Mishra, in a reply to a question in Lok Sabha gave the following data - "92 incidents of honour killing took place in the country in 2017, 29 in 2018 and 24 in 2019. The highest 50 honour killings have taken place in Jharkhand between 2017 and 2019, 19 in Maharashtra and 14 in Uttar Pradesh."[3] It is also important to note here that these statistics represent just the cases that have been reported and labelled as honour killings which is just a miniscule portion of the cases of honour killings that are actually carried out. A lot of the times cases aren't reported and registered as honour killings by police officers fearing strong opposition from very powerful local actors and groups.

Mala fide Acts of State Administration

There have also been instances where the marriage officers and police officers, bypassed the procedure of the Act and acted beyond their powers. There was in an instance in Lucknow, in October 2019, where a woman who wanted to get married under the special marriage act without any religious rituals and ceremonies was taken to the police station and was intensely questioned for their decision to get married under the secular law and were pressured into getting married under personal laws. After she did not hear back from the Registrar's office, she decided to abandon her decision and had to get married under personal laws only as procedural compliances and the discouraging behaviour of the administration made it very difficult for her to go through with a secular marriage.[4] This is only one of the many cases that are caused due to administrative shortcomings. Before the year 2018, there existed a practice of affixing the notice of intended marriage under Section 5 at the homes of the couples

[3] "145 incidents of honour killing between 2017 and 2019: Govt", India Today, 11 Aug 2021,https://www.indiatoday.in/india/story/145-incidents-of-honour-killing-between-2017-and-2019-18393212021-08-11

[4] Namita Bhandare and Surbhi Karwa, "How the Special Marriage Act is Killing Love", Article14, 19 Oct 2020, https://www.article-14.com/post/how-the-special-marriage-act-is-killing-love

intending to get married for public notice. This was a grave violation of an individual's Right to Privacy and also a huge risk to safety. This practice of disclosing matrimonial plans unwarrantedly was held "completely whimsical and without the authority of law" by the Delhi High Court in 2009 in **Pranav Kumar Mishra v Govt. of NCT of Delhi**.[5] The disheartening part of it is that it took 9 years and another decision of the Rajasthan High Court in **Kuldeep Singh Meena v State of Rajasthan**[6] in 2018 to abolish this practice of affixing notices at the residences of the two parties. Therefore, we see how the governmental authorities, whose mandate is to ensure smooth, successful and obstruction-free marriages end up hindering the process instead. This can be attributed partly to statutory provisions of the Special Marriage Act and partly to the personal interests of the government servants who, guided by their personal interests and beliefs are shaped by their own notions of morality and religion which has no place in a secular constitutional democracy like ours.

States such as Gujarat, Madhya Pradesh, Chhattisgarh, Odisha, Uttarakhand, Arunachal Pradesh, Uttar Pradesh, Jharkhand, and Himachal Pradesh have recently enacted anti conversion laws which have harsher penalties and in some certain states, where the administration itself brazenly indulges in communal behaviour, these laws are rampantly misused and interfaith couples bear the brunt a lot of the times. The **Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2020**[7] which is a particularly harsh law and conversion which is misused by the administration to stop interfaith marriages.[8] Similar situations have occurred in Uttarakhand and are a big cause of concern.

Judicial Developments: A Commentary and Analysis

Our courts have been rightly heralded as the last bastion for the protection of our rights. The courts have intervened time and time again in order to ensure that the right of an individual to marry does not get vitiated by the state and has given many landmark judgements and passed orders to that end. The contentious issues of the Special Marriage Act and the violation of rights of the individual they have resulted have been dealt with by the courts and will be discussed

[5] Pranav Kumar Mishra & Anr. v. Govt. of NCT of Delhi & Anr, 2009 SCC Online Del 725
[6] Kuldeep Singh Meena v State of Rajasthan, Civil Special Appeal (Writ) No. 936 of 2013
[7] UP Ordinance No. 21 of 2020
[8] "UP: Hindu Yuva Vahini Stops Interfaith Marriage; Police Charges Man Under Anti-Conversion Law", The Wire, 21 April 2022 https://thewire.in/communalism/up-hindu-yuva-vahini-stops-interfaith-marriage-policecharges-man-under-anti-conversion-law

below.

First and foremost, it is imperative to mention the decision of the Apex Court in the case of **Lata Singh v State of Uttar Pradesh**[9] where the supreme court included the individual's Right to Marry a person of their choice under the ambit of the **Right to Life under Article 21** of the constitution. The court held that -

"*This is a free and democratic country, and once a person becomes a major he or she can marry whosoever he/she likes. If the parents of the boy or girl do not approve of such intercaste marriage the maximum they can do is that they can cut off social relations with the son or daughter, but they cannot give threats or commit or instigate acts of violence and cannot harass the person who undergoes such intercaste marriage*"

The court further reiterated the fact that there are no bars to an intercaste marriage under the Hindu Marriage Act or any other matrimonial laws in the country and opined that the state should promote intercaste marriages and ensure the safety of the couples as that would lead to the erosion of the caste system in India, which is deeply discriminatory, insidious and inhumane.

There also exist rulings on the central issue of this paper, which is the public notice provisions of the act. The Punjab and Haryana High Court, in the case of **A and Another v State of Haryana and Ors**[10] ruled in favour of a couple who appealed to the court to stop the marriage officer from sending the notice of intended marriage to their parents and publication of marriage in a newspaper as the family was against the marriage and argued that not allowing them to stay together during the notice period were "*offensive, insensitive, arbitrary, primitive and out of sync with rapidly changing social order in an inter-faith proposed marriage".* The court made an observation about the Court Marriage Checklist (CMCL) "which lists down sixteen conditions to be complied with by couples seeking to tie the knot under the Special Marriage Act, 1954". It was held that-

"CMCL, except as indicated below, deserves to be disregarded as its terms and conditions largely violate the rights to privacy of the petitioners which is now declared fundamental right.

[9] Lata Singh v State of Uttar Pradesh, AIR 2006 SCC 2552
[10] A and Another v State of Haryana and others, CWP No.15296 of 2018 (O&M)

The provisions appear particularly offensive and excessive executive action beyond the purview of the Act and have, therefore, to be ignored".

It was however the **Allahabad High Court** in January 2021, that the most progressive judgement was passed on the point of law regarding requirement of public notice of marriage.

In **Safiya Sultana Thru. Husband Abhishek Kumar Pandey & Anr vs. State of U.P. Thru. Secy. Home, Lko. &Ors**[11], an interfaith couple, facing staunch opposition from their families, could not get married under the Special Marriage Act, due to the public nature of the notice and that it would make it easier for their families to find them and coerce them in to not marrying each other. In fact, it was easier for them to convert their religion and get married under personal laws which is what they went through with. The court opined that this **defeats the whole purpose of the Special Marriage Act.** The court, recognised the shortcomings of the act and held that the provision demanding publication of notice of intended marriage under should be construed as "Directory" and not "Mandatory". The court held that - *"In case the same [publication of notice] on their simplistic reading are held mandatory... they would invade in the fundamental rights of liberty and privacy, including within its sphere freedom to choose for marriage without interference from state and non-state actors, of the persons concerned."*

It was further explained that it was the sole discretion of the parties to the marriage if they want the publication of the notice. This judgement represents the victory of the matrimonial and privacy rights of the individual against community interests and is definitely the right way forward.

The Rajasthan High Court also followed this interpretation of the Allahabad HC in **Lunavath Veeranna & Anr. v. Union of India & Ors.**[12] where in, an interfaith couple was being forced by the authorities to publish the notice of intended marriage under section 5 of the Special Marriage Act, which had been duly filed by them. They contended that the provisions regarding publication of notice to be made directory in nature. The court quoted and used the interpretation of the Allahabad HC in the Safiya Sultana case[13] and issued a notice declaring

[11] Safiya Sultana Thru. Husband Abhishek Kumar Pandey & Anr vs. State of U.P. Thru. Secy. Home, Lko. &Ors, HABEAS CORPUS No. - 16907 of 2020
[12] Lunavath Veeranna & Anr. v. Union of India & Ors, S.B. Civil Writ Petition No. 5944/2022
[13] *Supra*

the provisions as directory and held that it is the discretion of the parties of the marriage whether or not to have the notice published. We will see however that this view hasn't achieved universal acceptance yet and there are a lot of instances of courts upholding the view that the requirement of publication of notice of marriage is not problematic and should not be done away with which shall be discussed below.

"A **PIL was filed in the Apex Court** in September 2020, challenging Sections 6(2), 6(3), 7, 8, 9 and 10 of the Special Marriage Act on the grounds that the provisions of the act violated the individual's Right to Privacy which has been recognised as a fundamental right under the Right to Life under Article 21 in" **KS Puttaswamy v Union of India**[14]. The Supreme Court however rejected the contentions of the petitioners and clarified that these provisions in fact prevent the abuse of existing marriages and prevent social wrongs such as coercive marriages by runoff couples and bigamy. The court opined that if the provisions were deleted, the marriage officers who have been empowered by law to check the legitimacy of the marriage would not be able to carry out their functions and if no provision exists to challenge the marriages, it would be an injustice in cases where one of the parties has another spouse, or a family whose child are engaging in run off marriages.

This view was also shared by the central government as it reflected in their affidavit in another petition before the Delhi High court in **Nida Rehman v Union of India**[15] when Section 6,7 of the act were challenged owing to their societal consequences. It was contended that the 30 day period notice provisions discourage interfaith couples to get married and are a direct breach of fundamental rights. The centre in their affidavit said that "fundamental rights are not absolute and can be reasonably restricted" and that the provisions are there to put adequate safeguards for the rights of all parties involved. The centre contended that the 30 day period is necessary for the marriage officers to verify the credibility and genuineness of the parties.

Such a conservative view towards fundamental rights is disdainful to say the least, it is the first and foremost duty of the state to ensure that individuals are able to enjoy and avail their fundamental rights.

[14] KS Puttaswamy v Union of India (2017) 10 SCC 1
[15] Nida Rehman v UOI, 2017 (6) MLJ 267

The Way Forward

We can glean from the detailed discussion about the public notice provision of the act is that there is an evident lacuna in the legislation and more importantly, its implementation. The object that the act was created to achieve, which was enabling any two persons from any religion or community to marry each other is clearly not getting fulfilled as there have been numerous cases where people find it easier to convert their religion and get married under personal laws.

Moreover, personal laws also have very similar grounds for valid marriages to ensure that there are no instances of bigamy, coercive marriages, prohibited relationships but any objections on these grounds can only be raised by petitioning the courts. In special marriage act however, the state through marriage officers investigates and verify details, which is obviously beneficial but there are many cases of harassment by marriage and police officers, arbitrary refusal to approve solemnisation which is discriminatory in nature and must be stopped.

The view espoused by the Allahabad High Court making the provisions under Section 6 directory and not mandatory should become the universal view and the statute should be amended to reflect that. This is the best way to ensure that the Right to Privacy is upheld and the spirit of the Right of a person to marry any person of their choice is guaranteed without any apprehension for personal safety and social isolation and boycotts.

The requirement of publication of notice under Section 6, which we have discussed above is violative of privacy and endangers the safety of the couples is unnecessary.

It is also extremely important to ensure that malafide and baseless objections just to delay the marriage of the intending couple are not filed under Section 7. This provision is grossly misused at time and we need harsher penalties to be imposed upon people in case their objection is found to be false and to be made in bad faith. The present penalty prescribed under the act is merely 1000 rupees which is clearly not enough of a deterrent and hence an amendment is the need of the hour.

REFERENCES

Acts

1. The Special Marriage Act (1954) Act No. 43 of 1954
2. The Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2020, UP Ordinance No. 21 of 2020

Articles

1. 145 incidents of honour killing between 2017 and 2019: Govt", India Today, 11 Aug 2021
2. Namita Bhandare and Surbhi Karwa, "How the Special Marriage Act is Killing Love", Article14, 19 Oct 2020,
3. UP: Hindu Yuva Vahini Stops Interfaith Marriage; Police Charges Man Under AntiConversion Law", The Wire, 21 April 2022

Cases

1. A and Another v State of Haryana and others, CWP No.15296 of 2018 (O&M)
2. KS Puttaswamy v Union of India (2017) 10 SCC 1
3. Kuldeep Singh Meena v State of Rajasthan, Civil Special Appeal (Writ) No. 936 of 2013
4. Lata Singh v State of Uttar Pradesh, AIR 2006 SCC 2552
5. Lunavath Veeranna & Anr. v. Union of India & Ors, S.B. Civil Writ Petition No. 5944/2022
6. Nida Rehman v UOI, 2017 (6) MLJ 267
7. Pranav Kumar Mishra & Anr. v. Govt. of NCT of Delhi & Anr, 2009 SCC Online Del 725

8. Safiya Sultana Thru. Husband Abhishek Kumar Pandey & Anr vs. State of U.P. Thru. Secy. Home, Lko. &Ors, HABEAS CORPUS No. - 16907 of 2020