

# The Special Marriage Act, 1954

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## ABSTRACT

This research paper talks about the Special Marriage Act, 1954 and the provisions that it holds. The Special Marriage Act is the legislation that grants validity to marriages that do not find their place in religion specific marriage legislations. The Act grants registration to the marriages between two consenting parties who belong to different religions or cast. In India, inter caste or inter religion marriages are not normative and are considered a taboo. People go as far as committing Honour killings in order to prevent such marriages. The aim of the Act is to protect the people from such acts and to provide legal validity to their marriage. The Act also consists of provisions with respect to the other marriage related aspects such as restitution of conjugal rights and divorce. The Act also lays down eligibility criteria for a valid marriage under the Act such as consent between the parties getting married and the relationship between them not falling within the prohibited degree of relationship.

## Keywords

Caste, Consent, Law, Marriage, Religion

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## Introduction

India is a diverse nation with every aspect, it is the home to extreme climatic conditions as well as various religions and cultures within those religions which exemplify the saying 'unity in diversity'. A very significant feature of Indian culture is the institution of marriage which has a sacred connotation to it and which is an affair very close to the families of both the spouses.

Generally, the nature of the marriages is arranged and intra cast while love marriages and inter cast or inter religion marriages are an exception to the system. Bride or groom is chosen by the family of the person getting married and the same is often chosen from the same cast as the person's family.

In fact, some parts of the country are very rigid with respect to the practice and do not allow the members of their cast to marry the members of another cast. It is considered dishonourable to the family if a member of the family has love marriage. It is considered a betrayal to the parents of the person and the family, in order to protect its honour, goes as far as killing the bride and the groom for going against the norms of their families. This act is aptly called honour killing.

The Special Marriage Act grants validity to inter religion or inter caste marriages and such marriages are registrable under the 1954 Act of Special Marriage.

This has been termed as special because the person getting married through this Act is not required to convert to a different religious conviction. "Contrasting to old-style arranged marriage ceremonies which included binary relations belonging to same status or social group, the Act objective is to make lawful inter-religious or inter-caste marriage ceremony." The certification granted by the virtue of the Act is considered a general proof of marriage. The Act not only acknowledges this special form of marriage but also provides with the registration and also provides for divorce in the case of such marriages.

It has been observed that there is a rise in the number of marriages through the Special Marriage Act, 1954. According to the data obtained from the stamps and registrations department 2,624 marriages were registered under the Act in 2013-14 and the number jumped to 10,655 in the year that followed. The number had reached 8,391 in 2015-16, up to January, i.e. a 306 per cent rise from 2013-14 to 2014-15. It has been recorded that many marriages today are interreligious and inter-caste, and are largely beyond the purview of spiritual-based marriage laws. This Act provides an opportunity to perform the marriage ceremony as per the Indian Constitution. The numbers of wedding from different belief are growing after the implementation of this Act.

If two people belonging to diverse spiritual conviction get married with the permission of their folks, and according to the customs laid down by their religion, such marriage is registrable only through the the 1954 Act of Special Marriage.

## Application:

This Act is applicable to all of the states of India. The Act has a special feature of not only being applicable in the territory of India but is also applicable to Indian nationals who are living outside India. The Act considers the nature of a marriage to be that of a civil contract and thus the only requirement under the Act for two people to get married is their consent. The Act does not require the performance of any kind of rituals and ceremonies in order to validate the marriage.

People belonging to any two religions, be it Muslims, Hindus, Parsis, Christians or Sikhs can get married under the Act. The Act is applicable to all the persons of all the religions. Divorce of such marriages is also governed by the Act. The Act is different from other marriage related legislations in the sense that it does not require the persons to convert their religion. The Act consists all the marriage related provisions such as restitution of conjugal rights, judicial separation, nullity of marriage etc.

In the case of *Robin v. Jasbir Kaur* the man was a Christian while the wife was a Sikh and the marriage took place in accordance with the Hindu laws. The question posed in the suit was that Section 125 under such marriage circumstances would be appropriate for claiming maintenance. It was held that the marriage cannot be deemed void, the purpose of allowing aid under Cr. P.C Section 125.

### Functions Of The Marriage Officer

The marriage officer has to give a public notice after he receives an application under Section 15 of the Act. He has to give a time period of 30 days for filing objections. Only after hearing the objections within the prescribed time and all the conditions under Section 15 have been satisfied, the officer can enter the certificate of marriage in the marriage certificate book.

The parties have to sign the certificate of marriage along with three witnesses. The officer performs a quasi-judicial function. The officer has to write in his own handwriting the evidence as well as the decision with respect to the objections raised.

The Fifth Schedule of the Act lays down the manner in which the officer, husband and wife and three witnesses have to sign the certificate of marriage and the mode in which declaration has to be made by the parties. A declaration has to be made by the Husband and wife stating that the husband and wife that they have been living with each other since the time of marriage.

In the case of *Krishnadas v. State of Kerala*, a citizen of India had the intention of marrying a foreign national and for the same, he approached the Marriage officer with notice of the intended marriage. The marriage officer declined the acceptance of such notice. The officer was directed by the court to take notice of the marriage under the Special Marriage Act, 1954.

### Eligibility Under The Special Marriage Act

It is Section 4 of this Act talks about the circumstances required in lieu of the purpose of solemnization of a marriage under the Act. The Section lays down the following conditions for the appropriation of marriage:

- a) No party has a living spouse;
- b) No party at all-
  - i. is unable to give informed consent to it because of mental insanity; or
  - ii. although able to give a reasonable consent, suffered from mental illness of such a kind or to such an degree as to be unfit for marriage and childbearing;
  - iii. have been the subject of repeated insanity attacks
- c) The male is twenty-one years old and the female is eighteen(18) years old;
- d) The parties should not fall under the boundaries of forbidden relationships.

### Compulsory Registration

The Supreme Court in the case of *Smt. Seema v. Ashwani Kumar* it was stated that “matrimonies of all people who are

nationals of India included in numerous religious conviction ought to be made compulsorily registrable.” The court directed the states to follow the subsequent phases:

a) Process in lieu of registering must be informed by particular States within 3 months. This can be completed by amending or framing rules. However, resistance from the society is to be called in advance. In this connection, due publicity shall be provided by the States and the matter shall remain open to objections for a period of 1 month from the date of the inviting objections to the ads. On the termination of specified period, the States shall issue a notice passing the rules.

b) The officer named pursuant to the said States Rules shall be properly allowed to register the marriages. Clearly state the age, marital status (unmarried, divorcee). The effect of the non-registration of marriages or the filing of a false declaration is also provided for in the said Laws. Needless to say, the object of these Rules is to follow the directions of the court of Law.

c) The statute passed by the government shall be placed before this Court of Law for examination.

d) Qualified counsel for various States and territories of the Union shall ensure that the instructions set out herein are followed instantly.

Court of Law, through this judgement, emphasised upon the importance of registration of marriages of citizens belonging to various religions once the marriage has been solemnized. Due to the above laid directions, the state governments made changes to their respective rules for providing for the compulsory registration of the marriage.

### Prohibited Relationship

The Act also laid down some relationships as the prohibited degrees of relationship and these are the relationships under which the persons are not allowed to get married. All first cousins, either paternal or maternal are placed under the category of prohibited relationship while the second cousins have not been put under the ambit of prohibited degree.

But whereas under Muslim personal law all first cousins on both the patriarchal and maternal sides are permitted beyond the purview of forbidden marriage and marriage degrees between the first cousins. Marriage with a relative may also be permitted under Christian law through a special dispensation from the Church. Consequently, it ends in a misunderstanding that if the term is personalized as described in the Act of Specific Marriage would comprise of private/ personal law of the parties or not? If answer is yes, the circumstance of acknowledgment by the State Government through a notice ought to be fulfilled.”

Thus, a Hindu can marry a second cousin through Special marriage Act though he cannot do the same through the Hindu Marriage Act, 1955 due to the restrictions under the Sapinda relationship. A Muslim, on the other hand cannot marry a first cousin under the Special Marriage Act while he or she can do the same through his or her personal marriage laws.

For a valid marriage under the Act, the boy should have attained at least the age of 21 while the girl must be at least the age of 18. The parties are required to be of sound mind and capable of giving their consent.

The persons getting married must not be already married at the time of marriage. They should either be unmarried or must have been divorced or their spouses must be dead at the time of the marriage.

### Jurisdiction

In the case of ManmeetLaghmani vs. Jitesh Kishore Tolani the wedding had been fixed in New Delhi and the same was conducted and registered in Goa and the couple shifted in a flat in Goa. The petitioner had to move between India and UK before she finally took accommodation in New Delhi when she found that the marriage had been declared as null without her presence in an ex parte decision in Goa. The petitioner thereby sought transfer of the proceeding from the court in Goa to a court of proficient authority in New Delhi.

The Supreme Court claimed that although the marriage was performed in Goa and the same was done in accordance with their personal laws and the Hindu customs. The court was gratified that the petitioner's argument was acceptable, therefore allowed the transfer.

Vandana Sharma v. Rakesh Kumar Sharma is also a case of transfer which was filed by the wife. The case was pending in Tis Hazari Courts, New Delhi while the wife was residing in Panchkula. The wife requested the transfer of the case to the Court of District Judge as she had two minor daughters and travelling to Delhi from Haryana without anyone to accompany her was very difficult. Thus, the Supreme court directed the Tis Hazari Court to transfer the case to the District court in Panchkula.

In Smt. RachnaChohan vs State of Madhya Pradesh filed an application before the Family Court under Section 13 of S M Act and sought relief of divorce submitting forged affidavit alleged to have been signed by the petitioner. The Petitioner filed a complaint before the Family Court and lodged complaint before the Superintendent of Police, Gwalior and Police station, Thatipur. The grievance of the petitioner is that despite her complaints no FIR has been registered. Hence, she sought relief through the High Court under Section 482 Cr.PC that the respondents be directed to register crime. The High Court held that if cognizable offence is made out on the report of the petitioner, action be initiated pursuant to directions given by the Hon'ble Supreme Court in the case of LalitaKumarivs.Govt. of UP.

In Reynold Rajamani&Anr v. Union of India, the Supreme Court held that "It may be noted that obviously, the couple could not get divorce even by mutual consent due to technicalities. It is obvious that they could not continue to lead a marital life living together. It may be realized that the decision of the court cannot obviously make them live together. The Apex Court could have used its inherent power, to allow the parties to get separated setting right the discrepancy among the marriage laws. The Love and affection between the couple is important regardless of the faith they believe in. The government has tried to its utmost level in making sure that the couple as wished would be safe under the shelter of the Special marriage Act and it would protect their legal interests."

In the case of Jaya Lakshmi Coelho v. Oswald Joseph Coelho, "It was held that 'on payment of Rs.1, 70,000/- by the husband-respondent to the wife, in respect of the transfer

of the flat which appears to be the bone of contention. Undisputedly the wife was not paid the sum. The payment has either been given or, if at all, is a contentious topic between the parties that need not be discussed in these proceedings. The foremost part of the agreement referred to divorce by mutual consent, as the couple's life together had become doubtful. This authenticity alone is stated in the family court judgment dated 7.3.1992 which was passed. What we say is that there might be other possible causes for the family court not to include in the settlement the terms and conditions of the arrangement. In the above-mentioned sense and in view of the prayers made by the respondent-husband to issue mandatory injunction, the appeal for correction of the decree was absolutely misconceived and could only be dismissed"

### Thirty Day Notice

The Special Marriage Act requires a 30 day notice to be given before the date of the intended marriage. An opinion has often surfaced that the notice period may be reduced or waived and that the court may exercise discretion in this regard. The intention of having this time period is to see that the persons to get married fulfil all the conditions that exist for a valid marriage under the Special Marriage Act. But instead, the time period is often used by the family members of one of the parties or both of the parties to coerce the parties out of the decision to get married.

The Acts objective was to simplify the marriage between two people belonging two different casts or religions when it was well known fact that such marriages are not acceptable to the society. Thus, having a time period of thirty days before the parties can get married acts against the interests of the parties and the aim of the legislation.

### Conclusion

India is a democratic country and people are free to carry out their wishes if they do so without causing any unreasonable inconvenience to anyone. Two people who are adults and wish to get married. The relatives of the parties cannot take any legal action against them and they cannot use any kind of physical force to stop them. What they can do is coerce them mentally and threatened to break ties with them if they follow through the marriage.

In Lata Singh v. State of UP, the Supreme Court iterated the above lines and said that the family cannot in any case threaten, or commit or instigate Acts of violence and cannot harass the person who undergoes such inter caste or inter religious marriage.

The copies of the order were ordered to be sent by the Supreme Court to various High Courts and district courts and the director generals of police in all the states. The Supreme Court through this order also asked the Police throughout the nation grant special safeguard to couples marrying by way of Special Marriage Act throughout the state and to take strict action against those impeding such marriages.

Though the law is in place, many such marriages are still not able to take place successfully because of the fact that the parents of the parties and their relatives find ways to stop the parties and many of the cases go unreported.

There is an urgent need of spreading awareness in the society regarding such marriages and lift the taboo that exists with respect to inter caste or inter religious marriages. People need to be made aware that if a marriage fulfils the basic requirements such as consent and not falling within the prohibited degree of relationship, such marriage is a valid marriage and that the society should not disapprove of such arrangement.

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