BETWEEN CONSENT AND CONTROL: THE CONSTITUTIONAL PARADOX OF THE SMA

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ABSTRACT

Indian people can marry across caste, community, or religious boundaries without converting or renunciating their faith thanks to the Special Marriage Act, 1954 (SMA), which was created as a progressive, secular substitute for religious personal laws. Seven decades after it was hailed as a constitutional victory for individual autonomy, the Act now directly contradicts the fundamental rights it was designed to defend. Sections 5, 6, and 7, which are nearly exact replicas of the colonial Special Marriage Act of 1872, require couples to publicly reveal their names, ages, addresses, occupations, and intended marriage details. This exposes them to the wrath of their families, Khap panchayats, vigilante groups, and honor-based violence.

This essay makes several arguments that the notice-and-publication process is unconstitutional. First, according to the nine-judge panel in K.S. Puttaswamy (2017), it infringes against the right to privacy, which is now a component of Article 21. Every aspect of the proportionality test is violated by the mandatory distribution of sensitive personal data: there is no less invasive option when identity, age, and consent may be discreetly confirmed using passports, Aadhaar, or affidavits. Second, it creates a de facto "social veto" mechanism that permits any third party to object and postpone solemnization, undermining the fundamental right to marry the partner of one's choice, which has been consistently upheld in Lata Singh (2006), Shafin Jahan (2018), and Shakti Vahini (2018).Third, it violates Article 14 by subjecting only interfaith and intercaste couples to an onerous process, while Hindus, Muslims, Christians, Parsis, and others who marry under personal laws are exempt. This leads to hostile discrimination against a class that is already vulnerable.

The study shows how, in modern India, the notice provision—which was initially meant to prevent bigamy and coercion—has grown to be the biggest procedural trigger for honor crimes, forced separations, false criminal prosecutions, and social exclusion. The 30-day window is frequently used by hostile families and caste groups to track down, threaten, kidnap, or destroy couples, according to empirical reality.

As a result, the paper argues that Sections 5, 6, and 7 may be overturned for violating Articles 14, 15, 19, and 21 inasmuch as they require public notice and third-party complaints. Alternatively, in order to preserve the SMA as a truly freeing statute, immediate legislative reform is necessary. Dr. B.R. Ambedkar's ideal of individual dignity over social morality and constitutional morality are gravely betrayed by the persistence of these colonial remnants. SMA reform is now required by the constitution rather than being a matter of policy.

INTRODUCTION

In a nation governed by a constitution, each citizen is granted the freedom to select their life partner as a fundamental right under the right to life and personal liberty. The constitution's basic structure defines India as a republic, driven by equality and secularism. Furthermore, according to the judicial interpretation of the right to life and personal liberty, choosing a life partner is a matter of individual and personal liberty, which also includes the ability to marry the person of one's choice regardless of religious beliefs.

In contrast to Muslim law, which views marriage as a legal transaction requiring witnesses and permission, Hindu law views marriage as a sacred, fearsome, and immortal connection of two souls. Most fundamentally, it is a matter of personal preference, but it is frequently influenced by socioeconomic strata, family pride, caste concerns, and interfaith conflicts. If the marriage is outside of their caste or religion, it frequently results in honor killing.
The Special Marriage Act of 1954 was a sophisticated civil law that provided a secular legal framework for marriages between people from different castes, religions, or communities in order to prevent honor killing and such disparities and to preserve the freedom of choice, the right to life, and personal liberty. Additionally, SMA made it possible for interfaith or inter caste couples to be married without having to convert or give up their religious identity. This made it possible for couples to marry their loved ones regardless of caste or religion.

Despite this, some of the act's provisions, such as Section 5-Notice of Intended Marriage (30 days notice period for marriage) and Section 6- Marriage Notice Book and Publication (Publication of personal information) , have been repeatedly contested and criticized for impeding fundamental autonomy, equality, and the right to choose a spouse. Additionally, the act itself only granted the right to marry outside of one's caste or religion while simultaneously controlling, monitoring, and keeping an eye on one's personal life.

Instead of serving as a safeguard, this part encourages antagonistic families and moral gatekeepers to use it as a means of intimidating couples and violating their privacy. Therefore, the primary concern is whether the 30-day notice time is constitutional and, if not, why such unfair rules should be required under Indian law.

RESEARCH PROBLEM

The necessary 30-day public notice and publication requirement under Sections 5, 6, and 7 of the Special Marriage Act, 1954 poses a serious constitutional conflict and existential threat, which is the main study subject of this paper. The SMA, which was enacted as a symbol of secularism and individual liberty, was designed to ensure that every adult citizen has the freedom to marry regardless of caste, community, or religion without having to convert or lose their faith. Ironically, the statute's most notable procedural feature—mandatory public disclosure of names, ages, addresses, occupations, photographs, and intended marriage details followed by a 30-day window for anyone to raise objections—has made it a primary state-enabled tool for the persecution of consenting adults, especially runaway, interfaith, and inter caste couples.

Originally designed in a 19th-century setting to prohibit bigamous and fraudulent weddings among a few elite, these rules were inherited unaltered from the colonial Special Marriage Act of 1872. However, in modern India, they serve as a deadly tracking mechanism: antagonistic families, khap panchayats, vigilante groups, and religious extremists frequently take advantage of the publicly posted notice to hunt down, threaten, kidnap, file false criminal charges, or carry out honor killings. The 30-day period has turned into the most hazardous time for spouses exercising their constitutional autonomy, far from protecting vulnerable individuals, as evidenced by empirical data and multiple documented incidents.

This puts post-2017 constitutional jurisprudence in irreconcilable contradiction. The Supreme Court has stated again and time again that, under Article 21, the choice of life partner is at the heart of privacy, dignity, and individual liberty (Lata Singh, 2006; Shakti Vahini, 2018; Shafin Jahan, 2018; Navtej Singh Johar, 2018). In K.S. Puttaswamy (2017), the nine-judge panel upheld the least intrusive option and acknowledged informational privacy as essential. However, even if private verification via Aadhaar, affidavits, and digital means is easily accessible, the SMA still requires the widespread distribution of sensitive data.

Furthermore, by imposing a particularly burdensome duty only on individuals choosing secular marriage but exempting the same risks under Hindu, Muslim, Christian, and Parsi personal laws, the provisions violate Article 14 and lead to hostile discrimination against an already marginalized class. The fact that the Supreme Court has not yet definitively decided the constitutional validity, leaving thousands at ongoing risk, exacerbates the research problem even though a number of High Courts have repeatedly waived or dispensed with publication in individual cases by citing fundamental rights (2020–2025). Therefore, the study questions whether these colonial vestiges can withstand rigorous analysis, proportionality, and reasonableness in a Constitution that prioritizes constitutional morality and individual dignity over caste-endogamy and patriarchal domination.

METHODOLOGY

This study employs a purely doctrinal, analytical, critical and normative legal research methodology, rooted in constitutional interpretation and human-rights jurisprudence.

Primary sources comprise: (i) the Constitution of India (Articles 13, 14, 15, 19, 21, 25); (ii) the Special Marriage Act, 1872 and 1954 along with parliamentary debates of 1952–54; (iii) authoritative Supreme Court judgments including K.S. Puttaswamy (2017) 9-Judge Bench, Shakti Vahini v. Union of India (2018), Shafin Jahan v. Asokan K.M. (2018) , Lata Singh v. State of U.P. (2006), Navtej Singh Johar (2018), Joseph Shine (2018) , Modern Dental College (2016) (proportionality), and Shayara Bano (2017);

(iv) recent High Court decisions (Allahabad, Delhi, Punjab & Haryana, Madras, Kerala benches, 2020–2025) that have waived or modified the notice requirement by treating it as directory when fundamental rights are threatened; and (v) relevant Supreme Court orders up to November 2025.

Secondary sources include Law Commission of India reports on marriage and divorce laws, academic commentaries in NUJS Law Review, Indian Journal of Constitutional Law, Economic & Political Weekly, and Journal of Indian Law & Society, scholarly works on privacy and autonomy (Gautam Bhatia, Tarunabh Khaitan, Menaka Guruswamy), NGO documentation by Shakti Vahini, Partners for Law in Development and Centre for Law & Policy Research on honour crimes triggered by SMA notices, and authenticated media investigations,

The analytical framework deploys: (a) the four-pronged proportionality doctrine (legitimate aim, rational connection, necessity, and balancing); (b) the twin tests under Article 14 – reasonable classification and manifest arbitrariness; (c) the constitutional morality versus social morality paradigm articulated by Dr. B.R. Ambedkar and applied in Naz Foundation, NALSA, Puttaswamy and Navtej Johar; (d) historical-evolutionary analysis tracing the colonial origin and post-independence retention of the impugned provisions; and (e) comparative references to marriage registration systems in jurisdictions that protect privacy (United Kingdom, Australia, Canada).

While adhering scrupulously to binding precedent and constitutional language, the study deliberately takes a critical and reform-oriented attitude. There has been no main empirical fieldwork; instead, documented court cases and reliable secondary reports of violence connected to SMA notices are relied upon. Only items accessible through November 18, 2025, are included in the temporal scope. The methodology aims to establish a constitutionally mandated roadmap for judicial striking down or immediate legislative revision of the offending provisions by synthesizing constitutional philosophy with practical implications.

PRE INDEPENDENCE ERA

The Special marriage act of 1954 is the updated version of the special marriage act of 1872. The Special marriage act of 1872 was the first law for the civil marriages in India which was enacted during the British era under the first law commission of pre independence era. The special marriage act of 1872 facilitate inter religious marriages outside their religious ambit. When the act was released, it didn't contain any clause for particular group of religion.It was an optional law initially made available only to those who did not profess any of the various faith traditions of India. The Hindus, Muslims, Christians, Sikhs, Buddhists, Jains and Parsis were all outside its ambit. So, those belonging to any of these communities but wanting to marry under this Act had to renounce whatever religion they were following. Later in 1922 the special marriage act of 1872 was amended and it was available to Hindus, Sikhs, Buddhists and Jains for marrying within these four communities without renouncing their religion and allowed inter religious marriages within this ambit. The legal age for marriage under special marriage act of 1872 was 18 for men and 14 for women and it also required guardian approval for people marrying under age of 21. It also contained the notice period for 14 before the solemnization of marriage and only required 5 days residence in the district where the parties

intended to get married. But the main drawback of the act was that there was no provision for dissolution or nullification of marriage and neither for divorce.

The main reason for the replacement of the Special marriage act of 1872 was that the laws were prevailing from the pre colonial period and contained the 19th century British legislation and also contained many clause which didn't mandate the basic principle of today's constitution declaring it unconstitutional. Sofor a change and to avail the law for everyone it was replaced by a new statute i.e Special Marriage Act, 1954.

The Special Marriage Act, 1954

The Special Marriage act of 1954 came with a bigger scope covering the segments like dissolution and nullification of marriage which were previously not mentioned. And adding provisions which isapplicable to all citizens of India, regardless of religion, for a secular marriage. SMA, 1954 Recognized marriage as a secular civil contract rather than religious one mostly allowing inter religion, inter caste marriages without getting converted. Increased the marriage age to 18 for women and 21 for men. And specifically availed the law to any person in India and all Indian nationals in foreign countries irrespective of the faith which either party to the marriage may profess, making it constitutionally viable for every citizen. But certain provisions of the act were still prevalent from the colonial era like the requirement of public notice before the marriage and the publishing of it, declaring it unconstitutional and emerging concerns.

Section 5 of the Special marriage act of 1954 - "Notice of intended marriage" . It simply defines that the parties intending to get married must submit a written notice to the Marriage Officer of the district (local marriage registrar) at least not less than 30 days before the intended date of marriage also mentioning either of the parties must have at least lived for 30 days before. The written notice must be in the prescribed format with no shortcuts and the notice contains the personal details of both the parties like the name, occupation, intention to get married. And after that the written notice is displayed publicly in the registrar office by the registrar and,If one party lives elsewhere, a copy goes to that district's officer for posting too, making it accessible to the general public(Section 6 of SMA,1954). And if any person has any objection relating to marriage can raise objection within 30daysnotice period in the grounds mentioned in the section 4 of special marriage act. (Section 7 of SMA,1954).

Section 6(1) of the Special marriage act says "The Marriage Officer shall keep all notices given under section 5 with the records of his office and shall also forthwith enter a true copy of every such notice in a book prescribed for that purpose, to be called the Marriage Notice Book, and such book shall be open for inspection at all reasonable times, without fee, by any person desirous of inspecting the same". Here lies the problem. This provision has been incorporated in toto from the Special marriage act of 1872. Which clearly violates the right to privacy of a person or the parties intending to get married. Why to display the personal information of the person and letting "any" person object to it. Only person to whom such details should matter is the persons getting married and the registrar. Publishing of the personal information exposes the individual getting married and raise life threatening risk from families, political communities, extremists and even honor killing which is one of the dangerous risk to the parties. The important crisp of still prevailing this provision was that legislature had only came out of the shadow of the colonial era, but that's not the point to allowing an unconstitutional provisions and violating right to life under Article 21 of the Indian constitution.

In K.S. Puttaswamy v. Union of India, (2017) The Supreme Court in 2017 in a nine judge bench, has ruled that privacy is an indispensable aspect of right to life and personal liberty under article 21 of Indian constitution. And it also recognized that individuals have the right to make autonomous decisions about their personal lives, including marriage. So public display of the marriage notice clearly violates the right to privacy and personal liberty and often lead to backlash. And this display creates a huge chaos questioning the couples and harming their reputation and good will in the society.

The 30-day notice requirement was designed to ensure transparency and prevent bigamous or coercive marriages. However, in the present constitutional framework emphasizing individual autonomy and privacy, this safeguard has become an instrument of intrusion."

In light of the contemporary constitutional jurisprudence, the 30-day notice requirement transforms from a protective provision into a potential tool of harassment, discrimination, and the mass violation of fundamental rights. While the main intention of the original legislative was to safeguard the vulnerable individuals and ensure that the marriages were not solemnized under coercion or fraud, the socio-legal landscape of modern India reveals that the notice mechanism is disproportionately misused against consenting adults, especially those marrying

against familial, caste, or community expectations.

Modern Constitutional Challenges to the SMA Notice Requirement

The legitimacy of maintaining a public notice-and-objection procedure must be tested on constitutional touchstones, particularly after the Supreme Court's expansion of privacy, autonomy, and dignity under Article 21. The jurisprudence that has emerged over the past two decades places individual choice at the highest pedestal, especially in matters of marriage, companionship, and identity.

1. Violation of Privacy under Article 21

In the case of ***K.S.*Puttaswamy *v. Union of India* (2017)** , the court ruled the right to privacy has been recognized asan intrinsic to the right to life and personal liberty. Informational privacy — which includes the right to control dissemination of personal data — becomes central when the SMA compels the display of:

- names of the parties
- ages
- occupations
- addresses
- intended date of marriage
- personal declaration of intention to marry

Such sensitive and personal information, if put in the public domain, becomes easily accessible to hostile actors. Honour-based violence, coercion, social humiliation, and interference by vigilante groups are often led by the public notice. In essence, what was designed as an administrative requirement transforms into a public exposure of private life.

The Supreme Court in Puttaswamy held that the State must adopt the least restrictive alternative. In marriage registration, least restrictive means would be internal verification and not public publication. Therefore, Sections 5 and 6 fail the test of proportionality.

2. Violation of the Right to Marry as a Fundamental Right

The **Supreme Court of India** has consistently ruled that **choosing your life partner is a core part of your personal liberty and dignity**, protected under **Article 21** of the Constitution (Right to Life and Personal Liberty).

1. **Shafin Jahan v. Asokan K.M. (2018) – The Hadiya Case**
    - A young woman converted to Islam and married by choice.
    - Her father challenged the marriage, claiming coercion.
    - The Supreme Court overturned the Kerala High Court's annulment and said:

"The choice of a life partner is a facet of individual liberty and human dignity."

2. **Lata Singh v. State of U.P. (2006)**
    - A woman married outside her caste; her brothers threatened her.
    - The Court protected her and said:

Adults are **free to marry anyone they like**. So-called "honour killings" or threats are **illegal and unconstitutional**, and Police **must protect** such couples, not harass them.

3. **Shakti Vahini v. Union of India (2018)**
    - NGO challenged khap panchayat interference in inter-caste/ inter-faith marriages.
    - The Court issued **strict guidelines**:
        - State must **prevent**honour-based violence.
        - Police must **act immediately** on threats.
        - **No one**—not family, not community—can dictate marriage choices.

In short words, you are an adult. You get to decide whom you love and marry. No one—

parents, relatives, or society—can force, threaten, or harm you for your choice. The Constitution and the Supreme Court stand with you.

.These judgments affirm thatthe marriage choices cannot be subjected to societal vote and choices. The SMA notice provision, by inviting objections from *any* third party, creates a mechanism for social veto. This is directly inconsistent with the Supreme Court's consistent position that only the couple has a say in their marriage decision.

3. Unequal Treatment under Article 14

Under personal laws: The citizens belonging to religion

- Hindus
- Muslims
- Christians
- Parsis
- Jews

can marry without any notice period or public announcement.

However, couples choosing SMA—primarily **interfaith and inter-caste couples**—are subjected to a mandatory 30-day notice, publication, and objections.

This creates:

- hostile discrimination
- unequal treatment
- arbitrary classification.

And which is a direct violation of fundamental rights, under article 14 of the constitution which says equality before law and equal protection of laws. And in the scenario of SMA and personal laws both don't go hand in hand.

The classification fails the *reasonable nexus* test because:

- the objective of preventing fraud or coercion can be achieved through administrative verification
- personal law marriages pose the same risks, but have no notice period
- SMA uniquely burdens a minority of couples who are already vulnerable

Thus, Sections 5 and 6 violate Article 14.

4. SMA Reinforces Social Morality Over Constitutional Morality

Dr. B.R. Ambedkar emphatically pointed out that constitutional morality has to override social morality, especially when personal choices challenge entrenched hierarchies of caste, religion, and patriarchy. The SMA, ironically meant to be a progressive law, has now turned into a tool of enforcing social morality.

Compelling publication of personal information allows for:

1. Cast panchayats

2. Religious extremists

3. Vigilante groups

And the potential malicious actors which extends from: Politically motivated actors to family members who will directly object to marriages across caste and religious lines.

Thus, such assistance will be made, or deemed, without the intention of interfering with the autonomy of the couple.

This goes against constitutional morality, which holds individual freedom and equality above tradition-bound norms.

Practical Harms Caused by the Notice Requirement

1. Honor Killings and Threats

Many reported cases show that SMA notices have directly triggered:

- harassment
- kidnapping
- false FIRs
- confinement of women
- physical assault
- honor killings

The law, instead of protecting the couples, often exposes them to violence and triggering to harm their privacy.

2. **Misuse by Families**

Families frequently misuse the notice to:

- threatening the woman into returning home
- file kidnapping/rape complaints
- threaten the partner or blackmail
- impose religious or caste-based restrictions

For women, the consequences are particularly severe due to entrenched patriarchal structures.

3. Societal Surveillance

The notice enables interference by:

- neighbour
- distant relatives

- community members
- extremist groups

The law creates a mechanism for policing private relationships.

4. State Intrusion in Private Life

Marriage becomes not a private decision, but an event subjected to:

- scrutiny
- objections
- bureaucratic delay - This contradicts the very essence of a secular civil marriage law.

Reform Proposals

To balance protection with privacy, several reforms can be considered:

1. Abolition of Section 5 and 6

The Supreme Court should declare Sections 5, 6 and 7 (public notice and objection provisions) unconstitutional and void ab initio in a PIL or reference. Precedent exists: the Allahabad High Court in Safiya Sultana v. State of U.P. (2021) and several single-judge orders (e.g., Delhi HC in Pranav Kumar Mishra, 2020) have already permitted solemnisation without waiting 30 days or publishing notices by reading in privacy safeguards. A definitive nine-judge or Constitution Bench ruling will end uncertainty nationwide.

2. Complete Legislative Overhaul (Model Special Marriage Bill, 2025 – Suggested Framework)

(a) Abolish mandatory public notice entirely.

(b) Replace it with confidential administrative verification within 72 hours.

(c) Verification to include: 1. Aadhaar/e-KYC for identity and age. 2. Self-attested affidavits of free consent and non-bigamy. 3.Optional video-recorded consent statement stored securely.

(d) Marriage Officer to solemnise marriage immediately upon satisfaction; maximum outer limit: 7 days.

e) Retain right of objection only for blood relatives on strictly defined grounds (minor age, existing spouse, unsoundness of mind) and only through affidavit filed directly with the Marriage Officer without public disclosure.

3. Interim Optional Hybrid Model (Immediate Executive Relief)

Until Parliament acts, the Ministry of Law & Justice should issue a notification under Section 50 (power to make rules) permitting couples to choose between: Option A: Traditional 30-day public notice (for those who want community involvement). Option B: Confidential fast-track registration (default for inter-faith/inter-caste couples or those apprehending danger).

4. Protective Protocols for Vulnerable Couples

(a) Mandatory police protection from date of application if couple declares apprehension of violence (link with Shakti Vahini guidelines).

(b) Safe-house referral system integrated with One-Stop Centres under Nirbhaya Framework.

(c) Fast-track FIR registration and anticipatory protection orders within 24 hours**.**

5. Digital-Only Confidential Registry

Create a secure online portal (similar to MCA's V3 portal)where couples upload documents, verify biometrically, and receive digital marriage certificate within 48–72 hours. Physical appearance only for solemnisation ceremony. This eliminates need for public notice boards altogether**.**

6. Harmonisation with Personal Laws (Long-term Equality Measure)

If public notice is deemed necessary for any marriage, impose identical requirement across all personal laws (HMA, Indian Christian Marriage Act, etc.) or, preferably, abolish it everywhere. Selective burden only on secular marriages is indefensible under Article 14.

7. Compensation and Accountability Mechanism

Introduce Section 46A:State liability for harm caused to couples due to leakage of notice information. District Magistrate personally liable if honour crime occurs after notice publication in district**.**

CONCLUSION

A constitutional pledge that love would not be constrained by caste, creed, or community gave rise to the Special Marriage Act, 1954. That commitment has been broken seventy years later by the statutory 30-day public notice and disclosure requirement. For many interfaith and inter caste couples, what started out as a colonial administrative protection has evolved into a modern death sentence. Sections 5, 6, and 7 turn a statute of emancipation into a state-approved tracking tool for honor killings, kidnappings, and patriarchal abuse by requiring the public revelation of private information and inciting criticism from all quarters.

Following Puttaswamy case India acknowledges that Article 21's non-negotiable aspects include privacy, dignity, and the choice of life partner. No family, khap, or community can veto an adult consensual marriage, according to the Supreme Court's repeated rulings. However, the SMA alone exposes these couples to a process that personal-law marriages completely avoid, resulting in hostile discrimination under Article 14 and putting caste and religious dogma ahead of constitutional decency.

Unquestionably, the notice period facilitates bigamy and coercion rather than preventing them. Ad hoc remedy is not a replacement for systemic justice, even if High Courts have frequently stepped in to save lives by eschewing publishing. More than judicial patchwork is required by the Constitution.

Insofar as they require public notice and third-party objections, Sections 5, 6, and 7 are invalid. They need to be overturned or drastically changed right away. Until then, the Special Marriage Act continues to jeopardize love rather than protect it, and every public notification is still a possible death sentence. It is now the urgent responsibility of the Parliament and the Supreme Court to free this progressive statute from colonial constraints and reinstate it as a genuine haven for adult consensual choice.

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