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30-Day Notice: Decoding the Privacy Paradox in India's Special Marriage Act, 1954

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ABSTRACT

The Special Marriage Act, 1954 (SMA), a secular means of the law that was enacted aiming to convene interfaith and inter-caste marriages, was aimed at respecting several constitutional provisions of liberty, equality, and dignity. Nevertheless, its procedural demands have perversely turned it into an instrument of surveillance and social control, mainly due to Sections 5 and 6 that require a 30-day advance-notice period and a public dissemination of personal information. These provisions, rather than protecting couples against the coercion of society and their families, subject couples to harassment, violence, and moral policing, particularly in the case of inter-caste and inter-religious marriages. This paper will examine the historical development of the SMA, the constitutional inconsistencies of the SMA, and the criticisms of its legal architecture, with a focus on the development of the right to privacy handed down in the K.S. Puttaswamy case. Judicial pronouncements like Safiya Sultana, Nandini Praveen PIL, and Pranav Kumar Mishra case are increasing pressure to change and have highlighted the need to reform. Based on the societal facts and law, precedent, 242nd Law Commission Report, this writing makes a case on how sections 5 and 6 should immediately be repealed or amended to bring the SMA in line with constitutional principles. Up to that point, the initial emancipatory promise has not been fully met, least of all to those minority groups that pursue marital independence.

KEYWORDS

Privacy, Surveillance, Marriage, Constitutionality,

*Reform***LEGAL / CONSTITUTIONAL TERMS**

1. **Constitutional scrutiny:** Detailed legal examination of a law under the Constitution.
2. **Jurisdiction:** Legal area or territory of authority.
3. **Locus standi:** Legal right to raise a case or objection.
4. **Solemnisation:** Official or legal performance of a marriage.

SOCIAL / CULTURAL CONCEPTS

1. **Honour killing:** Killing someone (usually by family) to protect family "honour".
2. **Moral gatekeepers:** People or groups who try to control what is "right" or "wrong" in society.
3. **Social strata:** Levels or classes in society.

INTRODUCTION

In a country that has not only been created based on the constitutional principles of freedom, equality, and secularism, the freedom to decide about the life partner gets caught in the age-old social strata and bureaucracies of the institution. Although marriage is a solemn social institution observed in India, it usually goes beyond individual choice, as it is considered a venue of family pride, caste pride, and religious identity. In the past, anyone who wanted to marry outside of their caste or religion would be ostracized, forced, and even killed in the name of honour, all so that society could remain the way it is.

In a bid to fight such oppressive behavior and defend the freedom of choice, an advanced civil law entered the scene, the Special Marriage Act, 1954, which facilitated not only inter-faith, inter-caste but also secular marriages that should not involve conversion and servitude to religion. However, it has become ironic in one sense because such procedural provisions as Section 5, providing a minimum 30-day residence of one of parties to the marriage in the district where notice to solemnise marriage is given¹, and Section 6, demanding publication of personal information², have also turned this liberating law into an instrument of monitoring and social regulation. Instead of being the tools of informed consent protection, these provisions are used by vigilantes, hostile families, and gatekeepers of morals as tools to intimidate couples and impede their unions.

These sections contravene the key rights to privacy, dignity, and

¹ Special Marriage Act, No. 43 of 1954, §5, (Ind.).

² Special Marriage Act, No. 43 of 1954, §6, (Ind.).

liberty by subjecting individual details to publicity. In the real sense, they make people, especially inter-faith, inter-caste, less welcome to take advantage of the same law that is intended to seek protection of their lives. When we trace the history, the legal and constitutional boundaries of the 30-day publicity rule in question, it is essential to ask ourselves whether the Special Marriage Act is functioning as originally intended or has moved on to bolster the very obstacles it initially was created to tear down.

LEGAL HISTORY

As British legal reforms were introduced during the colonial period in India, the first statutory attempt to allow civil marriages not governed by religious personal laws came in the form of the Special Marriage Act of 1872. The law, drafted by Henry Sumner Maine altered a religious mode of forming inter-religious unions at a time when family affairs became completely regulated by religious standards. There was, however, a condition annexed to the law that both parties, who swore under it, must have renounced their faith, and there could be a declaration, like this, I do not profess the Hindu, or Christian, or Jewish, etc., religion. This necessity made the Act impractical to the majority of the devout Indians, and henceforth it was largely available to those Indians who had been educated in the West and specifically the Brahmo Samaj reformists³.

Most importantly, the 1872 Act was voluntary, and it did not apply to the followers of the major Indian religions-Hindus, Muslims, Christians, Sikhs, Buddhists, Jains, and Parsis-unless they gave up their religion in their own formal way. Although its main purpose was ease of inter-religious marriage, this restriction excluded religious people from its benefits unless they gave up their religion⁴. In 1922, a modest reform allowed Hindus, Sikhs, Buddhists, and Jains to marry within their groups without renouncing, but the change did not bring full secularization of the law; at independence, the 1872 Act was still inadequate to the plural society in India old Special Marriage Act. The Act of 1872 further introduced the requirement of a notice period before solemnisation of marriage, which was 14 days, and only required 5 days' residence in the district where the parties intend to get married⁵.

The nationalist freedom struggle and social reform initiatives of

³ Pervez Mody, *Love and the Law: Love-Marriage in Delhi*, 36 Modern Asian Studies 223, 227-228 (2002).

⁴ *Id.* at 232.

⁵ Pervez, *supra* note 3, at 234.

the early 20th century by such leaders as Gandhi and Nehru, and Ambedkar had given the legal reforms, including marriage, greater attention. Such leaders derided religious and caste restrictions, and although the Constituent Assembly eventually did not settle on a complete Uniform Civil Code, they settled on the need for a constitutionally built civil marriage code based on secular principles⁶. As a result, the Special Marriage Act, 1954 was passed by Parliament, which came into force on 1 January 1955. This contemporary civil law, which substituted the colonial laws, allowed interreligious marriages, inter-caste as well as inter-nation marriages without compelling religious rejection. It applied to all India (then not in Jammu and Kashmir) and Indian citizens overseas, and the original eligibility rules were monogamy, normal mental capacity, age (men 21, women 18), and no banned relationships (Section 4).

UNDERSTANDING THE STRUCTURE OF NOTICE UNDER SMA, 1954

The Special Marriage Act, 1954, provides a separate secular legislation for the solemnisation of marriage between two individuals regardless of their caste or religion. For an individual to get married under this act, a minimum 30-day notice period is allotted to raise an objection, which therefore becomes an encumbrance to fulfill the purpose of this legislation. This research will delve into the legal framework of the 30-day notice period.

For the purpose of solemnization of marriage under this act, the required state government has to appoint a Marriage Officer under section 3⁷, who is given the responsibility to officiate the marriage, register and issue the certificate for the same⁸. Under section 5, for giving the notice of marriage, any one of the parties to the marriage should have resided in the same district for at least 30 days before the notice is filed before the marriage officer⁹. The duty has been imposed upon the marriage officer under section 6 to enter the true copy of the notice in the marriage notice book, which shall be open to inspection by anyone, and also to publish such notice at the conspicuous place of his office. If any of the parties to the marriage does not reside within the local limits of that marriage officer, then, such officer shall send a copy of such notice to the marriage officer of the district where they

⁶ Safiya Sultana Thru. Husband Abhishek Kumar Pandey and Another v. State of U.P. Thru. Secy. Home, Lko. and Others, AIR 2021 ALL 56.

⁷ Special Marriage Act, No. 43 of 1954, §3, (Ind.).

⁸ Special Marriage Act, No. 43 of 1954, §13, (Ind.).

⁹ Special Marriage Act, No. 43 of 1954, §5, (Ind.).

permanently reside¹⁰.

Advancing to the condition to solemnise marriage under this act, section 4 provides four prerequisites to be fulfilled, which are:

1. Neither party has a living spouse.
2. Neither of the parties is of unsound mind or is incapable of giving valid consent.
3. The minimum age of a male and female is 21 and 18 years, respectively.
4. Parties to the marriage shall not be within the prohibited marriage¹¹.

If any of the conditions remain unfulfilled, then such marriages are void under this act. There is also section 7 to fulfill these conditions, i.e., a 30-day period is given after the notice has been filed before the marriage officer to investigate and to raise an objection before the same officer if the condition under section 4 is breached¹². According to this section, a marriage under this act cannot be solemnised before the 30-day notice period is completed. Pursuant to section 8, if the objection is raised on the intended marriage, then such marriage officer shall not solemnise the marriage, and within 30 days of the objection, he shall inquire into the matter. The parties to the marriage are given the right to appeal in the district court in case, after 30 days of inquiry, the marriage officer continues to refuse to register the marriage, and the order passed by the appellate court shall be complied with by such officer¹³. If the objection raised before the marriage officer was fraudulent/ untrue, then an objection cost not exceeding Rs 1000 may be imposed on the person raising such objection as per section 9¹⁴.

STRUCTURAL DEFICIENCIES AND CONSTITUTIONAL CONTRADICTIONS IN THE SMA, 1954

Legislation based on the principle to provide individual freedom and a separate recourse to individuals who wish to get married to a person who belongs to a different caste and religion. But the procedural framework, as we have seen earlier in this study, provides enough time and scope to the family, caste, or religious groups to interfere and take coercive measures to preserve the

¹⁰ Special Marriage Act, No. 43 of 1954, §6, (Ind.).

¹¹ Special Marriage Act, No. 43 of 1954, §8, (Ind.).

¹² Special Marriage Act, No. 43 of 1954, §7, (Ind.).

¹³ Special Marriage Act, No. 43 of 1954, §8, (Ind.).

¹⁴ Special Marriage Act, No. 43 of 1954, §9, (Ind.).

pre-existing social norms. In the matter of the *Shakti Vahini case*, the Supreme Court held that if two adults wish to marry each other consensually, then their choice is recognised as a fundamental right under articles 19 and 21¹⁵. Yet, the cases of atrocities against interfaith and inter-caste couples, like where a 22-year-old man was killed in daylight in India for marrying an upper caste woman¹⁶ have been escalating day by day, and various such events occur due to the lacunae and shortcomings in the existing Special Marriage Act, 1954. And the shortcoming of this act outweighs the purpose of this act. Let's further delve into it:

A notable drawback of this act is regarding the requirement of a minimum 30-day residence of any one of the parties to the marriage in the district where the couple has applied for the marriage. This becomes a major obstacle for the runaway couple and provides enough opportunity to the family to get them. The period of 30-day residence under section 5 cannot be waived off, despite causing inconvenience and procedural hardship to the couple, and keeping the statutory requirement intact¹⁷. And if this was not enough, parliament added section 6(3) whereby, duty was imposed on the marriage officer to send a copy of the notice to the marriage officer of the district from which the couple belongs, this is like sending an invitation to the escalating chaos with an open arm¹⁸. Moreover, section 6(2) places an obligation on the marriage officer to publish the notice at a conspicuous place in his office. Section 6 of the Special Marriage Act, 1954, altogether renders the judgment of the *K S Puttaswamy case* infructuous, where the right to privacy was enshrined as a fundamental right to life under Article 21 of the Indian Constitution¹⁹, but mandating the publication of a copy of the notice and sending the notice to the marriage officer of the home district of the applicants, therefore results in the infringement of the right to privacy of the couple²⁰.

Further, the Special Marriage Act, 1954 provides a minimum 30-day period to raise objections, and post 30 days, only the marriage will be solemnised, but the issue here is that section 7 empowers 'any person' to raise objections without any *locus standi*²¹. And in

¹⁵ *Shakti Vahini v. Union of India*, (2018) 7 SCC 192.

¹⁶ BBC News, <https://www.bbc.com/news/world-asia-india-42700361> (last visited june. 22, 2025).

¹⁷ *Easland Combines, Coimbatore v. Collector Of Central Excise, Coimbatore*, AIR 2003 SC 843.

¹⁸ Kameshwar Choudhary, *Anatomy of the Special Marriage Act*, 26 Economic and Political Weekly 2981, 2981 (1991).

¹⁹ *K S Puttaswamy (retired) and Another v. Union of India and Another*, (2019)1 SCC 1.

²⁰ Safiya, *supra* note 6.

²¹ Special Marriage Act, No. 43 of 1954, §7, (Ind.).

case of fraudulent objection, only a fine not exceeding Rs 1000 can be charged by the marriage officer²², which in contemporary society is just a minimal punishment, because of this reason, cases of fraud and unreasonable objections are further accelerating²³.

Additionally, in cases where a marriage officer refuses to register the marriage, the right to appeal has been given to the couple, and the marriage officer has to abide by the order passed by such appellate authority. Such a remedy is not enough, as there is no provision with respect to the punishment or the penalty upon the marriage officer in case he harasses the couple or refuses to register the marriage on unreasonable grounds²⁴.

Furthermore, the model of 30-day notice for the marriage is underlying only in Special Marriage Act, 1954 whereas, under the personal laws such as Hindu Marriage Act, 1955 and Muslim personal laws there is no such requirement for 30-day notice as well as requirement under section 5 of Special Marriage Act, 1954, which ultimately creates a discriminatory framework between the intra-faith or intra-caste couple and interfaith or inter caste couple leads to the violation of article 14 of the Indian Constitution²⁵.

SOCIETAL RESPONSE

In this contemporary society, where on one hand we talk about the individual freedom and right to life as an integral source to live our lives with dignity and on the other hand, the individuals who wish to live according to their own choice, face multiple challenges not just from society but from their own family. Historically, we have seen the impact of the caste system and religious tension on our social structure, which eventually evolved into a rigid social culture or norms. These social norms are followed so strictly that they strongly reflect in the personal laws of various religions²⁶, and hence, whoever goes or tries to go beyond such social norms is eventually ends up being shamed by society²⁷ or sometimes resulting in what is commonly referred to as honour killing.

²² Special Marriage Act, No. 43 of 1954, §9(2), (Ind.).

²³ Kameshwar, *supra* note 18.

²⁴ Kameshwar, *supra* note 18.

²⁵ INDIA CONST. Art. 14.

²⁶ M.P. Jain, *Matrimonial Law In India*, 4 Journal of the Indian Law Institute 71, 72 (1962).

²⁷ Sneha Annavarapu, *Human Rights, Honour Killings and the Indian Law: Scope for a 'Right to Have Rights'*, 48 Economic and Political Weekly 129, 131 (2013).

To curb this situation, parliament came up with a secular law which promotes inter caste and interfaith marriages (also known as the Special Marriage Act, 1954). Even the judicial precedents like *Lata Singh case* have declared the right to choose a partner as an integral part of the right to life with dignity²⁸, which is also well recognised by UDHR under Article 3²⁹. Moreover, Article 12 of UDHR supports the non-interference in the privacy of an individual³⁰. However, the family often continues to be involved in the matter of the choice of spouse.

As noticed in earlier studies, the intended purpose of the Special Marriage Act, 1954, became infructuous because of the provisions present in the act itself. An act that was originally enacted to uphold the liberal values to recognise individual freedom has now become a vague reality. According to a 2011 census report, approximately 6.8% of the total marriages are inter-caste marriages, which is quite insignificant in number. Whereas, in the report published by National Council of Applied Economic Research in the year 2016, approximately 5% of the marriages in India are inter-caste marriages with Mizoram being top state with 55% of the total marriages being inter-caste marriages and Madhya Pradesh being last in the list with just 1% of the total marriages being inter-caste marriages³¹. Another report shows that 61% and 56% of the people have opposed the idea of interfaith and inter-caste marriages, respectively³². While inter-caste and interfaith marriages have been continuously facing challenges, however, there has been an increase in the acceptance of such marriages over the period. During the period of 1981-2005, a remarkable growth in inter-caste and interfaith marriage was seen. In 1981, there were approximately 3.5% inter-caste and 1.6% interfaith marriages, and by 2005, the number of inter-caste and interfaith marriages had doubled, i.e., approximately 6.1% inter-caste and 2.7% interfaith marriages, therefore reflecting the acceptance of such marriages in the society³³.

Nevertheless, there is a gradual increase in the acceptance of

²⁸ *Lata Singh v. State of U.P.*, AIR 2006 SC 2522.

²⁹ United Nations, <https://www.ohchr.org/en/universal-declaration-of-human-rights>, (last visited June 24, 2025).

³⁰ *Id.*

³¹ Dr Winnie Joyce A, *Impact Of Inter-caste Marriages In India- A Situational Analysis*, 8 International Journal of Multidisciplinary Research Review 1, 3 (2022).

³² Yudhajit Shankar Das, *61% oppose interfaith marriages; Chandigarh shocks, Kerala soothes: GDB survey*, India Today (March 23, 2025), <https://www.indiatoday.in/india/story/india-today-gdb-survey-shows-61-oppose-interfaith-marriages-inter-caste-marriage-troll-2697704-2025-03-23>.

³³ Srinivas Goli, *Exploring the Myth of Mixed Marriages in India: Evidence from a Nation-wide Survey*, 44 Journal of Comparative Family Studies 193, 196 (2013).

inter-caste and interfaith marriages over the period, but still honour killings are prevalent in society today. According to a United Nations report from the year 2000, approximately 5000 cases of honour killings occur worldwide each year. In India alone, around 900 cases were recorded from U.P., Haryana, and Punjab, and 100-300 cases were recorded from the rest of the country³⁴. Furthermore, in a study, it was recorded that approximately 5250 cases are registered every year to seek protection via court order from the threat of honour killing³⁵. Due to the deep-rooted presence of casteism and religious divisions in Indian society, honour killings remain disturbingly common, making the goal of achieving individual freedom and the right to marry a partner of one's choice a distant reality³⁶.

POLICY REFORM IN SMA, 1954

My advocacy of reform of Sections 5 and 6 of the Special Marriage Act, 1954 has attracted immense attention over the last few years, due to a heady mixture of judicial pronouncements, legal discourse and a burgeoning sense of social conscience about the dangers of the imposition of the regime of mandatory giving of notice and raising of objection. The most significant change was under a 2021 verdict of the Allahabad High Court in *Safiya Sultana* case where Justice Vivek Chaudhary decided that public notice of a planned marriage was not essential but directive in nature³⁷. By stating that indiscriminate publication is a violation of Article 21 of the Constitution, the Court was favouring the couples to waive the option to give the notification and objection process by writing a letter³⁸. It was a historic landmark ruling and established a reformist precedent, especially for couples who are against the family or society.

The next important reform initiative dates back to earlier in 2009 when the Delhi High Court ruling on *Pranav Kumar Mishra* case. The court judged the administrative practices that entailed the automatic dispatching of marriage notices to the home of a couple and involving local police on the law as arbitrary and unlawful. Hon'ble Justice S. Ravindra Bhat said that such activities were threatening individual freedom and privacy in a dangerously

³⁴ Sneha, *supra* note 27, at 129.

³⁵ Meena Dhanda, *Runaway Marriages: A Silent Revolution?*, 47 Economic and Political Weekly 100, 103 (2012).

³⁶ Srinivas, *supra* note 33, at 205.

³⁷ Safiya, *supra* note 6.

³⁸ Omar Rashid, *Publication of notice under Special Marriage Act optional; mandatory notice invades privacy: Allahabad HC*, The Hindu (January. 13, 2021), <https://www.thehindu.com/news/national/publication-of-notice-under-special-marriage-act-optional-mandatory-notice-invades-privacy-allahabad-hc/article33569377.ece>.

serious manner³⁹. This verdict appeared as a first but vital measure in promoting the administrative changes that limited the abuse of the marriage process to persecute those who indulge in interfaith or even inter-caste nuptials.

The current Supreme Court hearings on same-sex marriage in April 2023 also furthered judicial reforms since the Hon'ble Chief Justice of India, D.Y. Chandrachud, lamented that the publication regime under Sections 5 and 6 is a legally unjustified infringement of privacy and "patriarchal" power and a form of social control. He maintained that forcing couples to reveal their marriage plan interferes with the concept of individual dignity and autonomy, the idea strongly upheld by Indian constitutionalism today⁴⁰. Although the Court did not immediately void the provisions, it forwarded the case to a Constitution Bench that was smaller in size to look into the situation in a constitutionally detailed manner-indicating the commencement of a wider constitutional scrutiny.

In the policy sphere, the 242nd Law Commission Report (2012) proposed simplification of the process and stated that, commonly the inter-religious and inter-caste couples face harassment and violence due to the public notices⁴¹. The report did not explicitly demand the full abolition of the notice-and-objection mechanism, but it implied that the main changes to be introduced focus on the preservation of individual privacy and the reduction of the impact on the third-party.

A law student Nandini Praveen sought a PIL in the Supreme Court in 2020 *Nandini parveen case* against the Sections 6-10 of the Special Marriage act of 1954. She claimed that the right to privacy, dignity, and equality in the Articles 14, 15, 21 were infringed by the 30-day notice. The Supreme Court accepted the plea and gave a notice to the Centre, though no definite judgment has been given so far. The case presented by her petition emphasizes how the publication of the same creates the risk of moral policing and violence particularly in inter caste or inter-

³⁹ Pranav Kumar Mishra v. Govt. Of NCT. Of Delhi & Anr., 2009 SCC OnLine Del 725.

⁴⁰ Krishnadas Rajagopal, *Supreme Court slams sections of Special Marriage Act requiring prior notice*, The Hindu (April. 21, 2023), <https://www.thehindu.com/news/national/open-notice-of-intent-to-marry-under-special-marriage-act-is-an-invasion-into-privacy-of-couples-reeks-of-patriarchy-sc/article66760460.ece>.

⁴¹ Ministry of Law, Government of India, Prevention of Interference with the Freedom of Matrimonial Alliances (in the name of Honour and Tradition): A Suggested Legal Framework, 24 (2012), <https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022081053-3.pdf>.

faith marriages⁴². The case has become associated with the greater controversy over autonomy of marriage and secularism in India. By-gone constitutional barriers in the SMA in terms of procedure still remain a challenge.

Despite these plain indicators on the part of both courts and policy institutions, there has as yet not been a single law-legislative amendment proposed in Parliament to formally reform or repeal Sections 5 and 6. By June 2025, it will be inconsistent across India in terms of law. States such as Uttar Pradesh have made publication optional as per the order of the Allahabad High Court. Administrative reforms grounded on the Pranav Mishra case in Delhi have excluded the police and confined the issuance of notice to the registrar's office. Nevertheless, other states are still enforcing the obligatory notice system unless they decide to take action by turning to the courts.

CONCLUSION

With the intention of serving as a progressive and secular oasis to the personal laws, the Special Marriage Act, 1954, was supposed to institute the fundamental right to liberty, privacy, and dignity through permitting individuals to marry outside caste and religious parameters. Nevertheless, the strict procedural provisions integrated in Sections 5 and 6, especially the statutory 30-day notice and exposing personal information to plain view, has skewed the initial intent of the Act. Rather than providing a secure legal means through which individuals of mixed faiths and castes can marry, the Act has been proven to be a means through which people are subjected to harassment, threats, and even violence.

This regime has numerous legal and constitutional deficiencies, which do not go unnoticed. Cases such as the Safiya Sultana, Nandini Parveen PIL and Pranav Kumar Mishra highlights the violation of the right to privacy under Article 21 by virtue of these provisions of the notices. Moreover, since the requirement is discriminatory and peculiar to the Special Marriage Act, 1954, only, Article 14, which gives a right to equality before the law, is infringed since the requirement does not apply under the personal laws such as the Hindu Marriage Act, 1955 and the Muslim Personal Law. That strong movement towards the need for reform is also supported by the 242nd Law Commission Report (2012) and the latest steps made by the Supreme Court during the

⁴² Live Law, <https://www.livelaw.in/top-stories/law-student-challenges-constitutional-validity-of-provisions-of-special-marriage-act-162379>, (last visited June. 25, 2025).

hearings about same-sex marriage.

Nevertheless, reforming the law still proves hard despite these efforts by the court of law and scholars. The experience of couples is arbitrary because the implementation of privacy-respecting administrative practices is patchy and dependent on the state. Since India edges closer to discussions of the Uniform Civil Code and the wider extension of personal laws, abolishing the oppressive system of notice-and-objection under the SMA should be a priority. Not only will so doing meet the emancipatory purpose of the Act, but it will also assert the constitutional guarantee of dignity, autonomy, and equality of all citizens.