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SPECIAL MARRIAGE ACT, 1954

ARTICLE WRITING

BY- TEJASWI MEHTA

INTRODUCTION-

The Special Marriage Act of 1954 is a secular law. Its main objective is to allow a special form of marriage with a uniform procedure and similar conditions. It is not dependent on the practices of any particular religion like Hindu marriage or Muslim marriage. The act allows and gives legal recognition to marriages between two persons of different religion or different faith or different castes or different nationalities. The act does not require the people entering into marriage to convert into other's religion. The act primarily supports article 14 that is right to equality and article 21 that is right to life and personal liberty. It ensures that people from different religion and castes are treated equally and get legal recognition when married. It allows people a life of dignity where they can choose their own partners regardless of their difference in religions and castes.

HISTORICAL DEVELOPMENT-

In India historically marriages are performed according to the customs and traditions of one's religion. People were not allowed to marry outside their religion else they were considered outcaste. It was in 1872 that the British India under Sir Lord Henry Sumner Maine introduced the Special Marriage Act in 1872¹. Section 2 of the act proposed the idea that people from different religion, caste, background can marry each other but only after renouncing their religion and declare that they do not profess any religion.

¹ The Special Marriage Act, 1872- The Special Marriage Act, 1872, Nasir's Law Site, <https://nasirlawsite.com/laws/sma.htm>

In 1954 after india became an independent nations, it brought in some amendments to the act of 1872. The 1954 law allowed people from different religion to get married without renouncing their religion. Now people from different religion can get married and practice their own religion.²

CONDITIONS FOR SOLEMNISATION-

Section 4 of the act talks about “Conditions relating to solemnization of special marriages”³. It establishes that solemnisation of marriage between two person happens if neither of them has a living spouse, both are in a mental capacity to give a valid consent for the marriage and are of sound mind, neither of them gets recurrent attacks of insanity. The male must be of twenty-one years and the female must be of eighteen years. Neither of the spouse must be under the prohibited degrees of relationship.

PROCEDURE FOR SOLEMNISATION-

The procedure to solemnise marriage under the special marriage act is established under section 5⁴ to section 13⁵. Firstly, the couple who decided and intends to get married gives a written notice to the district’s marriage offices where either one of them have resided for the time given under the act. This is the first step done to begin the legalisation of the marriage. Once the marriage officer receives the notice, he enters the notice into the marriage notice book. This book remains open for public inspection too. The notice should also be published for people to know the information. After the publication of notice, if any person objects to the marriage within 30 days of publication, such objection must fall under section 4 of the act. The objection regarding the religion, caste, creed, family etc will not be entertained. If any other objection is admitted by the marriage officer, they are required to enquire over the that particular objection and decide upon whether such objection is legally admissible or not. If the objection is legally admissible then the marriage can not be solemnised. While examining the objection, the marriage officer has certain powers like, examining documents, calling witness, receiving evidence etc. Without any objection, before the solemnisation of the marriage, both the parties to marriage sign a declaration in presence of three witnesses and a marriage officer. This must take place in the office of the marriage officer and no other religious ceremony is required. This is done to have a marriage registered regardless of their religious rituals or customs. A marriage certificate is formed and recorded in the marriage certificate book by the marriage officer. This certificate needs to be signed by the bride, the groom, the marriage officer and the three witnesses. This marriage certificate serves as the evidence to the marriage. It becomes the legal evidence of the marriage.

² The Special Marriage Act, No. 43 of 1954, India Code,
https://www.indiacode.nic.in/bitstream/123456789/15480/1/special_marriage_act.pdf

³ Special Marriage Act, No. 43 of 1954, § 4 (India).

⁴ Special Marriage Act, No. 43 of 1954, § 5 (India).

⁵ Special Marriage Act, No. 43 of 1954, § 13 (India).

CONDITIONS FOR DIVORCE-

Section 27⁶ of the act lays down the grounds on which the husband or the wife can file a divorce petition before the jurisdictional district court. The grounds for divorce can be adultery, desertion, imprisonment, cruelty, mental disorder, venereal disease, presumption of death. Not living together since one year without resumption of cohabitation, no restitution of conjugal rights also amounts to a valid ground for divorce. Section 28⁷ of the act lays down mutual consent as a valid ground for divorce. Both the spouse mutually agrees on getting separated and getting divorced without putting any one of the spouse at fault or blame. Though both of them must satisfy the condition of living separately for one year, and prove the inability to live together.

LANDMARK JUDGEMENT-

In the landmark judgement of *Lata Singh Vs. State of U.P. and Ors.* 2006, the court while giving judgement on the case of an interfaith marriage stated that *“16. The caste system is a curse on the nation and the sooner it is destroyed the better. In fact, it is dividing the nation at a time when we have to be united to face the challenges before the nation unitedly. Hence, inter-caste marriages are in fact in the national interest as they will result in destroying the caste system. However, disturbing news are coming from several parts of the country that young men and women who undergo inter-caste marriage, are threatened with violence, or violence is actually committed on them. In our opinion, such acts of violence or threats or harassment are wholly illegal and those who commit them must be severely punished. This is a free and democratic country, and once a person becomes a major he or she can marry whosoever he/she likes.”*⁸

In the case of *Supriyo vs Union of India* (2023)⁹, A number of same-sex couples went to the Supreme Court asking for their marriages to be legally recognized. They argued that even though consensual same-sex relationships were decriminalized, LGBTQ+ couples still faced discrimination because Indian marriage laws only acknowledged heterosexual unions. The petitioners challenged parts of the Special Marriage Act of 1954, claiming that terms like 'husband' and 'wife' excluded same-sex couples. They asked the Court to either interpret the law in a way that is neutral to gender or to declare some sections of the law unconstitutional.

The Union Government opposed these petitions, arguing that marriage is a socio-cultural institution traditionally recognized only between a biological man and a woman. They also stated that any changes to marriage law should be made by Parliament, not the judiciary. The Supreme Court issued a split

⁶ Special Marriage Act, No. 43 of 1954, § 27 (India).

⁷ Special Marriage Act, No. 43 of 1954, § 28 (India).

⁸ *Lata Singh v. State of U.P. & Ors.*, (2006) 5 S.C.C. 475 (India).

⁹ *Supriyo @ Supriya Chakraborty & Anr. v. Union of India*, 2023 INSC 920 (India).

verdict. The majority opinion, mainly written by Justice Ravindra Bhat, declined to legalize same-sex marriage under the Special Marriage Act. The Court stated that there is no absolute fundamental right to marry and that recognizing same-sex marriage is a matter for the legislature.

However, the Court unanimously confirmed that queer individuals have equal rights and dignity under the Constitution. The judges acknowledged that discrimination against LGBTQ+ individuals is unconstitutional and instructed the State to take action to prevent such discrimination. The Court also recognized that queer couples have the right to live together and build relationships. Some comments highlighted the importance of administrative actions to ensure social welfare protections for LGBTQ+ individuals.

CONCLUSION-

The special marriage act of 1954 was one of the greatest steps taken by India in stage of social development. The act was made to increase the number of inter caste and inter faith marriages. It was done and was believed that allowing marriages between people from different caste and different faith helps in reducing the dominating caste system that was prevalent in India for ages. It allows people to get married even without following any religious custom or tradition or ritual. Getting married under the special marriage act gave people the legal recognition of marriage within court itself. It became a less time-consuming and low-cost marriage. People no more had to stick to the traditional marriage structure and get the marriage certificate from the marriage officer.