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# The Special Marriage Act 1954: A Critical Examination of its Constitutionality and the Need for Legislative Action

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PATIL NEHA<sup>1</sup>

## ABSTRACT

*This research paper aims to examine the experiences of individuals in interfaith relationships in India and the issues and challenges they confront. Despite the legal recognition offered by the Special Marriage Act of 1954, interfaith couples continue to face significant challenges and societal pressures. The paper will analyse the impact of societal pressures and recent changes in legislation on interfaith marriages and explore the urgent need for legislative action to protect the rights and interests of couples marrying under the act. The study will also present recommendations to address the issues faced by interfaith couples in India, including the need for amendments to the act to truly uphold the principle of secularism and empower couples who choose to marry under it. The paper argues that only by providing fair, just, and rational legislation that does not succumb to societal pressure can couples from different religions and groups be encouraged to marry under the act and achieve the country's ideal of true secularism.*

**Keywords:** Right to privacy, Special Marriage Act 1954, Constitutionality.

## I. INTRODUCTION

In India, the societal constructs of caste, religion, and culture play a significant role in the institution of marriage. Traditional weddings in the country typically occur within the caste and faith of the couple, with nuptials that defy this social norm being viewed as socially undesirable and irreligious. However, the Special Marriage Act of 1954 aims to provide legal validity to marriages between two consenting individuals of different faiths or castes. This statute does not require any religious rites or practices, and marriages must be solemnized by a government official following a set of prescribed processes. Despite the legal recognition offered by the Special Marriage Act, interfaith couples in India continue to face significant challenges and societal pressures. The processes outlined by the act are often lengthy and invasive, compromising the privacy and security of the couple. Furthermore, recent changes in regulations have imposed additional checks and impediments on couples seeking to marry under

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<sup>1</sup> Author is a student at O.P Jindal Global Law School, O.P Jindal Global University, India.

the act.

## **II. CONSTITUTIONALITY OF SECTIONS 5, 6 AND 7 OF THE SPECIAL MARRIAGE ACT**

Section 5 of the statute governing marriage in India requires parties to provide notice of their intention to marry.<sup>2</sup> Section 6(1) further mandates the recording and entry of a valid copy of this notification in a Marriage Notice Book, which is made available for perusal by any member of the public.<sup>3</sup> However, this provision, which is derived from the 1872 act and was inserted into the current statute in 1954, raises significant concerns in regard to privacy rights. The notification required under Section 5 includes personal information such as name, age, occupation, residence address, marital status, and period of residency, which should only be of concern to the parties intending to marry, and the authority solemnising the marriage for official reasons. The exposure of this information to examination by any member of the public constitutes a breach of an individual's right to privacy, as acknowledged in the longest judgement in Indian judiciary history. Furthermore, there is no reasonable argument for permitting "any" person to view such information; rather, enabling such scrutiny exposes the persons planning to marry to life-threatening hazards from their families, and religious extremists.<sup>4</sup>

The contemporary political situation, community conflicts, and religious polarization in India are evidence of a pervasive intolerance for differences and variety among groups, faiths, and political parties. These factors provide a clear motivation for someone to use this information in a harmful manner, putting the intended parties to a marriage in danger. It is thus crucial to re-evaluate the provision in the statute that allows for the perusal of the Marriage Notice Book by any member of the public, in light of the right to privacy of individuals and the potential hazards that this provision may expose them. This would involve examining the necessity and proportionality of these provisions, as well as ensuring that individuals are given control over their personal information and the ability to protect it from public scrutiny and State interference. The freedom, autonomy and safety of the individuals involved should be given priority over the accessibility of the information. Moreover, in the age of technology and easy access to information, the provision of this information to anyone can lead to misuse and abuse of the personal information of the parties involved, putting them at risk of identity theft, stalking and harassment.

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

<sup>3</sup> Special Marriage Act, 1954, §6

<sup>4</sup> Rakesh Behera†, Special Marriage Act, 1954: Too special to be constitutional, (Feb 20, 2021)

**(A) Section 6 of the constitution**

Section 6(2) of the statute governing marriage in India requires the Marriage Officer to publish the notification of an impending marriage by posting it in a prominent location in their office. This provision, which was added after the 1872 Act, represents a further violation of citizens' privacy rights. The legislators at the time appear to have deliberately made it easy for any individual to access the Marriage Notice Book by including a provision for it to be displayed publicly. This provision reflects a failure on the part of the legislature to move beyond colonial-era legislation, which is a common issue across many laws in India. However, the fact that these provisions have their origins in colonial-era legislation does not excuse their infringement on the basic right to life under Article 21 of the Indian Constitution.<sup>5</sup>

The right to privacy is a fundamental aspect of the right to life and liberty guaranteed by Article 21 of the Indian Constitution. The Supreme Court of India has affirmed that privacy is an essential component of these rights, and individuals have complete control over how much of themselves they wish to reveal to the rest of the world. This is particularly important in today's data-driven society, where personal information is a powerful tool that can be used for both positive and negative purposes. Interpreting Sections 5 and 6 of the Act from this perspective, it appears that these provisions serve it on a silver platter. As a result, individual's freedom and autonomy are susceptible to public scrutiny as well as State interference.

**(B) Section 7 of the Constitution**

Section 7 of the Act allows "any" person to object to an intending couple's marriage notice on the grounds specified in Section 4 of the Act. However, even though the objection is limited to the limited grounds provided in the Act, the inclusion of a provision of this nature violates the freedom of choice and expression under Article 19, the right to privacy under Article 21, and the right to equality under Article 14. An individual, especially one who has attained majority, must have complete discretion and autonomy to decide what he or she believes is best for him or her moving ahead. When this freedom of choice is restricted in any way, whether by the state or the court, it must be vigorously fought and safeguarded. The right to marry a partner of one's own choice is inherent in the freedom of speech and the right to life and cannot be questioned by anybody. Law can establish a method for the solemnization and annulment of a marriage, and even that system must be equitable, fair, and reasonable, but it cannot dictate or question who should and should not partner, nor can it empower anybody to do so.<sup>6</sup>

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<sup>5</sup> Supra note 2

<sup>6</sup> Supra note 2

The Supreme Court in the case of *Shakti Vahini v Union of India*<sup>7</sup> and *Shafin Jahan v Ashokan K.M*<sup>8</sup> ruled that the Constitution of India recognizes the right of two consenting adults to marry, as protected by Articles 19 and 21. The Court emphasized that the law sets out the requirements for a valid marriage, but also provides remedies when relationships go awry. Neither the state nor the law can impose a partner's choice or limit an individual's freedom of choice in these matters. Recognizing private, personal decisions is not based on societal acceptability, and the Constitution guarantees personal liberty and freedom from condemnation by others. The Allahabad High Court in the case of *Safiya Sultana v. State of Uttar Pradesh* also upheld this position, stating that the requirement for publication of notices challenging marriages under the Special Marriage Act of 1954 would infringe on fundamental rights to liberty and privacy, and the freedom to choose one's own marriage partner without interference from others. Some have criticized the ordinance as a violation of constitutional morality, as it tramples on the majority's social traditions and beliefs<sup>9</sup>. In the 242<sup>nd</sup> Law Commission of India's report on the Prevention of Interference with the Freedom of Matrimonial Alliance recommends simplifying and expediting the registration process under the Act.<sup>10</sup>

The Delhi High Court in the case of *Pranav Kumar Mishra &Anr.v. Govt of NCT of Delhi & Anr*<sup>11</sup> ruled that the Special Marriage Act dictates that parties seeking to get married must file a notice with the Marriage Office, demonstrating that they have been residing at a specific address for at least 30 days prior to the notice. Additionally, Section 6 requires the parties must produce proof of this residency to the office. The notice must also be publicly displayed by affixing a copy in a prominent area of the Marriage Officer's office and entered into a public register for anyone to view. Justice S Ravindra Bhat noted that the Special Marriage Act was established to provide a special form of marriage for those of Indian descent who practice other faiths or prefer a civil form of marriage. He added that the unwarranted public exposure of marital commitments by the individuals authorized to solemnize it may potentially undermine the marriage in certain situations.<sup>12</sup>

The Rajasthan High Court in the case of *Kuldeep Singh Meena v. State of Rajasthan*<sup>13</sup> ruled

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<sup>7</sup> (2018) 7 SCC 192; (2018) 3

<sup>8</sup> (2018) 16 SCC 368;(2020)

<sup>9</sup> Chandragupta Patil, *Inter Faith Marriages in India with Special Reference to Anti-Conversion Laws*, 4 INT'L J.L. MGMT. & HUMAN. 5402 (2021).

<sup>10</sup> Law Commission of India, *Prevention of Interference with the Freedom of Matrimonial Alliances*, report No. 242

<sup>11</sup> 2009 SCC OnLine Del 725

<sup>12</sup> Vallari Kapoor & Prajwal Dwivedi, *Special Marriage Act & Anti Conversion Laws of India*, 5 INT'L J.L. MGMT. & HUMAN. 1627 (2022).

<sup>13</sup> *Kuldeep Singh Meena vs State Of Raj And Ors* on 20 Feb. 2018

that the Special Marriage Act only requires the notification of the marriage to be displayed on a notice board in a visible location at the Marriage Officer's office and that officials should not impose additional requirements or criteria on couples beyond those outlined in the Act. Similarly, in the case of A and Anr. v State of Haryana<sup>14</sup> Punjab and Haryana High Court overturned the Gurugram Check List in July 2018, emphasizing that the Special Marriage Act should be implemented in a manner that promotes interfaith marriages. The court stated that the state's role is to ensure that the procedures for marriage reflect the changing circumstances in a secular democracy and foster inter-religious marriages. The Court deemed the provisions of the court marriage checklist prepared by the Government of Haryana, which required the posting of the notice in a newspaper and mailing of the notice to the couple's parents, as a violation of the fundamental right to privacy. Additionally, the Law Commission of India's consultation paper titled "Reform of Family Law" dated 31 August 2020, also recommended removing the provision mandating the publicizing of the notice for 30 days under the Special Marriage Act as it discouraged inter-caste and inter-religious marriages.

In the case of Govind v. State of Tamil Nadu, the court ruled that in the absence of any legal requirement, sending notices of marriage solemnization to the home addresses of the parties would constitute a violation of the right to privacy protected under sections 4 and 5. As a result, the Delhi High Court determined that it is not necessary or legally permissible to affix notices at the parties' residence, as it would infringe on their privacy.

### **III. VIOLATION OF ARTICLE 14**

The Act's sections 6 and 7 contain unique provisions that permit any person to access the Marriage Notice Book and make public the notice submitted by the intending couples, which includes their personal information, as well as the provision for raising objections to the notice. These provisions are not present in other laws regulating marriages, except those concerning intra-faith marriages. There is no logical reason for such disparities in provisions.

For a classification to be considered constitutional under Article 14, it must pass the twin tests of "intelligible differentia" and "reasonable nexus." This means that the classification must be fair, just and reasonable, and it must have a rational relation to the purpose being pursued. If the classification is arbitrary, without a fair and reasonable basis, it will be deemed invalid. Additionally, the classification must have a rational connection to the objective it aims to achieve. Even if the goal is noble, if the classification used is not rationally linked to that goal,

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<sup>14</sup> A and Another v. State of Haryana and others, Punjab and Haryana High Court, CWP 15296 2018 20 07 2018, (July 20, 2018).

it should be discarded. Both of these prerequisites are mandatory and cannot be ignored.

The statute is written in a broad manner, indicating that not only couples of different religions and communities, but also couples of the same faith and community, can marry under it. However, they must comply with the procedures outlined in sections 5, 6, and 7. These regulations require that notice is provided, which includes the personal information of the couples seeking to marry, and that this notice is made public and available for inspection, and any individual can object. It is unclear how couples marrying under this statute differ from those marrying within their own faith. The intent is to provide a specific type of marriage act that can be used by anyone in India and Indians in other countries, regardless of their faith or the faith of either partner in the marriage.

Therefore, there is no valid reason for treating individuals who wish to marry under this Act differently, and there is no correlation with the intended outcome. On the contrary, based on this classification, it appears that the state continues to view interfaith, communal, and runaway marriages with hesitation, and if that is the case, the directive principles outlined in Article 44 will be unattainable. As India is a secular state and secularism is a fundamental aspect of the Constitution, the government in power is obligated to maintain secularity in its governance of the country. It cannot give in to societal values and prejudices, especially when they lack a valid foundation. As a result, every statute issued by the legislature must be secular and impartial in its implementation, otherwise it is a violation of the Constitution and the people of this country.<sup>15</sup>

#### **IV. ANALYSIS OF NANDINI PRAVEEN V UNION OF INDIA**

Ms. Nandini Praveen, a law student, filed a civil writ suit in the Supreme Court on September 2nd, 2020, challenging the constitutionality of sections 6(2), 6(3), 7, 8, 9, and 10 of the Special Marriages Act. In *Nandini Praveen v Union of India*<sup>16</sup>, the petitioner argued that these laws violate the right against religious discrimination and the right to privacy guaranteed by Articles 14, 15, and 21 of the Indian Constitution. The main issues, in this case, are (a) whether sections 6(2), 6(3), 7, 8, 9, and 10 of the act infringe the right to privacy under Article 21, and (b) whether sections 6(2), 6(3), 7, 8, 9, and 10 of the act violate the right to equality and non-discrimination under Article 14 and 15. The case is currently pending in the Supreme Court of India, to be heard by Justice V Ramasubramanian and Justice A.S. Bopanna.

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<sup>15</sup> Rakesh Behera†, Special Marriage Act, 1954: Too special to be constitutional, (Feb 20, 2021)

<sup>16</sup> W.P. (C) No. 000983 - 000983/2020 [for sci.gov.in use Diary No. 18474/2020]

PROVISION	SUBJECT	PARTICULARS IN CONTENTION	GROUNDS OF CHALLENGE
Section 6(2)	Marriage Notice Book and Publication	It provides for the publishing of the details of parties to marriage by the marriage officer via affixing the marriage form at a conspicuous place in the office.	<p>Violates Article 21</p> <ol style="list-style-type: none"> <li>1. Throws private information open to public scrutiny, damaging one's right to have control over an individual's information and its accessibility.</li> <li>2. There is no legitimate state interest that is being fulfilled by publishing such information</li> <li>3. Couples are being asked to waive their right to privacy in order to marry</li> <li>4. Hinders the excision of the right to privacy guaranteed by the supreme court in the Puttaswamy judgment.</li> <li>5. The couples are denied their right to privacy, dignity, and personal autonomy.</li> </ol>



Section 7	Objection to Marriage	It provides for a 30-day period after the submission of the marriage form, during which any individual is allowed to make an objection to the marriage on the ground that it would contravene one or more of the conditions specified in section 4	Violates Articles 14 and 15  1. The requirement of the public notice under the Hindu Marriage Act,1955 and customary law of Islam is absent. There is however such requirement under section 13 of the Indian Christian Marriage Act,1872.  2. Such differential treatment amounts to infringement of the right to equality under Article 14 and 15 of the constitution.  3.Section 11 mandates three witnesses to a sign a declaration that the parties to the marriage satisfy the criteria laid down by section 4 of the act. Hence there is no requirement of calling or objection from the public.
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## V. SUGGESTED AMENDMENTS

- Amending the Special Marriage Act to accommodate same-sex marriage

One way to legally recognize same-sex marriages in India would be to make changes to the Special Marriage Act, 1954. This act is a secular law that allows for the registration of special types of marriages, such as inter-religion, inter-caste, or inter-racial weddings, as well as the dissolution of such marriages by divorce. However, it currently has heteronormative undertones, such as the concept of "prohibited relationships," which only recognizes partnerships between a man and a woman. Additionally, Section 4(c) of the Act specifies the age requirements for males and females, indicating that it only applies to heterosexual marriages

in its current form. Amending this section 4(c) would be a straightforward solution to legally recognize same- sex marriages and it would not affect religious liberties.<sup>17</sup>

- Civil Marriages under the Special Marriage Act

The concern with civil marriages under the Special Marriage Act of 1954 was that if two Hindus chose to marry under the Act, it resulted in their separation from the joint family. Additionally, the Indian Succession Act, 1925 applied to the property of such a marriage and the property of such a couple's children, instead of the Hindu law of succession. This was seen as an unnecessary disadvantage for Hindus who decided to marry civilly. The Law Commission proposed that this limitation be removed by amending the statute. However, this limitation would only be removed if both parties in the civil marriage are Hindus. If one of them is a Hindu and the other is not, the limitation remains. This highlights how religion continues to play a significant role in our secular society. A better solution would be to create a separate civil marriage statute under which any two people can legally marry, with private international law addressing conflicts of personal laws arising from inter-community or inter-religious marriages.<sup>18</sup>

## VI. CONCLUSION

The Special Marriage Act allows for two consenting adults to marry without regard for their religious beliefs, but in practice, it can be difficult for such couples to gain community acceptance and validation for their marriage. This issue, combined with other unfavourable aspects of the Act, outweighs its benefits. To truly uphold the principle of secularism and empower couples who choose to marry under this Act by providing them with fair, just, and rational legislation that does not succumb to societal pressure, certain amendments to the act must be made. Only then can couples from different religions and groups be encouraged to marry under this Act and achieve the country's ideal of true secularism<sup>19</sup>. The Act has the potential to promote inter-faith trust and brotherhood but it fails to protect the essential principles of liberty, privacy, and equality. For years, couples who wish to marry under this Act have been seeking relief that does not align with the spirit of the Constitution.

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<sup>17</sup> Legal Recognition of Same-Sex Marriage Rights in India, CNLU LJ (9) [2020] 158

<sup>18</sup> Ceremonial Validity of Hindu Marriages: Need for Reform, (1977) 2 SCC J-22

<sup>19</sup> Nabilah Rahman & Rishav Raj, The Significance of Special Marriage Act, 1954: An Insightful Analysis of the Challenges of Implementation, 4 INT'L J.L. MGMT. & HUMAN. 169 (2021).