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## **REQUIREMENT OF NOTICE UNDER THE SPECIAL MARRIAGE ACT 1954: A CRITICAL ANALYSIS**

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### **ABSTRACT**

The Special Marriage Act, 1954 (SMA) is a significant legal framework in India that facilitates interfaith and inter-caste marriages, promoting secularism and individual choice. However, its mandatory 30-day public notice requirement has drawn criticism for exposing couples to harassment, societal pressure, and even honour crimes. This research critically examines the historical evolution of the SMA, the rationale behind the notice requirement, and its impact on individual rights, particularly privacy and personal liberty. The study also delves into how the public notice provision under the SMA disproportionately affects interfaith couples, forcing many to either abandon their decision to marry or resort to religious conversion to circumvent legal hurdles.

## 1. INTRODUCTION

In Indian society, marriage is considered a social institution and is often seen as a union of two families rather than just two individuals. It is regarded as the foundation of forming a family in a society. It requires the performance of various ceremonies and rituals which vary according to different religious groups and their customs. It was considered a purely sacrament in old Hindu law because marriage was one of the sixteen *samskaras*. However, modern Hindu law also has certain characteristics of contracts such as divorce, widow remarriage, age of majority, consent, registration of marriage and many more.<sup>1</sup> In Islam, marriage is considered a civil contract that outlines the rights and responsibilities of both the husband and the wife. According to the Bible, the foundation of marriage is supposed to be procreation, faithful intimacy and a properly ordered sexual relationship.<sup>2</sup> Throughout the history of mankind, the central aim of marriage has evolved around companionship and procreation. However, marriages in India often reject the personal choice and freedom of individuals due to the constraints imposed by caste, creed, or religion through the prevalent caste endogamy system.

The Special Marriage Act, 1954 (hereinafter referred to as SMA) is a special law because it governs civil marriages in India. It is seen as a revolutionary and progressive law that allows inter-faith couples to marry which their respective personal law does not thus breaking down the barriers between different religious communities. The Act does not only solemnise the marriage of inter-faith couples but also of same-faith couples who do not wish to perform religious ceremonies and rites. It promotes the principles of secularism and individual rights. The act requires no adherence to religious customs or practices to solemnise the marriage as marriage is solemnised before the government-appointed marriage officer by following certain procedures.

Under the SMA, marriage is treated as a civil contract rather than a sacrament or a religious duty, which is the perception in many traditional religious systems. The SMA provides the procedure for the solemnization of marriages, including the filing of a notice of intended marriage, the waiting period before the marriage can be solemnized, the powers and duties of the marriage officer, and the requirement for witnesses. The Act also includes provisions for

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<sup>1</sup> Pooja, *Whether Sacramental or Contractual: Concept of Hindu Marriage*, 3 INT'L J. LEGAL RSCH. & STUD. 112, 112-13 (2018), <http://www.ijlrs.com/papers/vol-3-issue-1/18.pdf>.

<sup>2</sup> A BIBLICAL VIEW OF MARRIAGE, <https://www.thegospelcoalition.org/essay/biblical-view-marriage/> (last visited on Oct. 10, 2024).

the registration of marriages and custody of children born from such marriages. It allows for the dissolution of marriages through divorce on specific grounds, offering legal remedies similar to those available under other marriage laws in India. Although the law appears progressive in a society where caste, creed, and religion are deeply ingrained, however, it fails to address the challenges posed by an orthodox society as only 5% of marriages in India are inter-caste.<sup>3</sup>

## **2. RESEARCH DESIGN**

### **2.1 STATEMENT OF PROBLEM**

The 30-day notice requirement under the Special Marriage Act, of 1954 exposes inter-faith and inter-religious couples to serious risks such as honour killings and harassment. This mandatory public disclosure results in a violation of their right to privacy which is a fundamental right of a couple and poses a serious concern to their safety. Traditional social institutions like khap panchayats, primarily in rural northern India, often violently uphold traditional customs, support caste hierarchy, and vehemently reject inter-caste marriages. The intersection of this legal requirement and the actions of khap panchayats creates a hostile environment for couples seeking to marry across caste or religious lines, violating their fundamental rights to privacy, safety, and personal liberty. This situation necessitates a critical analysis of the 30-day notice requirement and its implications on individual rights and societal harmony.

### **2.2 RESEARCH OBJECTIVES**

1. To study the evolution of secular marriage law in India and the legislative intent behind the inclusion of the notice requirement in the SMA, 1954.
2. To evaluate the current legal framework of the notice requirement.
3. To analyse the issues and legal challenges of mandatory notice requirements.
4. To evaluate the potential alternatives available for mandatory notice requirement.

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<sup>3</sup> CENSUS (2011), <http://censusindia.gov.in>, (last visited on Oct. 10, 2024).

## **2.3 RESEARCH QUESTIONS**

1. How did the secular marriage law develop in India and what was the legislative intent behind including the notice requirement in the SMA, 1954?
2. What are the specific provisions governing the notice requirement, and how have they been interpreted by the judiciary?
3. How does the clause of notice requirement impact intended parties and their right to privacy?
4. What are the potential alternatives to the mandatory notice requirement under the SMA, 1954?

## **2.4 RESEARCH METHODOLOGY**

The research adopts a doctrinal approach to thoroughly examine the historical context and legislative intent behind the notice requirement under the Special Marriage Act, 1954. This approach also aims to evaluate problems incurred by intended parties due to the mandatory requirement of notice and to identify potential ways for reform. The study involves an extensive analysis of the Special Marriage Act, relevant judicial decisions, scholarly articles, books, and reports from various organizations, including the Law Commission of India.

## **2.5 HYPOTHESIS**

The unrestricted access to the Marriage Notice Book and publication of public intended marriage leads to an increased risk of honour killings and other forms of societal harassment.

## **3. LITERATURE REVIEW**

Mody (2002) traces the origin of civil marriage law in India, highlighting the progressive movement led by Brahmo Samaj leader Keshub Chandra Sen, which resulted in the establishment of Act III of 1872. This act allowed for the solemnization of marriages without performing rituals and ceremonies, but only for individuals who did not profess mainstream

religions.<sup>4</sup>

Chatterjee examines the intersection of English law and Brahmo Samaj's approach to civil marriage in colonial India. The paper explores how British civil marriage laws were adapted to address religious differences and legal challenges in India. The Brahmo Samaj, a reformist movement in 19th-century India, sought to establish a civil marriage system free from religious constraints, reflecting a broader struggle for legal and social reform. Chatterjee discusses the complexities of integrating British legal principles with Indian religious practices, highlighting the tensions and negotiations involved in creating a civil marriage framework that respects both legal and cultural contexts.<sup>5</sup>

Choudhary (1991) criticised the Special Marriage Act, 1954, for failing to eliminate societal pressures on interfaith couples. He pointed out the mandatory 30-day notice period under Section 5, which often resulted in harassment from relatives and objections from traditionalist elements. The author argues that these provisions undermine the Act's intent to support individual choice in marriage. To address these issues, Choudhary recommended reforms such as eliminating the notice period, allowing marriages in any district, imposing stricter penalties for insignificant objections, and simplifying procedures to better protect couples' autonomy.<sup>6</sup>

The study analysed the injustices faced by interfaith couples due to the publication of a 30-day notice period. The problem is grave because it can often lead to honour killings thus forcing parties to choose conversion as a better option rather than marrying under the SMA, 1954. The study highlighted to bring reforms under the clause of notice requirement to balance between the number of registration of marriages and their solemnisation.<sup>7</sup>

The authors critically analysed the Special Marriage Act, 1954, and pointed out issues related to the notice requirement while comparing it with other personal laws. Although the Act empowered couples to defy traditional social structures and marry anyone, regardless of

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<sup>4</sup> Pervez Mody, *Love and the Law: Love-Marriage in Delhi*, 36 MOD. ASIAN STUD. 223 (2002), <https://www.jstor.org/stable/3876697>.

<sup>5</sup> Nandini Chatterjee, *English Law, Brahmo Marriage, and the Problem of Religious Difference: Civil Marriage Laws in Britain and India*, 52 COMP. STUD. SOC'Y & HIST. 524 (2010), <https://doi.org/10.1017/S0010417510000290>.

<sup>6</sup> Kameshwar Choudhary, *Anatomy of the Special Marriage Act*, 26 ECON. & POL. WKLY. 2981 (1991), <https://www.epw.in/journal/1991/52/commentary/anatomy-special-marriage-act.html>.

<sup>7</sup> Atishay Agarwal & Abhishek Khandelwal, *Special Marriage Act-The Intercepted Marriage*, 29 SUPREMO AMICUS 141 (2022), <https://doi-ds.org/doi/10.2022-48812249/supremoamicus/v29/2022/20>.

religion, caste, or creed, certain provisions caused significant hardships and restricted individuals' rights to marry a partner of their choice. The mandatory notice requirement delayed the marriage process, exposing couples to societal backlash, harassment, and instances of honour killings. Additionally, these provisions breached fundamental rights under Articles 14, 19, and 21 of the Constitution of India. The authors also suggested several modifications, including restricting access to the marriage notice book, relaxing the mandatory notice requirement, and reducing the objection period to better protect the rights of individuals seeking to marry under the Act.<sup>8</sup>

Mody (2013) examined the challenges that eloping couples have to face from their families as parents of the adult daughters fill writ of habeas corpus and take custody of them through the police and legal collusion. There are also instances where one of the parties or both have to face social outcasts. She also highlighted that SMA, 1954 gave legal authority to love and an individual's choice, contrasting with the control that family and community traditionally had over people's relationships.<sup>9</sup>

#### 4. HISTORICAL EVOLUTION OF THE SPECIAL MARRIAGE ACT

Historically, before the 19th century, there were no codified laws governing marriages and divorces in India. Marriages in India were primarily governed by personal laws specific to a particular religious group. These personal laws did not lead down only the ceremonies and rituals for solemnising marriage but also the legal rights and duties arising out of such union. However, there was no law for the couple who wish to marry outside the traditional boundaries because the respective personal laws did not permit such a union. The first instance of reform of secular marriage law in India emerged in the late 1860s, when Keshub Chandra Sen, the then leader of Brahmo Samaj filed a petition seeking to have different marriage law for people belonging to Brahmo Samaj. Sir Henry Maine, the then law member of the Governor-General Council of India saw this movement as progressive and decided not to just make a civil marriage law for members of Brahmo Samaj but for all.<sup>10</sup> This led to the foundation of "The Act III of 1872" or "The Special Marriage Act, 1872", governing civil marriages during the

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<sup>8</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 (2020), <https://ijlmh.com/paper/the-significance-of-special-marriage-act-1954-an-insightful-analysis-of-the-challenges-of-implementation/>.

<sup>9</sup> Perveez Mody, *Love Jurisdiction*, 31 CAMBRIDGE J. ANTHROPOLOGY 44 (2013), <https://www.jstor.org/stable/43612881>.

<sup>10</sup> *Supra* note 4.

colonial period. The Act provided “*a form of marriage for those who did not profess the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh or Jaina religion.*”<sup>11</sup> However, the Act only introduced a secular form of marriage between individuals who did not profess or had renounced the major recognized religions of the country. This limitation was likely a response to the backlash from the orthodox sections of society, who feared that such a secular marriage system would undermine the deeply ingrained caste system prevalent at the time. However, the Act was amended in 1922 to allow Hindus, Sikhs, Buddhists, and Jains to marry within these four communities without having to renounce their religion.<sup>12</sup>

It had set a minimum age limit for the bride i.e., 14 years and for the groom i.e., 18 years and prohibited polygamy. The age of consent was set to 21 years and individuals below this age required consent of their father or guardian making bigamy punishable. The marriage needed to be solemnised before the marriage officer. The Act required a 14-day residence period for the intended parties in the district where the marriage was to be registered, before submitting the notice of the intended marriage. The notice period was kept as an allowance for the idea that parents should be given enough time to gather their thoughts and express any objections they might have to such marriages and prevent fraudulent marriages. After fulfilling the residence period requirement, the couple would submit a notice of their intended marriage to the Registrar. The submitted notice would be entered into the Registrar's Marriage Notice Book, which was open for public inspection. A further 14-day period was required after the submission of the notice before the marriage could be solemnized. Then the marriage would be solemnized in the presence of the Registrar and three witnesses.<sup>13</sup>

However, the act of the colonial period faced significant societal opposition as it challenged the entrenched caste system and social hierarchy in India. By supporting inter-caste and inter-faith marriages and prohibiting polygamy, it confronted the orthodox and conservative mindset of the time. Many parents denounced their children who married under this act, leading to social ostracism. Consequently, despite its enactment, individuals hesitated to use the act due to fear of social exclusion. Furthermore, a notable limitation of the Act was that it required parties to renounce their religion.

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<sup>11</sup> Special Marriage Act, 1872, No. 3, Acts of Parliament, 1872 (India).

<sup>12</sup> *Supra* note 9.

<sup>13</sup> *Supra* note 4.

After the independence, the SMA, 1872 was repealed and the Special Marriage Bill was introduced by the then Law Minister CC Biswas in the Rajya Sabha in 1952. The SMA, 1954 enacted to govern civil marriages or secular forms of marriage and facilitate interfaith marriages in India. This is a secular law that allows heterosexual couples to marry without renouncing their religion. The Act holds special significance because it allowed people belonging to different religious groups to marry which was not allowed by their respective personal law. For example, a Hindu man and a Muslim woman cannot marry under their respective personal law but they can marry under the SMA.<sup>14</sup> The enacted act is often seen as an attempt to strengthen the position of the Uniform Civil Code, as promised by the Indian Constitution. It is also seen as an act that protects people's secular rights as well as religious beliefs.

Moreover, the Act applies not only to citizens of India residing within the country but also to Indian nationals living abroad, provided they meet the criteria laid out in the legislation. Under the new SMA Act, males must be at least 21 years old and females at least 18, with both parties capable of giving valid consent, and not having a living spouse at the time of marriage and should be free from any extreme mental disorder, deemed fit for marriage, and capable of procreating children, and a couple within prohibited relationships are not allowed to solemnise the marriage unless permitted by custom of either party.<sup>15</sup>

The post-independence legislative bill was discussed in the Lok Sabha and introduced a 30-day waiting period for marriage registration. The rationale behind this provision was to prevent eloping couples from clandestinely registering their marriages in undisclosed locations, without notifying individuals who might have a legitimate interest or stake in the marriage. By instituting this mandatory period, the members aimed to safeguard the transparency and accountability of the marriage process, ensuring that any concerned parties had the opportunity to raise objections or make their positions known before the union was formalized. This approach was intended to balance personal freedom with social and familial responsibilities.

## **5. PROVISIONS AND THE SIGNIFICANCE OF THE NOTICE REQUIREMENT**

The provisions relating to the requirement of notice are mentioned in Part II of the Act which

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<sup>14</sup> KUMUD DESAI ET AL., INDIAN LAW OF MARRIAGE AND DIVORCE 333 (12th ed. 2011).

<sup>15</sup> Special Marriage Act, 1954, § 4, No. 43, Acts of Parliament, 1954 (India).



deals with the solemnisation of special marriages.

Section 5 of the Act states “**Notice of intended marriage.** —*When a marriage is intended to be solemnized under this Act, the parties to the marriage shall give notice thereof in writing in the form specified in the Second Schedule to the Marriage Officer of the district in which at least one of the parties to the marriage has resided for not less than thirty days immediately preceding the date on which such notice is given.*”<sup>16</sup>

It states that the intended parties are required to submit a written notice to the marriage officer of the district in which they are solemnising their marriage regarding their intention to marriage in the form prescribed under Schedule II of the Act and they also have to prove that either of the party has resided in the district where the notice is being given for a minimum of thirty days immediately before the notice date. The notice served is joint notice wherein the parties express their intention to solemnise their marriage. The notice includes parties’ details such as name, current marital status, occupation, age, dwelling place, permanent place dwelling if present place is not permanent and the length of residence. It prevents any hurried or fraudulent marriages and gives authorities time to verify the couple’s eligibility for marriage.<sup>17</sup>

Section 6 of the Act says that the marriage officer of that district is required to keep all the notices of the intended parties in his office record book and shall enter an original copy of every notice in the Marriage Notice Book and these records will be open for all during the reasonable time without any fee.<sup>18</sup> It also requires the marriage officer to publish or post a notice at some conspicuous place in his office.<sup>19</sup> Moreover, it says that if either party does not permanently reside within the district where the notice is given then the marriage officer shall send a copy of the notice to the marriage officer of the district where the party permanently resides. The receiving marriage officer will post the notice at some visible place in his office.<sup>20</sup> Thus, this section aims to guarantee full transparency throughout the entire process of solemnizing a marriage under this Act. If a marriage officer fails to perform all the necessary duties specified under section 6 then he is punishable according to Section 46 of this Act.<sup>21</sup>

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<sup>16</sup> *Id* § 5.

<sup>17</sup> *Id.*

<sup>18</sup> *Id* § 6(1).

<sup>19</sup> *Id* § 6(2).

<sup>20</sup> *Id* § 6(3).

<sup>21</sup> *Id* § 46.

Section 7 deals with objections to marriage. It states that any person can object before the expiration period of 30 days from the date when the notice was posted by the marriage officer. The grounds of objection should be that the marriage contravenes one or more conditions specified in Section 4 of the Act.<sup>22</sup> These conditions include issues such as whether either party has a spouse living, mental capacity, age requirement, or couple falls under the prohibited relationship.<sup>23</sup> Sub-section (2) of Section 7 deals with the solemnisation of marriage after the objection period. It says that if no objections are raised within thirty days of the notice published according to section 6 (2) then the marriage can be solemnised.<sup>24</sup> Section 7, furthermore states that if any objection is raised then the marriage officer shall record the nature of objection in the Marriage Notice Book and the recorded objection must be read over and explained to the person objecting, if necessary. The person who is objecting must sign the written record or another person can sign on his behalf.<sup>25</sup>

Section 8 lays down the procedure the marriage needs to follow upon receiving the objection. It also says that if an objection is raised on the intended marriage, then the marriage officer will not solemnise the marriage until he conducts an inquiry into the matter and a decision based on inquiry should not take more than thirty days from the date of objection raised.<sup>26</sup> Moreover, it states that if the marriage officer preserves the objection and refuses to solemnise the marriage then either party can file an appeal in the district court within thirty days from the date of refusal located within the local jurisdiction. The decision given by the district court would be final and binding on the Marriage Officer.<sup>27</sup>

Section 9 of the Act outlines the procedure and authority given to the marriage officer for investigating objections to an intended marriage. The Act grants the marriage officer the same powers as a civil court under the Code of Civil Procedure, such as summoning witnesses, inspecting and producing documents, issuing commissions, and more. Proceedings before the marriage officer are considered “judicial proceedings” under Section 229 of the Bharatiya Nyaya Sanhita, 2023, which penalizes false or fabricated evidence.<sup>28</sup> According to Section 9(2), this provision aims to prevent baseless objections by allowing the marriage officer to impose a

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<sup>22</sup> *Id* § 7(1).

<sup>23</sup> *Id* § 4.

<sup>24</sup> *Id* § 7(2).

<sup>25</sup> *Id* § 7(3).

<sup>26</sup> *Id* § 8(1).

<sup>27</sup> *Id* § 8(2).

<sup>28</sup> *Id* § 9(1).

fine of up to Rs 1,000 on anyone who raises an unreasonable or insincere objection under Section 7. This fine can be enforced in the same way as a decree issued by the district court within the area where the marriage officer's office is located.<sup>29</sup>

Section 14 deals with the new notice when the marriage is not solemnised within three months. It states “*Whenever a marriage is not solemnized within three calendar months from the date on which notice thereof has been given to the Marriage Officer as required by section 5, or where an appeal has been filed under sub-section (2) of section 8, within three months from the date of the decision of the district Court on such appeal or, where the record of a case has been transmitted to the Central Government under section 10, within three months from the date of decision of the Central Government, the notice and all other proceedings arising therefrom shall be deemed to have lapsed, and no Marriage Officer shall solemnize the marriage until a new notice has been given in the manner laid down in this Act.*”<sup>30</sup> Thus, If the marriage isn't completed within this time, the notice and any related actions will be considered expired. The Marriage Officer cannot solemnise the marriage after the expiration of this period.

## 6. ISSUES AND CHALLENGES FACED BY THE INTENDED PARTIES

1. *Violation of Fundamental Rights*: The SMA, 1954 was enacted with progressive intent law to break the barriers formed by the orthodox society and empower individuals to marry a partner of their own choice, irrespective of caste, creed, or religion. However, the publication of crucial details such as name, age, place of residence, profession etc in the public domain without any restriction<sup>31</sup> results in a breach of the right to privacy which is a fundamental right recognised in the Puttaswamy case and embedded in the Article 21 of the Constitution. Furthermore, the information mentioned in the Marriage notice book is accessible to the public domain and the publication of the notice at some conspicuous place in the office of the marriage officer not only violates privacy but also raises concerns about the safety and security of the couple because publication of such information results threats and oppression from extremist groups, religious fundamentalists, and their own families who oppose such interfaith marriages and consider it irreligious. This, also resulting a violation of the right to marry a partner of their own choice embedded in Article 19 freedom of choice and expression. The right

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<sup>29</sup> *Id* § 9(2).

<sup>30</sup> *Id* § 14.

<sup>31</sup> *Supra* note 19.

to marry without any interference is even recognised by the Supreme Court in the case of *Shafin Jahan v. Asokan KM. and Others*<sup>32</sup> the court held that “*The constitution recognizes the liberty and autonomy which inheres in each individual. This includes the ability to make decisions on aspects that define one's personhood and identity. The choice of a partner whether within or outside marriage lies within the exclusive domain of each individual.*” “*Intimacies of marriage lie within the core zone of privacy, which is inviolable. The absolute right of an individual to choose a life partner is not in the least affected by matters of faith.*” The said provision of notice results in the violation of Art. 14 which guarantees the right to equality as in the other personal law there is no need for public notice.

2. *Threats and Harassment:* Moreover, the provision of forwarding such notice to the permanent dwelling place of the couples makes it easy for families, relatives, and members of the caste or community to locate the couple, subjecting them to harassment, coercion, honour killing, and the imposition of outdated societal norms. In several instances, the disclosure of marriage notices has been used by conservative elements to exert undue pressure on couples. For example, details of interfaith couples intending to marry under the SMA have sometimes been leaked on social media platforms, particularly in Facebook groups dedicated to propagating the idea of “love jihad”—a conspiracy theory alleging that Muslim men seduce Hindu women to convert them to Islam through marriage. Such leaks expose couples to violence, threats, and public shaming, further undermining their right to privacy and personal safety.<sup>33</sup> In the case of Athira wherein she solemnised her marriage under the SMA, 1954, her all details containing her address were circulated on various Facebook and WhatsApp groups and several people called her parents making them aware of their daughter's marriage. While Athira had the support of her parents it can be life threatening for all those who are marrying without their parent's consent.<sup>34</sup>
3. *Honour Killings and Violence:* A recent case was reported where a 25-year-old Hindu man was brutally killed in broad public view by the family members of his Muslim

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<sup>32</sup> *Shafin Jahan vs. Asokan K.M. and Others*, MANU/SC/0340 (2018).

<sup>33</sup> Namita Bhandare & Surbhi Karwa, *How the Special Marriage Act Is Killing Love*, ARTICLE 14 (Oct. 20, 2020), <https://www.article-14.com/post/how-the-special-marriage-act-is-killing-love>.

<sup>34</sup> Jagriti Chandra, *Challenging the Special Marriage Act, 1954*, THE HINDU (Aug. 31, 2022), <https://www-thehindu-com.elibrarynlunagpur.remotexs.in/news/national/explained-challenging-the-special-marriage-act-1954/article65831184.ece>.

wife. The incident occurred in Hyderabad, where the assailants, including the woman's brother, reportedly opposed the interfaith marriage.<sup>35</sup> There are several more incidents where brutal honour killings have occurred. The incidents of honour killings in India are mainly prevalent in the northern states such as Uttar Pradesh, Haryana, Punjab, and Rajasthan and in Tamil Nadu in Southern India. These crimes are often perpetrated by family members or caste-based councils, such as Khap Panchayats, who oppose inter-caste or interfaith marriages on the grounds of "family honour" and societal custom. The Hon'ble Supreme Court in the case of Shakti Vahini had held that instances of honour killings and other forms of honour crimes inflicted on couples by Kap Panchayats is a grave violation of Arts. 21 and 19 (1) (a) and 14. The Court categorically held that no individual or community, including Khap Panchayats, has the authority to interfere in an adult's right to marry a partner of their choice. The Court also stated that honour killings violate the fundamental right to life, liberty, and personal dignity, and they cannot be justified on any ground.<sup>36</sup> The Law Commission of India in its 242<sup>nd</sup> report submitted the "*Prevention of Interference with the Freedom of Matrimonial Alliance Bill*". Despite the prevalence of horrific instances of honour killings across various parts of India, there remains no central legislation specifically addressing these crimes. However, Rajasthan has taken a pioneering step by introducing "*The Rajasthan Prohibition of Interference with the Freedom of Matrimonial Alliances in the Name of Honour and Tradition Bill, 2019*" which imposes the death penalty or life imprisonment for killing a couple in the name of honour.<sup>37</sup>

4. *Pressuring intended parties to choose conversion*: The provision related to the publication of notice often forces inter-faith couples to choose conversion and solemnise marriage under other personal laws as a better option rather than solemnising their marriage under SMA, 1954 because personal laws do not require publication of notice. In the Safia Sultana case wherein the female Safia who was Muslim converted to Hinduism to marry and expressed they could have solemnised their marriage under

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<sup>35</sup> PTI, *Hindu Youth in Interfaith Marriage Killed by Wife's Kin*, TIMES OF INDIA (May 6, 2022), <https://timesofindia.indiatimes.com/india/hindu-youth-in-interfaith-marriage-killed-by-wifes-kin/articleshow/91356009.cms>.

<sup>36</sup> Shakti Vahini v. Union of India, (2018) 7 SCC 192.

<sup>37</sup> The Hindu Team, *Bill Mandating Death Penalty for 'Honour Killing' Passed in Rajasthan Assembly*, THE HINDU (Aug, 05, 2019), <https://www.thehindu.com/news/national/bill-mandating-death-penalty-for-honour-killing-passed-in-rajasthan-assembly/article28826270.ece>.

SMA, 1954 however requirement of 30 days' notice to be published and objections to be invited would result in invasion of their privacy and undue social pressure.<sup>38</sup>

## 7. CONCLUSION AND SUGGESTIONS

The SMA, 1954 is undoubtedly a progressive law that recognizes and promotes interfaith marriages thus breaking traditional barriers imposed by the orthodox society and providing couples with an option for inter-religious marriage. However, certain conditions required for solemnising marriage under this, such as the public notice requirement, the waiting period, and the simplified procedures for raising objections to intended marriages, lead to significant hardships. These include social harassment, coercion, honour killings and invasion of privacy thus leading to violations of articles 14, 15, 19, 21. Therefore, the challenges posed by certain provisions of the notice requirement can be addressed by adopting certain reforms in the Act.

Firstly, the requirement for a public notice should not be mandatory in a manner that grants unrestricted access to personal information, as it compromises the privacy and security of individuals exercising their right to marry under the Special Marriage Act. As in the year 2021, the Allahabad High Court in the case of Safiya Sultana had ruled that the parties didn't need to serve public notice of the intended marriage and held that publication of notice "*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*".<sup>39</sup>

In many cases, the personal details of couples are leaked online, leading to harassment, intimidation, and even violence. To curb this practice, there must be strict legal consequences for individuals, organizations, or online communities that release personal information of couples on social media platforms such as Facebook, WhatsApp or X. Moreover, there should be strict as well as prompt action to be taken by law enforcement agencies against those who violate the privacy of couples, with stringent penalties imposed on offenders. This will serve as a deterrent and help protect vulnerable couples from being exploited or harmed due to malicious online activities.

Secondly, under the current provisions of the SMA, objections to the marriage can be raised during the notice period. However, the fine for raising unreasonable or frivolous objections is

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<sup>38</sup> Safiya Sultana v. State of U.P., 2021 SCC OnLine All 19.

<sup>39</sup> Safiya Sultana and Ors. Vs. State of U.P. and Ors., MANU/UP/0011 (2021).

a mere ₹1,000, which does little to deter individuals from extending the waiting period and causing distress to the couple. To prevent misuse of this provision, the penalty should be significantly increased. A higher fine would act as a stronger deterrent, discouraging individuals from raising baseless objections aimed at delaying or obstructing the marriage. This would also reduce the burden on the authorities tasked with investigating such claims, ensuring that only legitimate objections are entertained.

Thirdly, the current 30-day waiting period for the solemnization of marriages under the SMA can often be a source of anxiety and danger for couples, particularly those who are already facing social and familial pressures. Reducing this waiting period to 15 days would still allow for due diligence to be conducted by the authorities, such as verifying the age and marital status of the couple, while minimizing the window of time in which they could be subjected to social harassment, coercion, or even violence. A shorter waiting period would strike a balance between ensuring procedural compliance and protecting the rights and safety of the couple.

Lastly, the requirement for couples to demonstrate a minimum residence of 30 days in a particular district before they can marry under the Special Marriage Act should be removed. This restriction creates unnecessary obstacles for couples, particularly those who may need to relocate due to safety concerns or familial opposition. Simplifying the process by eliminating the residency requirement would make it easier for couples to marry under the Act, ensuring that procedural formalities do not impede their right to choose a life partner. This reform would align with the Act's progressive intent by making it more accessible and practical for all couples.

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