

IN THE MATTER OF:

... Petitioner

... Respondent

I.A.No. OF 2020

PAPER BOOK

ADVOCATE FOR THE PETITIONER: NISHE RAJEN SHONKER

Dy. No.18474 of 2020

DECLARATION

All defects have been duly cured. Whatever has been added/deleted/modified in the petition is the result of curing of defects and nothing else. Except curing the defects, nothing has been done. Paperbooks are complete in all respects.

Signature:-



MR.NISHE RAJEN SHONKER  
Advocate-on-Record

Date: 02.09.2020

Contact No.: 9942583587

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FOR FIRST LISTING

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**SECTION-PIL**

The case pertains to (Please tick/ check the correct box):-

<input type="checkbox"/>	Central Act: (Title)	Constitution of India 1949
<input type="checkbox"/>	Section:	Article 14,15 & 23(1)(2)
<input type="checkbox"/>	Central Rule: (Title)	N/A
<input type="checkbox"/>	Rule No(s):	N/A
	State Act: (Title)	N/A
<input type="checkbox"/>	Section	N/A
	State Rule: Title:	N/A
<input type="checkbox"/>	Rule No(s):	N/A
<input type="checkbox"/>	Impugned Interim Order: (Date)	N/A
	Impugned Final order/ Decree: Date	N/A
<input type="checkbox"/>	High Court: (Name)	N/A
<input type="checkbox"/>	Names of Judges:	N/A
<input type="checkbox"/>	Tribunal/ Authority: (Name)	N/A
1.	Nature of matter:	Civil
2.(a)	Petitioner/ appellant No. 1:	Nandini Praveen
(b)	e-mail ID:	N/A
(c)	Mobile phone number:	N/A
3.(a)	Respondent No.1:	Union of India
(b)	e-mail ID:	N/A
(c)	Mobile phone number:	N/A
4.(a)	Main category classification:	018

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(b)	Sub classification:	1807 others	
5.	Not to be listed before:	N/A	
6 (a)	Similar disposed of matter with citation, if any, & case details.	No similar matter disposed	
(b)	Similar pending matter with case details	No similar matter pending	
7.	Criminal Matters:	No	
(a)	Whether accused/convict has surrendered:	N/A	
(b)	FIR	Date	N/A
(c)	Police Station:	N/A	
(d)	Sentence Awarded:	N/A	
	Period of sentence undergone including period of detention /custody undergone:	N/A	
8:	Land Acquisition Matters:		
(a)	Date of Section 4 notification:	N/A	
(b)	Date of Section 6 notification:	N/A	
(c)	Date of Section 17 notification:	N/A	
9.	Tax Matters: State the tax effect:	N/A	
10.	Special Category (first petitioner/appellant only):		
	(i) <input checked="" type="checkbox"/> Senior citizen > years	(ii) <input checked="" type="checkbox"/> SC/ST	
	(iii) <input checked="" type="checkbox"/> Woman/child	(iv) <input checked="" type="checkbox"/> Disabled	



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	(v) [ x ] Legal Aid case	(vi) [ x ] In custody
11.	Vehicle Number (in case of Motor Accident Claim matters):	N/A

Date: 31.08.2020

*12/08/2020*

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## SYNOPSIS

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1. This writ petition is filed under Article 32 of the Constitution of India challenging certain provisions of the Special Marriage Act, 1954 (hereinafter, "SMA") for those violate the fundamental rights of the citizens under Articles 14, 15 and 21 of the Constitution of India. The impugned provisions require the parties to the marriage to publish their private details, open for public scrutiny, before 30 days of intended marriage. The provisions also allow anyone to submit objections to the marriage and empower the Marriage Officer to inquire into such objections. These provisions violate the fundamental rights of couple intending to marry, depriving of their right to privacy under Article 21 of the Constitution of India. The requirement of notice before marriage is absent in the Hindu Marriage Act, 1955 and customary laws in Islam. Therefore, the said provision is also discriminatory and violative of Article 14 of the Constitution of India.
2. The petitioner is a law student and public-spirited person. She has been taking keen interest in socio-legal affairs of the nation. On an earlier occasion, she had filed an Interim Application as I.A. 1

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/2020 in WP (C) No. TMP 285/2020 before the Hon'ble High Court of Kerala, defending the ordinance no. 30 of 2020 issued by the Government of Kerala as per Notification No. 693/Leg.A1/2020/Law dated 30.04.2020, promulgated to cater the larger public interest to deal with the acute financial crisis faced by the State during the time of pandemic. She contended that the ordinance should not be stayed in larger public interest. In the said case, after accepting her contentions as well, the Hon'ble High Court of Kerala refused to stay the operation of the above said ordinance.

3. The following are the provisions which are under challenge in this writ petition:
- a. Sections 6(2), 7, 8 and 10;
  - b. Section 6 (3) to the extent to which it says "that Marriage Officer shall thereupon cause a copy thereof to be affixed to some conspicuous place in his office"; and
  - c. Section 9 to the extent to which it deals with inquiry under Section 8 of SMA.

The above said provisions violate the fundamental rights of the citizens and are liable to be struck down.

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4. Section 5 of the SMA requires that a notice of intended marriage to be given by the parties to the marriage to the Marriage Officer of the district where at least one of the parties to the marriage has resided for a period of not less than thirty days immediately preceding the date on which such notice is given. Section 6 mandates that all such notices received shall be entered in the marriage notice book and the Marriage Officer shall publish a notice by affixing a copy thereof to some conspicuous place in his office. As per Section 6(3), if the parties do not permanently reside within the jurisdiction of the officer who received the notice, a copy shall be transmitted to cause its publication in the relevant marriage office. Also, as per the said clause the marriage officer has to "cause a copy (of notice) to be affixed to some conspicuous place in his office". Publishing details of notice of marriage by the marriage officers include the details of the parties like names, date of birth, age, occupation, parents' names and details, address, pin code, identity information, phone number etc. This is a peculiar requirement of the SMA. Clauses (2) and (3) of Section 6 to the extent to which those direct to cause affixation of notice in some conspicuous place in the office of Marriage Officer are violative of the right to privacy of the parties to the marriage. Sections 7 to 8

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and 10 of the SMA and Section 9 to the extent to which it deals with inquiry under Section 8 of the Act are also violative of the right to privacy of the parties to the marriage. These provisions are liable to be struck down.

5. The right to privacy is held to be an aspect of the right to life under Article 21 of the Constitution, as reiterated in many judgments of this Hon'ble Court. In the celebrated judgment of Justice K. S. Puttaswamy v. Union of India (2017) 10 SCC 1, this Hon'ble Court has held that informational privacy needs to be protected as a facet of privacy right. Though usually informational privacy is dealt with in the context of digital use, there is no reason for not extending the said protection to the personal information of the parties to marriage in the context of clauses (2) and (3) of Section 6 of the SMA. The impugned provisions, by throwing the personal information of the individuals open to public scrutiny, seriously damage one's right to have control over her or his personal information and its accessibility. The impugned provisions fail the three tier test, endorsed in K.S. Puttaswamy (supra) i.e. legality, legitimacy and proportionality.

6. There is no legitimate state interest which is being protected by publication of the personal and intimate details of the parties to the marriage. It is settled that under proportionality test, the court would determine whether "the means adopted to achieve the end sought do so by impairing as little as possible the right or freedom in question" (R. v. Big M Drug Mart Ltd. [1985] 1 SCR. 295, Supreme Court of Canada). The impugned provisions are not measures which impair the right to privacy as little as possible, but in fact, significantly and disproportionately interfere with the right to personal information. The impugned provisions, therefore, do not fulfil the tests of legitimacy and proportionality.
7. Marriage reflects a private decision taken by two consenting adults and the SMA was formulated to provide a secular form of marriage. By making the personal details of the couple accessible to everyone, the very right of the couple to be the decision makers of their marriage is being hampered by the State. The significance of the right to privacy has been underlined by this Hon'ble Court in Ram Jethmalani v. Union of India (2011) 8 SCC 1, R. Rajagopal alias R.R. Gopal and another v. State of Tamil Nadu (1994) 6 SCC 632 and PUCL v. Union of India, (1997) 1 SCC 301.

8. For those marrying under the Hindu Marriage Act, 1955 and the customary law of Islam, the requirement of public notice is absent. Section 13 of the Indian Christian Marriage Act, 1872, however, contemplates a similar requirement. The couples marrying under the SMA are subjected to publication of their details, while the other couples marrying under the Hindu Marriage Act, 1955 and customary laws of Islam are not subjected to such a requirement. This situation infringes the right to equality under Articles 14 and 15 of the Constitution.
9. The traditional test of equality requires the state to fulfil (i) intelligible differentia (ii) rational nexus with the aim (Please see *State of W.B. v. Anwar Ali Sarkar*, AIR 1952 SC 75). There is no intelligible differentia between couples marrying under the SMA compared to couples marrying under Islamic law or the Hindu Marriage Act. No rational aim is sustained by subjecting one group of couples to a serious violation of privacy. For this reason also, the impugned provisions are liable to be struck down.
10. Publication of personal details often might have a chilling effect on the right to marry. In other words, couples are asked to waive the

right to privacy to exercise the right to marry. This infringes the rights of autonomy, dignity and the right to marry, of various couples. The right of two adults to choose their life partner has been well recognised in *Shakti Vahini v. Union of India* (2018) 7 SCC 192 under Articles 19 and 21 of the Constitution of India. In *Shafin Jahan v. Asokan K.M.* (2018) 16 SCC 368, this Hon'ble Court reiterated that a person's right to marry a person is an integral part of Article 21 which is enshrined in the Constitution.

11. Legality of various additional requirements with regard to publication of notice of intended marriage under Section 6 of the SMA has been challenged in *A and anr v. State of Haryana and ors.* (CWP No.15296 of 2018 (O&M)), *Kuldeep Singh Meena v. State of Rajasthan and ors* (D.B. Civil Writs No. 17080/2017), and in *Pranav Kumar Mishra & anr. v. Govt. of Nct. of Delhi & anr.* (WP(C) No.748/2009). In *Kuldeep Singh Meena v. State of Rajasthan and ors* (D.B. Civil Writs No. 17080/2017), the Delhi High Court held that sending notices to the residences of the parties to marriage is violative of their right to privacy and is an unwarranted procedure. Recently, the Hon'ble Punjab- Haryana High Court in *A and anr v. State of Haryana and ors.* (CWP



No.15296 of 2018 (O&M)) considered the legality of procedure followed under the SMA and held those as violative of fundamental right to privacy of the parties. In those cases, however, the constitutional validity of Section 6 of the SMA was not challenged, but legality of procedures adopted by the executive under Section 6 of the Act was considered. The procedure of sending notices to the residences of the parties to the marriages was held as violative of the privacy rights of the individuals.

12. Reports of honour killings and violence against inter caste and inter religious couples are predominant. One of the ways to access details of the couples marrying under the SMA is through the public notice under Sections 6(2) and 6(3) of the Act. In *Lata Singh v. State of U.P. & another*, AIR SCW 3499, this Hon'ble Court had expressed its anguish over the increasing violence over the inter caste and inter religious marriages. In *Valsamma Paul (Mrs) v. Cochin University*, (1996) 3 SCC 545 the importance to encourage inter-faith marriages has been stressed by this Hon'ble Court. The impugned provisions act as hindrances to the said aspiration.

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13. Also, Section 11 of the SMA mandates that three witnesses shall sign a declaration that the parties to the marriage satisfy the criteria laid down by Section 4 of the SMA. Therefore, there is no requirement of calling for objection from the public.
14. Therefore, the impugned provisions, being violative of the fundamental rights of the citizens under Articles 14, 15 and 21 of the Constitution of India, are liable to be struck down.

#### LIST OF DATES

- |      |   |
|------|---|
| 1872 | Sir Henry James Sumner Maine introduced Act III of 1872. It was a law which sought to legalize marriages of those who were willing to renounce their faith and enter into a civil contractual marriage. It was enacted as the Special Marriage Act, 1872. The Act was rigorously opposed by many traditional religious authorities since it deviated from religion and faith. |
| 1954 | The Special Marriage Act, 1954 (hereinafter, "SMA") was brought in effect replacing the old Act of 1872 to  |

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enact a modern legislation comprehensively in the light of India attaining independence. The prime purpose of the Act was to address Inter-religious marriages and to establish marriage as a secular institution bereft of all religious formalities, which required registration alone. But this same law discriminates against inter-faith couples through Sections 6(2) and 6(3) by requiring publication of notice of intended marriage. No other personal law, except the Indian Christian Marriage Act, 1872 has a requirement like the above. The above said provision is a clear violation of the equality doctrine enshrined and protected under Article 14 of the Constitution of India. The law also requires the marriage officer to publicly display the personal details of the applicants which includes even photographs. This provision violates the right to privacy. Relevant Sections of the Act read as follows:

*"5. Notice of intended marriage.—When a marriage is intended to be solemnized under this Act, the parties*

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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 a period of not less than thirty days immediately preceding the date on which such notice is given.

6. *Marriage Notice Book and publication.*—

(1) *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.*

(2) *The Marriage Officer shall cause every such notice to be published by affixing a copy thereof to some conspicuous place in his office.*

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(3) Where either of the parties to an intended marriage is not permanently residing within the local limits of the district of the Marriage Officer to whom the notice has been given under section 5, the Marriage Officer shall also cause a copy of such notice to be transmitted to the Marriage Officer of the district within whose limits such party is permanently residing, and that Marriage Officer shall thereupon cause a copy thereof to be affixed to some conspicuous place in his office.

7. Objection to marriage.—

(1) Any person may, before the expiration of thirty days from the date on which any such notice has been published under sub-section (2) of section 6, object to the marriage on the ground that it would contravene one or more of the conditions specified in section 4.

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(2) After the expiration of thirty days from the date on which notice of an intended marriage has been published under sub-section (2) of section 6, the marriage may be solemnized, unless it has been previously objected to under sub-section (1).

(3) The nature of the objection shall be recorded in writing by the Marriage Officer in the Marriage Notice Book, be read over and explained if necessary, to the person making the objection and shall be signed by him or on his behalf.

**8. Procedure on receipt of objection.—**

(1) If an objection is made under section 7 to an intended marriage, the Marriage Officer shall not solemnize the marriage until he has inquired into the matter of the objection and is satisfied that it ought not to prevent the solemnization of the marriage or the objection is withdrawn by the person making it; but the Marriage Officer shall not take more than thirty days from the date of the objection for the

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*purpose of inquiring into the matter of the objection and arriving at a decision.*

*(2) If the Marriage Officer upholds the objection and refuses to solemnize the marriage, either party to the intended marriage may, within a period of thirty days from the date of such refusal, prefer an appeal to the district court within the local limits of whose jurisdiction the Marriage Officer has his office, and the decision of the district court on such appeal shall be final, and the Marriage Officer shall act in conformity with the decision of the court.*

*9. Powers of Marriage Officers in respect of inquiries.- (1) For the purpose of any inquiry under Sec.8, the Marriage Officer shall have all the powers vested in a Civil Court under the Code of Civil Procedure, 1908(5 of 1908), when trying a suit in respect of the following matters, namely:*

*(a) summoning and enforcing the attendance of witnesses and examining them on oath;*

*(b) discovery and inspection;*

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*(c) compelling the production of documents;*

*(d) reception of evidence on affidavits; and*

*(e) issuing commissions for the examination of witnesses; and any proceeding before the Marriage Officer shall be deemed to be a judicial proceeding within the meaning of Sec.193 of the Indian Penal Code(45 of 1960).*

*2) If it appears to the Marriage Officer that the objection made to an intended marriage is not reasonable and has not been made in good faith he may impose on the person objecting costs, by way of compensation not exceeding one thousand rupees, and award the whole, or any part thereof to the parties to the intended marriage, and any order of costs so made may be executed in the same manner as a decree passed by the District Court within the*



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*local limits of whose jurisdiction the Marriage Officer has his office.*

*10. Procedure on receipt of objection by Marriage Officer abroad.- Where an objection is made under Sec.7 to a Marriage Officer in the State of Jammu and Kashmir in respect of an intended marriage in the State and the Marriage Officer, after making such inquiry into the matter as he thinks fit, entertains a doubt in respect thereof, he shall not solemnize the marriage but shall transmit the record with such statement respecting the matter as he thinks fit to the Central Government, and the Central Government, after making such inquiry into the matter and after obtaining such advice as it thinks fit, shall give its decision thereon in writing to the Marriage Officer shall act in conformity with the decision of the Central Government."*

However, if the marriage has already been celebrated, such marriages can be registered under

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Section 15 of the Act. There is no requirement of public notice to register a marriage under this provision.

1955

The Parliament enacted the Hindu Marriage Act, 1955. The objective of the Act was to amend and codify the marriage laws of a Hindu Couple. This Act has no additional requirements except for the solemnization of the marriage in a traditional way, unlike the SMA.

The relevant provisions of the Act read as follows:

*"8. Registration of Hindu Marriages.-(1) For the purpose of facilitating the proof of Hindu marriages, the State Government may make rules providing that the parties to any such marriage may have the particulars relating to their marriage entered in such manner and subject to such condition as may be prescribed in a Hindu Marriage Register kept for the purpose.*

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(2) Notwithstanding anything contained in sub-section (1), the State Government may, if it is of opinion that it is necessary or expedient so to do, provide that the entering of the particulars referred to in sub-section (1) shall be compulsory in the State or in any part thereof, whether in all cases or in such cases as may be specified and where any such direction has been issued, and person contravening any rule made in this behalf shall be punishable with fine which may extend to twenty-five rupees.

(3) All rules made under this section shall be laid before the State Legislature, as soon as may be, after they are made.

(4) The Hindu Marriage Register shall at all reasonable times be open for inspection, and shall be admissible as evidence of the statements therein contained and certified extracts therefrom shall, on application, be given by the Registrar on payment to him of the prescribed fee.

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*(5) Notwithstanding anything contained in this section, the validity of any Hindu marriage shall in no way be affected by the omission to make the entry."*

27.09.2006

In John Luckose v. District Registrar, 2007 (1) KLT 247, a Division Bench of the Hon'ble Kerala High Court directed the authorities to issue Marriage Certificate within 30 days, not insisting for compliance of the notice requirement under the SMA. This was done in view of the peculiar emergent situation faced by the petitioners who had solemnized their marriage earlier under the Christian law. However, in Deepak Krishna and anr. v. District Registrar and ors. AIR 2007 Ker 257, it was observed that the principles laid down in John Luckose would be confined to the facts and circumstances of the said case. Therefore, it follows that the requirements under the SMA under sections 5 and 6(2) are not relaxed in any way.

8.04.2009

The Hon'ble High Court of Delhi held that the practice of marriage officers sending notices to the permanent

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addresses of the applicants in order to verify the address is not required under the Act. In *Pranav Kumar Mishra & Anr v. Govt. of NCT. of Delhi & anr.*, 2009 SCC Online Del 725, Hon'ble Justice S. Ravindra Bhatt held:

"9. It is to be kept in mind that the Special Marriage Act was enacted to enable a special form of marriage for any Indian national, professing different faiths, or desiring a civil form of marriage. The unwarranted disclosure of matrimonial plans by two adults entitled to solemnize it may, in certain situations, jeopardize the marriage itself. In certain instances, it may even endanger the life or limb of one at the other party due to parental interference."

August 2012

Law commission of India in its Report No. 242 titled 'Prevention of Interference with the Freedom of Matrimonial Alliances (in the name of Honour and Tradition): A Suggested Legal Framework' recommended to simplify and expedite the procedural

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formalities under the Special Marriage Act in the following words:

"9.1. In order to avoid unnecessary hassles and harassment from external sources directed against the couple who are intending to marry and even their family members who would like to go according to their wishes, it is desirable that the procedure under the Special Marriage Act is simplified. The time gap between the date of giving notice of marriage and the registration should be removed and the entire process of registration of marriage should be expedited. The domicile restriction should also be removed. We are aware, that already an amendment is proposed to the Special Marriage Act by the Government of India by introducing a Bill in the Parliament. "

15.11.2013

Several couples who marry under the SMA are subject to violent threats by families, caste organisations and at times, are subject to even

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murders. Various press reports show the gravity of difficulties faced by them, including the problems created by the framework of the SMA. This aspect is discussed in report titled 'Why does the Secular Indian State Discourage Inter-Religious Marriages' by R. Nithya (NEWSCLICK, 15 November 2013). Since inter-religious and inter-caste couples face the vicious threats like honour killing, the requirement of publicising the notice turns out to be more dangerous in their case. This also poses a potential threat to the right to life of the couples under Article 21 in such cases.

2015

M. P. Rabindra Kumar Jena proposed the Special Marriage (Amendment) Bill, 2015 in the Lok Sabha. The bill states: ".... Procedural formality has been misused by unlawful groups or individuals in order to interfere with marriages in the name of 'honour' and 'tradition'." And the bill sought to amend Section 5 of the current Act. The Bill proposed the following change: -

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"2. In section 5 of the Special Marriage Act, 1954, for the words "has resided for a period of not less than thirty days", the words, "is residing" shall be substituted."

The Bill, however, is still pending before the Lok Sabha.

01.08.2016

Shashi v. PIO Sub-Divisional Magistrate (Civil Lines),  
CIC/SA/A/2016/001556 was a case before the  
Central Information Commission. It was held therein:

"20. The Commission recommends both the Governments Union and States, to consider:

a) Incorporating a column or leaving sufficient space for declaration in the application form for registration about reasonably apprehended threat to their life or liberty for exercising their choice and request for protection, and direct Marriage Officers to get the report from the concerned Station Housing Officer



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after due enquiry of the allegations of threat and secure their lives, if SHO concludes the threat is prima facie real, or

b) Take any other adequate measures to offer protection to would be partners, including taking up the draft Bill referred above with necessary changes.

21. The Commission, as per Section 19(8)(a)(iv), require public authority i.e., the Marriage Officers or SDMs, to: a) incorporate declaration about apprehended threat in the application form, and provision for due enquiry by SHO,

b) provide necessary protection in the standard operative practice or procedure,

c) add a warning against assaulting the liberty of would be partners in the form of notice for solemnization & registration of marriage, and

d) ensure wide reach to the mandatory notices to be issued under law, by placing the same on the official

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website, in an easily accessible link, highlighting under the title of 'marriage registration notices' as that is mandatory duty of public authorities under Section 4(1)(d) to facilitate the interested persons (including parents or guardians) to know and raise objections, if any, to safeguard the interests of the partners to the proposed marriage."

In the above case, incidents of assaults against the couples marrying under the SMA are recognised and safety precautions were recommended.

2017

The article titled 'Interfaith Marriages and Negotiated Spaces' written by Shwetha Varma and Neelam Sukhramani, published in *Society and Culture in South Asia* 4 (1) 16-43, South Asian University, 2017 lists various problems such as excommunication, parental alienation and violence faced by inter-religious and inter-caste couples.

AA

20.02.2018

The Hon'ble High Court of Rajasthan in Kuldeep Singh Meena v. State of Rajasthan and Ors, WP(C) No. 17080/2017, considered the validity of the practice of pasting notice at the residence of the couple intending to marry under the SMA through Station House Officers of the respective police station. The court held:

"5. Thus, the conclusion drawn by the learned Single Judge is that the procedure of affixing the notice at the residence of the parties is not warranted or authorised by law. It has been held that this would amount to a breach of privacy of the individuals.

6. We concur with the reasoning of the learned Single Judge of the Delhi High Court and thus dispose of the present petition directing all Marriage Officers in the State of Rajasthan not to despatch notices to the residence of the applicants who seeks solemnization of their marriage under the Special Marriages Act, 1954."

BB

20.07.2018

Before the Hon'ble Punjab Haryana High Court in A and Anr v. State of Haryana and ors, CWP No.15296 of 2018, the issue involved was that the Haryana Government issued a court marriage checklist, which contained 16 criteria to be followed to marry under the Special Marriage Act, 1954. The Hon'ble Court found 2 of them to be excessive executive discretionary power encroaching into the fundamental rights of the couples. Criterion 15 required that notice should be published in a newspaper. Also, another criterion was that the notice should have been sent to the parents of the respective persons who seek to get married under the Act. It was held:

"12. It is suggested to the State of Haryana to suitably modify and simplify the CMCL to bring it in line with the Act by minimal executive interference. It may restrict the list to conditions which account for fundamental procedure avoiding unwarranted overload of obstructions and superfluity. The State is not concerned with the marriage itself but with the

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procedure it adopts which must reflect the mind-set of the changed times in a secular nation promoting inter-religion marriages instead of the officialdom raising eyebrows and laying snares and land mines beneath the sacrosanct feet of the Special Marriage Act, 1954 enacted in free India to cover cases not covered by any other legislation on marriages as per choice of parties for a court marriage."

The above judgments show that how widely Section 50 of the Act empowering the States to frame rules has been interpreted. The rules made often are intrusive and violative of various rights of the concerned parties. The rule making power conferred under Sec. 50 of the Act, leads to instances of excessive delegation.

Also, for instance, consider the Andhra Pradesh State Special Marriage Rules 1959, Rule 7(3) which states:

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"Notice of the application under sub-rule (1) shall be given by the Marriage Officer by exhibiting a true copy thereof under his signature and seal in a conspicuous place in his office and by causing its publication by affixture in a conspicuous place in the village in which the parties reside. The notice shall also state that objections if any to the registration of the marriage should be preferred by the objector in person orally or in writing to the Marriage Officer within thirty days from the date on which the notice is exhibited. The cost of transmission of the copy of application to the Village Officer for affixture in a conspicuous place and other incidental charges if any, shall be collected from the parties to the marriage."

These rules violate the fundamental rights of the citizens.

25.06.2020

News report titled 'Against all odds: Meet India's happy interfaith couples' dated Adnan Bhat (25 June

2018) by Al Jazeera discusses about the extent of difficulties faced by inter faith couples who intend to marry under the SMA.

31.08.2018

The Law Commission of India in its consultation paper on 'Reform of Family law', has recommended to remove the provision which mandates 30 days for publicising notice under the SMA as it discourages inter-caste and inter-religious marriages. Relevant provisions are as follows:

"1.5 "The fact that secular laws such as the Special Marriage Act, 1954 also continue to suffer from lacunae suggests that even codified or religion-neutral laws offer no straightforward guarantee of justice."

2.110. "While the SMA, 1954 has often been considered a model law, it suffers from various serious lacunae. One of the major problems highlighted in the series of consultations held by the

Commission was that the 30-day notice period after the registration of marriage under the Act is often misused. The 30-days period offers an opportunity to kin of the couple to discourage an inter-caste or an inter-religion marriage. It is of paramount importance in the current scenario that couples opting into cross-community marriages are adequately protected. While previous Law Commission's 242nd Report Prevention of Interference with the Freedom of Matrimonial Alliances (in the name of Honour and Traditions): A Suggested Legal Framework' (2012) have discussed honour killings and the power of the Khap Panchayats, it is important to ensure that at least, willing couples can access the law to exercise their right to marry when social attitudes are against them.

2.114. "The Commission urges a reduction of this period to bring the procedure in line with all other personal laws, where registration of under Hindu Marriage Act, 1955 can be attained in a day and



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signing of a Nikahnama also confers the status of husband and wife on the couple immediately. This procedural tediousness forces couples to adopt alternate measure of marrying in a religious place of worship or converting to another religion to marry. Moreover, it also discourages couples from registering their marriage altogether because marriages outside the purview of the Act, remain valid even without registration, or marriage may take place anywhere (jurisdiction). Steps for the protection of the couples can be taken, if there is reasonable apprehension of threat to their life or liberty, and the couple request for the same. Thus, the requirement of a thirty days notice period from Sections 5, 6, 7, and 16 needs to be either deleted or adequate protections for the couple need to be in place."

28.02.2019

Article titled 'Confused About Special Marriage Act? Inter-faith Couples Take Heed' by Vakasha Sachdev in *the quint* dated 28 February 2019 analyses the

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hardships faced by the interfaith couple who intend to marry under the SMA.

14.04.2019 News report titled 'The couples on the run for love in India' by BBC News (14 April 2019) also in detail discusses about the extent of difficulties faced by inter faith couples who intend to marry under the SMA.

24.07.2020 The Kerala Government issued a circular which prohibits the practice of uploading the 'notices of intended marriage' in the website of the Registration Department as under the SMA. The action was taken on account of complaints which was received by the Government that the said facility was being misused by communal groups to spread hate on inter-faith couples.

The impugned provisions are patently illegal and violate the fundamental rights of the citizens.

31.08.2020 Hence, this writ petition

IN THE SUPREME COURT OF INDIA

[ORDER XXXVIII RULE (1)]

CIVIL ORIGINAL JURISDICTION

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

WRIT PETITION (CIVIL) NO. OF 2020

IN THE MATTER OF:

Nandini Praveen,  
Aged 20 years,  
D/o Praveen Nair,  
B8, Galaxy Clifford,  
Chillavanoor Road, Kadavanthra,  
Kochi- 682 020, Kerala.  
Aadhar Card No.674836422808  
Mobile No. 9188300258  
Email:nandini.praveen2000@gmail.com ... Petitioner

Versus

Union of India,  
Represented by the Secretary,  
Ministry of Law and Justice  
Government of India,  
Shram Shakti Bhawan, Rafi Marg,  
New Delhi – 110 001. ... Respondents

WRIT PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF  
INDIA

TO

THE HON'BLE THE CHIEF JUSTICE OF INDIA AND HIS COMPANION  
JUDGES OF THE HON'BLE SUPREME COURT OF INDIA

THE HUMBLE PETITION OF THE  
PETITIONER ABOVE NAMED

**MOST RESPECTFULLY SHOWETH:**

1. The petitioner herein is filing the present writ petition under Article 32 of the Constitution of India. This writ petition raises fundamental questions concerning the validity of Sections 6(2), 6(3), 7, 8, 9 and 10 of the Special Marriage Act, 1954.
- 1A. The petitioner has not approached any of the Respondents/authority for the reliefs sought in the present Writ Petition.
- 1B. The petitioner is a student and he is not income tax payee and also not having any PAN Card till date. The petitioner is having

Aadhar Card bearing No.674836422808. Copy of the Aadhar card is enclosed along with vakalatnama. Nandini Praveen, D/o. Praveen Nair, Aged 20 years, B8, Galaxy Clifford, Chillavanoor Road, Kadavanthra, Kochi 682 020, Kerala. Mob. 91883 00258, Email; [nandini.praveen2000@gmail.com](mailto:nandini.praveen2000@gmail.com).

- 1C. That no Civil or Criminal or revenue litigation are pending against the petitioner.
- 1D. The cause of action first arose on caused or likely to be caused to the public: Violation of right to life and right to equality guaranteed under Articles 21 and 14 of the Constitution of India of the couples intending to marry under the Special Marriage Act, 1954.
- 1E. The following injury.
  - i) Violation of fundamental rights under Article 14 of the Constitution of India
  - ii) Violation of fundamental rights under Article 21 of the Constitution of India
- 1F. The petitioner is a student and has no personal interest in the matter.

## 2. STATEMENT OF FACTS

1. The petitioner herein is filing the present Writ Petition under Article 32 of the Constitution of India for issuance of a writ, order or direction in the nature of Certiorari, Mandamus or any other appropriate writ or order challenging the constitutional validity of the following provisions of the Special Marriage Act, 1954 (hereinafter, "SMA"):

- a. Sections 6(2), 7, 8 and 10;
- b. Section 6 (3) to the extent to which it says "that Marriage Officer shall thereupon cause a copy thereof to be affixed to some conspicuous place in his office"; and
- c. Section 9 to the extent to which it deals with inquiry under Section 8 of SMA.

These provisions are apparently violative of the right to privacy guaranteed under Art. 21 of the Constitution of India and are discriminatory.

2. The petitioner herein is a citizen of India presently residing at Ernakulam District in the State of Kerala. She is a student of 3<sup>rd</sup> year LL.B. at His Highness Maharajas Government Law College, Ernakulam. The petitioner is a law abiding citizen and she had

been taking keen interest in the socio-legal affairs of the nation. In an earlier occasion, she had filed an Interim Application as I.A. 1 /2020 in WP (C) No. TMP 285/2020 before the Hon'ble High Court of Kerala, defending the ordinance no. 30 of 2020 issued by the Government of Kerala as per Notification No. 693/Leg.A1/2020/Law dated 30.04.2020, promulgated to cater the larger public interest to deal with the acute financial crisis faced by the State during the time of pandemic. In the said case, the Hon'ble High Court of Kerala, by accepting the contentions of the petitioner as well, refused to stay the operation of the above said ordinance. The petitioner also had filed WP (C) 532/2020 challenging the changes brought in labour laws by different states before this Hon'ble Court, which was subsequently dismissed.

3. The petitioner has not filed any similar Writ Petition before this Hon'ble Court or in any of the High Courts. She has not approached any of the respondents/authority for the reliefs sought in the present Writ Petition. The petitioner has no individual or personal interest in the matter and the petition is being preferred exclusively on larger public interest. It is further submitted that there is no civil, criminal or revenue litigation, involving the

petitioner herein, which has or could have a legal nexus with the issues involved in the present Public Interest Litigation.

4. The petitioner herein has the locus to file the present Public Interest Litigation. She is a public spirited person and is keen and active in fighting for the cause of public in general. The adverse impact of the provisions impugned in this Writ Petition is that those intrude into the privacy rights of the couple who intend to marry under SMA, and violate the right to privacy guaranteed to individuals under Art. 21 of the Constitution of India. Those provisions are also discriminatory, since such requisition of public notice intruding into the privacy of the parties to marriage is absent in the provisions of personal laws, except under the Indian Christian Marriage Act, 1872. Hence this petitioner has locus standi to file the instant Writ Petition challenging the said provisions before this Hon'ble Court under Article 32 of the Constitution of India.
5. The petitioner herein is preferring the writ petition in the form of a PIL and the same squarely falls within the ambit of the guidelines prescribed in the decision of this Hon'ble Court in State of



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Uttaranchal v. Balwant Singh Chaufal and Others, 2010 (3) SCC 402 and subsequent judgments wherein this Hon'ble Court had reiterated the prerequisites of a PIL.

6. An affidavit of undertaking that there is no personal gain, private or oblique reason for the petitioner herein in filing the instant PIL is enclosed with vakalathnama.
7. The above provisions are discriminatory and violative of Art. 14, Art. 15 and Art.21 of the Constitution of India.
8. The petitioner herein has no personal gain, private motive or oblique reason in filing the instant Public Interest Litigation. The Petitioner herein has filed the Public Interest Litigation with the noble aim of assisting this Hon'ble Court in ensuring gender justice. The Petitioner herein is not involved in any litigation before any other forum/ court/ authority which have nexus with the instant petition.
9. Sole respondent herein is the Union of India.

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**FACTS OF THE CASE ARE AS FOLLOWS:**

1. The Special Marriage Act, 1954 (hereinafter, "SMA") was brought in effect replacing the old Act of 1872 to enact comprehensively legislation in the light of India attaining independence. Ss. 6 (2) and (3) and Ss. 7 to 10 of the SMA, require publication of the details of the parties to the proposed marriage and provide for further proceedings after such publication. Such provisions constitute intrusion into the right to privacy of the couples who want to register their marriage under the SMA. Therefore, though the SMA was brought in with an intention to enact a secular law, in reality, due to the impugned provisions, create hardships to interfaith couples. The impugned provisions allow the State to make a private affair between two individuals i.e. a marriage, open for public scrutiny. Thus, the provisions of this Act, need a re-visit in the light of the judgment in Justice K. S. Puttaswamy v. Union of India (2017) 10 SCC 1, which held that the right to privacy is a fundamental right guaranteed by the Constitution of India.
2. The prime purpose of the Act was to address inter-religious marriages and to establish marriage as a secular institution bereft of all religious formalities, which required registration alone. There

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is no other enactment which permits two individuals of different faiths to enter into a matrimony. Therefore, by insisting on publication of individual details and by opening such details for public scrutiny, the people from inter faith sections are discriminated. No other personal law, except the Indian Christian Marriage Act, 1872 to an extent, has a requirement like the above. The above said provision in the SMA is a clear violation of the equality doctrine enshrined and protected under Article 14 and Article 15 of the Constitution of India. An enactment introduced to advance the secular nature of the nation acts as a tool for identifying and harassing the individuals who intend to have a secular marriage. The requirement of publication of notice and inviting objections against the marriage has origins in canon law. The fact that the statutory marriages in European nations also have such a requirement till date fortifies the colonial influence over the SMA, a post-independence statute. There is no other basis for this requirement. The provisions which were mechanical imitation of Victorian laws have turned draconian in the Indian context. The same are liable to be struck down.

3. The Law commission of India in its Report No. 242 titled 'Prevention of Interference with the Freedom of Matrimonial Alliances (in the name of Honour and Tradition): A Suggested Legal Framework' after discussing about the harassment faced by the couple from family and external sources, due to their decision to marry under SMA, observed that "The time gap between the date of giving notice of marriage and the registration should be removed and the entire process of registration of marriage should be expedited."
4. Various High Courts on different occasions had pointed out the fallacy of publication/issuance of notice reading the intention of two individuals to marry under the SMA. In *John Luckose v. District Registrar* 2007 (1) KLT 247, a Division Bench of the Hon'ble Kerala High Court, directed the authorities to issue Marriage Certificate within 30 days, without insisting for compliance of the notice requirement under the SMA in view of the emergent situation faced by the petitioners. They had solemnized their marriage earlier under the Christian law. In *Pranav Kumar Mishra & anr v. Govt. of NCT. of Delhi & anr* 2009 SCC Online Del 725, the Hon'ble High Court of Delhi held that the

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practice of marriage officers sending notices to the permanent addresses of the applicants in order to verify the address is not required under the Act. In *Kuldeep Singh Meena v. State of Rajasthan and ors*, WP(C) No. 17080/2017, the Hon'ble High Court of Rajasthan considered the validity of the practice of pasting notice at the residence of the couple intending to marry under the SMA through Station House Officers of the respective police station. In the said case it was held that:

"We concur with the reasoning of the learned Single Judge of the Delhi High Court and thus dispose of the present petition directing all Marriage Officers in the State of Rajasthan not to despatch notices to the residence of the applicants who (3 of 3) [CW-17080/2017] seeks solemnization of their marriage under the Special Marriages Act, 1954".

Hon'ble Punjab Haryana High Court in *A and anr. v. State of Haryana and ors*, CWP No.15296 of 2018, while considering the validity of court marriage checklist issued by the Haryana Government, which contained 16 criteria to be followed to marry

under the Special Marriage Act, 1954, held that “the State is not concerned with the marriage itself but with the procedure it adopts which must reflect the mind-set of the changed times in a secular nation promoting inter-religion marriages instead of the officialdom raising eyebrows and laying snares and land mines beneath the sacrosanct feet of the Special Marriage Act, 1954”. In *Shashi v. PIO Sub-Divisional Magistrate (Civil Lines)*, CIC/SA/A/2016/001556, which was a case before the Central Information Commission incidents of assaults against the couples marrying under the SMA is recognised and safety precautions were recommended.

5. Therefore, the impugned provisions which do not reflect the secular nature of our constitution and on the other hand which violate the fundamental rights guaranteed by the Constitution are only liable to be struck down.
6. The Law Commission of India in its consultation paper on 'Reform of Family law' dated 31.08.2018, has recommended to remove the provision which mandates 30 days for publicising notice under the SMA as it discourages inter-caste and inter-religious marriages.

7. Thus, the impugned provisions are only liable to be struck down as unconstitutional. It is submitted that as per the ratio of the judgments in Justice K. S. Puttaswamy v. Union of India (2017) 10 SCC 1 and Ram Jethmalani v Union of India (2011) 8 SCC 1, the impugned provisions are violative of fundamental right to privacy.
8. Subjecting the couples marrying under the SMA to a requirement of causing publication of their details, and not subjecting the couples marrying under the Hindu Marriage Act or/and Islamic law violates the right to equality of such couples under Articles 14 and 15 of the Constitution. Merely because one marries under the SMA, she or he cannot be subject to an unreasonable burden of having to give away her or his personal details for publication in public domain which couples marrying under other laws are not subjected to.
9. The impugned provisions violate the fundamental right to live with dignity as well. The position currently is such that for exercising the right to marry, a couple has to necessarily waive the right to privacy and has to undergo the procedure of private details being

published. This infringes the rights of autonomy, dignity and the right to marry of various couples. The impugned provisions seriously hamper the rights of the couples to marry with dignity and they violate the judgments in *Shakti Vahini v. Union of India* (2018) 7 SCC 192 and *Shafin Jahan v. Asokan K.M.* (2018) 16 SCC 368.

10. In the Second Schedule of the SMA, the format of the notice to be given by the parties intending to marry under SMA is given. A copy of the Second Schedule, Notice of the intended marriage provided in the Special Marriage Act, 1954 is produced herewith and marked as ANNEXURE P/1 (Pg. 52 to 53). As per Annexure P1, the parties intending to marry under the SMA have to give details like their full address, age, marital status etc., which will have to be published as per the impugned provisions.
11. The Law commission of India in its Report No. 242 titled 'Prevention of Interference with the Freedom of Matrimonial Alliances (in the name of Honour and Tradition): A Suggested Legal Framework' recommended to simplify and to expedite the procedural formalities under the SMA. A copy of the relevant



pages of the Law commission of India in its Report No. 242 titled 'Prevention of Interference with the Freedom of Matrimonial Alliances (in the name of Honour and Tradition): A Suggested Legal Framework' of August 2012 is produced herewith and marked as ANNEXURE P/2 (Pg. 53 to 75).

12. Several couples who marry under the SMA are subject to violent threats by families, caste organisations and at times, even death. Various press reports show the gravity of difficulties faced by them, including the problems created by the framework of the SMA. A copy of the report titled 'Why does the Secular Indian State Discourage Inter-Religious Marriages' by R. Nithya (NEWSCLICK, 15 November 2013) is produced herewith and marked as ANNEXURE P/3 (Pg. 76 to 84).
13. The article titled 'Interfaith Marriages and Negotiated Spaces' written by Shwetha Varma and Neelam Sukhramani, published in Society and Culture in South Asia 4 (1) 16-43, South Asian University, 2017 lists various problems such as excommunication, parental alienation and violence faced by inter- religious and inter-caste couples. A copy of the article titled Inter-Caste or Inter-

Religious Marriages and Honour Related Violence in India authored by Dr. Dharmendra Kumar Singh (International Journal of Humanities and Social Science Invention, ISSN (Online): 2319 – 7722, ISSN (Print): 2319 – 7714 [www.ijhssi.org](http://www.ijhssi.org), Volume 6 Issue 6, June. 2017, PP.49-53) on the socio-legal aspects of honour killings is produced herewith and marked as **ANNEXURE P/4 (Pg. 81-85 to 85)**.

14. News report titled 'Against all odds: Meet India's happy interfaith couples' dated Adnan Bhat (25 June 2018) by Al Jazeera discusses about difficulties faced by the inter faith couples who intend to marry under the SMA. A copy of the news report titled 'Against all odds: Meet India's happy interfaith couples' dated Adnan Bhat (25 June 2018) by Al Jazeera is produced herewith and marked as **ANNEXURE P/5 (Pg. 86 to 95)**.
15. It is submitted that the Law Commission of India in its consultation paper dated 31.08.2018 on 'Reform of Family law', has recommended to remove the provision which mandates 30 days for publicising notice under the SMA as it discourages inter-caste and inter-religious marriages. A copy of the relevant pages of the

consultation paper dated 31.08.2018 on 'Reform of Family law' by the Law Commission of India is produced herewith and marked as ANNEXURE P/6 (Pg. 96 to 102).

16. A copy of the article titled 'Confused About Special Marriage Act? Inter-faith Couples Take Heed' by Vakasha Sachdev in the quint dated 28 February 2019 is produced herewith and marked as ANNEXURE P/7 (Pg. 103 to 112). A copy of the news report titled 'The couples on the run for love in India' by BBC News (14 April 2019) is produced herewith and marked as ANNEXURE P/8 (Pg. 113-121 to ). Annexure P7 and P8 also in detail discuss the difficulties faced by inter faith couples who intend to marry under the SMA.
17. It is submitted that the Kerala Government issued a circular dated 24.07.2020 which prohibits the practice of uploading the 'notices of intended marriage' in the website of the Registration Department as under the SMA. The action was taken on account of complaints received by the Government that the said facility was being misused by communal groups to spread hate on inter-faith couples.

18. In the above circumstances, the following sections of the SMA are sought to be declared as unconstitutional:

- a. Ss. 6(2) and Ss. 7 to 8 and 10
- b. S. 6 (3) to the extent to which it says "that Marriage Officer shall thereupon cause a copy thereof to be affixed to some conspicuous place in his office."
- c. S. 9 to the extent to which it deals with inquiry under S. 8 of the SMA.

The above Sections are liable to be struck down. Several substantial questions of law and violation of the fundamental rights are involved in the present case. Therefore, this Hon'ble Court has jurisdiction to entertain the instant case moved under Article 32 of the Constitution.

19. The Petitioner has not filed any other Writ Petition before this Hon'ble Court or any High Court seeking similar relief.

**PRIVACY**

- A. Section 5 of the Special Marriage Act, 1954, (hereinafter, "SMA") requires that a notice of intended marriage to be given by the parties to the marriage to the Marriage Officer of the district "in which at least one of the parties to the marriage has resided for a period of not less than thirty days immediately preceding the date on which such notice is given." As per Section 6, all such notices received shall be entered in the marriage notice book and the Marriage Officer "shall cause every such notice to be published by affixing a copy thereof to some conspicuous place in his office." As per Section 6(3), if the parties do not permanently reside within the jurisdiction of the officer who received the notice, a copy shall be transmitted to cause its publication in the relevant marriage office. Also, as per the said clause the marriage officer has to "cause a copy (of notice) to be affixed to some conspicuous place in his office". It is relevant to note that publishing details of notice of marriage by the marriage officers include the details of the parties like names, date of birth, age, occupation, parents' names and details, address, pin code, identity information, phone number etc. This is a peculiar requirement of the SMA. Clauses (2) and (3)

of Section 6 to the extent to which those direct to cause affixture of notice in some conspicuous place in the office of Marriage Officer are violative of the right to privacy of the parties to the marriage. Sections 7 to 8 and 10 of the SMA and S. 9 to the extent to which it deals with inquiry under S. 8 of the Act are also violate the right to privacy of the parties to the marriage. These provisions are liable to be struck down.

- B. The right to privacy is held to be an aspect of the right to life under Article 21 of the Constitution, as reiterated in many judgments of this Hon'ble Court. Individual autonomy necessarily includes the right to have control over one's personal information and its accessibility. In Justice K. S. Puttaswamy v. Union of India (2017) 10 SCC 1, the majority judgment held that privacy is a fundamental right. More importantly, therein this Hon'ble Court specifically dealt with informational privacy. While discussing the aspects of information, the court noted:

"The age of information has resulted in complex issues for informational privacy. These issues arise from the nature of information itself. Information has three facets: it is

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nonrivalrous, invisible and recombinant. Information is nonrivalrous in the sense that there can be simultaneous users of the good – use of a piece of information by one person does not make it less available to another. Secondly, invasions of data privacy are difficult to detect because they can be invisible. Information can be accessed, stored and disseminated without notice. Its ability to travel at the speed of light enhances the invisibility of access to data, “information collection can be the swiftest theft of all. Thirdly, information is recombinant in the sense that data output can be used as an input to generate more data output.” (footnotes omitted).

The impugned provisions violate this right.

- C. Informational privacy is usually discussed in the context of the digital age and digital information. However, there is no reason why the information provided under Section 6 of the SMA would not be entitled to the protection of informational privacy. Therefore, the personal information required under Section 6 is protected under the ambit of privacy under Article 21. In

Puttaswamy (supra), it was held that all restraints on privacy right must be subject to the three-tier test, familiar to international human rights law: legality, legitimacy and proportionality. It was held:

“These three requirements apply to all restraints on privacy (not just informational privacy). They emanate from the procedural and content-based mandate of Article 21. The first requirement that there must be a law in existence to justify an encroachment on privacy is an express requirement of Article 21. For, no person can be deprived of his life or personal liberty except in accordance with the procedure established by law. The existence of law is an essential requirement.”

The law in the instant case is Sections 6 (2) and (3) and other provisions dealing with objection and inquiry on objection of the SMA. The requirement of the law, however, unreasonably intrudes into the privacy of individuals requiring them to provide their details causing it to be published for access to any individual. The prescription of the law that personal details can be published,



without limiting its accessibility is a vitiating factor for the law warranting interference of this Hon'ble Court.

D. It was further held in Puttaswamy (supra):

"Second, the requirement of a need, in terms of a legitimate state aim, ensures that the nature and content of the law which imposes the restriction falls within the zone of reasonableness mandated by Article 14, which is a guarantee against arbitrary state action. The pursuit of a legitimate state aim ensures that the law does not suffer from manifest arbitrariness. Legitimacy, as a postulate, involves a value judgment. Judicial review does not re-appreciate or second guess the value judgment of the legislature but is for deciding whether the aim which is sought to be pursued suffers from palpable or manifest arbitrariness. The third requirement ensures that the means which are adopted by the legislature are proportional to the object and needs sought to be fulfilled by the law. Proportionality is an essential facet of the guarantee against arbitrary state action because it ensures that the nature and

quality of the encroachment on the right is not disproportionate to the purpose of the law. Hence, the three-fold requirement for a valid law arises out of the mutual inter-dependence between the fundamental guarantees against arbitrariness on the one hand and the protection of life and personal liberty, on the other. The right to privacy, which is an intrinsic part of the right to life and liberty, and the freedoms embodied in Part III is subject to the same restraints which apply to those freedoms."

The impugned provisions fail to meet both legitimacy and proportionality. It is unclear as to what is the state interest that is sought to be protected by publication of the personal and intimate details of the parties to the marriage. It is evident that the State is trying to make a private affair between two individuals a public affair. It is settled that under proportionality test, the court would determine whether "the means adopted to achieve the end sought do so by impairing as little as possible the right or freedom in question" (*R. v Big M Drug Mart Ltd.* [1985] 1 SCR. 295, Supreme Court of Canada). The impugned provisions are not measures which impair the right to privacy as little as possible, but in fact,

interfere with the right to personal information greatly. The impugned provisions, therefore, do not fulfil the tests of legitimacy and proportionality.

E. In Puttaswamy (supra), it was further held:

“322. Privacy is the constitutional core of human dignity. Privacy has both a normative and descriptive function. At a normative level privacy subserves those eternal values upon which the guarantees of life, liberty and freedom are founded. At a descriptive level, privacy postulates a bundle of entitlements and interests which lie at the foundation of ordered liberty.

323. Privacy includes at its core the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home and sexual orientation. Privacy also connotes a right to be left alone. Privacy safeguards individual autonomy and recognises the ability of the individual to control vital aspects of his or her life. Personal choices governing a way of life are intrinsic to privacy.

Privacy protects heterogeneity and recognises the plurality and diversity of our culture. While the legitimate expectation of privacy may vary from the intimate zone to the private zone and from the private to the public arenas, it is important to underscore that privacy is not lost or surrendered merely because the individual is in a public place. Privacy attaches to the person since it is an essential facet of the dignity of the human being.”

Marriage is a private decision taken by two consenting adults and the SMA was formulated to provide a secular form of marriage. This Hon'ble Court has noted that the right to control the dissemination of personal information is an essential aspect under the right to privacy. Therefore, publication of personal information of the parties such as their age, occupation, place of dwelling and permanent place of residence as prescribed under the notice of intended marriage on a public space accessible to everyone violates the privacy of individuals to be the decision makers of their own marriage. The publication of such vital personal information is an encroachment to the lives of the parties involved in the procedure and curtails their liberty to keep their marriage as

a private affair. Hence, it is submitted that the of publication of notice of intended marriage under Section 6(2) of the SMA and other provisions under challenge in this writ petition violate the fundamental right to privacy.

- F. The significance of the right to privacy was underlined by this Hon'ble Court in a series of cases. In *Ram Jethmalani v. Union of India* (2011) 8 SCC 1, it was held:

"83. Right to privacy is an integral part of right to life. This is a cherished constitutional value, and it is important that human beings be allowed domains of freedom that are free of public scrutiny unless they act in an unlawful manner.... The notion of fundamental rights, such as a right to privacy as part of right to life, is not merely that the State is enjoined from derogating from them. It also includes the responsibility of the State to uphold them against the actions of others in the society, even in the context of exercise of fundamental rights by those others."

(Also see R. Rajagopal alias R.R. Gopal and another v. State of Tamil Nadu (1994) 6 SCC 632 and PUCL v. Union of India, (1997) 1 SCC 301).

Section 6(2) and S. 6 (3) to the extent impugned, therefore, being violative of the fundamental rights of the citizens, is liable to be struck down. Other impugned provisions, which are clearly enacted as a continuation of S. 6 (2) and S 6 (3) are also liable to be struck down.

#### DISCRIMINATION

- G. For those marrying under the Hindu Marriage Act, 1955, the requirement of public notice is absent. For marriages under the customary law in Islam as well, such a requirement is absent. Section 13 of the Indian Christian Marriage Act, 1872, however, contemplates a similar requirement. Subjecting the couples marrying under the SMA to a requirement of causing publication of their details, and not subjecting the couples marrying under the Hindu Marriage Act and Islamic law violates the right to equality under Articles 14 and 15 of the Constitution. The traditional test of

equality requires the state to fulfil (i) intelligible differentia (ii) rational nexus with the aim. In *State of W.B. v. Anwar Ali Sarkar*, AIR 1952 SC 75, it was held:

"In order to pass the test of permissible classification two conditions must be fulfilled viz. (i) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others left out of the group, and (ii) that the differentia must have a rational relation to the objects sought to be achieved by the Act. The differentia which is the basis of the classification and the object of the Act are distinct and what is necessary is that there must be nexus between them."

There is no intelligible differentia between couples marrying under the SMA compared to couples marrying under Islamic law or the Hindu Marriage Act. Although the legislations were traditionally enacted for different religious communities, the distinction has now become loose since persons belonging to any religion are entitled to marry under the SMA. Merely because one marries under the SMA, he or she cannot be subject to an unreasonable

burden – of having to give away her or his personal details for publication in public domain which couples marrying under the other laws are not subjected to. The couples seeking to marry is the common group and there cannot be any distinction within this group subjecting some among the group to a higher burden than the others. There is no rational aim which the state seeks to achieve by making this distinction. No rational aim is sustained by subjecting one group of couples to a serious violation of privacy. For this reason also, the impugned provisions are liable to be struck down.

- H. It is submitted that the impugned provisions have a disparate impact on inter-faith couples. This is to say that they are subject to additional burdens compared to couples marrying under, for example, the Hindu Marriage Act or Islamic Law. Therefore, merely because they choose to marry under the SMA, they are imposed with serious constraints. This violates the aspect of fundamental choice of the couples, which is held to be an aspect protected under Article 15(1) by Hon'ble Chandrachud J., in *Navtej Singh Johar v. Union of India* (2018) 10 SCC 1. This must be read coupled with the grave failure on the part of the state to



prevent honour killings and prevent the threat of life to inter caste couples in general. In the context of having already placed in a vulnerable position, the requirements under the impugned provisions constitute discrimination against couples marrying under SMA. The impugned provisions therefore, are liable to be struck down.

#### PERSONAL AUTONOMY AND DIGNIFIED LIFE

- I. The requirement under Section 5 of a mandatory notice of 30 days and the requirement of Section 6(2) requiring publication of the details severely hamper the right to marry of couples under the SMA. Publication of personal details often might have a chilling effect on the right to marry. The position currently is such that for exercising the right to marry, a couple has to necessarily waive the right to privacy and has to undergo the procedure of private details being published. This infringes the rights of autonomy, dignity and the right to marry of various couples.

- J. This Hon'ble Court in *Shakti Vahini v. Union of India* (2018) 7 SCC 192 held that the right of two adults to choose their life partners is recognized under Articles 19 and 21 of the Constitution of India. This right is threatened to a great extent by the impugned provision. It was held:

"1. Assertion of choice is an insegregable facet of liberty and dignity. When the ability to choose is crushed in the name of class honour and the person's physical frame is treated with absolute indignity, a chilling effect dominates over the brains and bones of the society at large. The question that poignantly emanates for consideration is whether the elders of the family or clan can ever be allowed to proclaim a verdict guided by some notion of passion and eliminate the life of the young who have exercised their choice to get married against the wishes of their elders or contrary to the customary practice of the clan. The answer has to be an emphatic "No". It is because the sea of liberty and the ingrained sense of dignity do not countenance such treatment inasmuch as the pattern of behaviour is based on some extra-constitutional perception. Class honour,

howsoever perceived, cannot smother the choice of an individual which he or she is entitled to enjoy under our compassionate Constitution. And this right of enjoyment of liberty deserves to be continually and zealously guarded so that it can thrive with strength and flourish with resplendence. It is also necessary to state here that the old order has to give way to the new. Feudal perception has to melt into oblivion paving the smooth path for liberty."

"42.....There is no known authority to which this duty can be delegated but the community itself. There is no known means of stimulating this vigilance but education of the community towards an enlightened interest in its legal system, its achievements and its problems." Honour killing guillotines individual liberty, freedom of choice and one's own perception of choice. It has to be sublimely borne in mind that when two adults consensually choose each other as life partners, it is a manifestation of their choice which is recognized under Articles 19 and 21 of the Constitution. Such a right has the sanction of the constitutional law and once that is recognized, the said

right (1994) 3 SCC 569 needs to be protected and it cannot succumb to the conception of class honour or group thinking which is conceived of on some notion that remotely does not have any legitimacy.

43. The concept of liberty has to be weighed and tested on the touchstone of constitutional sensitivity, protection and the values it stands for. It is the obligation of the Constitutional Courts as the sentinel on qui vive to zealously guard the right to liberty of an individual as the dignified existence of an individual has an inseparable association with liberty. Without sustenance of liberty, subject to constitutionally valid provisions of law, the life of a person is comparable to the living dead having to endure cruelty and torture without protest and tolerate imposition of thoughts and ideas without a voice to dissent or record a disagreement. The fundamental feature of dignified existence is to assert for dignity that has the spark of divinity and the realization of choice within the parameters of law without any kind of subjugation. The purpose of laying stress on the concepts of individual dignity and

choice within the framework of liberty is of paramount importance. We may clearly and emphatically state that life and liberty sans dignity and choice is a phenomenon that allows hollowness to enter into the constitutional recognition of identity of a person.

44. The choice of an individual is an inextricable part of dignity, for dignity cannot be thought of where there is erosion of choice. True it is, the same is bound by the principle of constitutional limitation but in the absence of such limitation, none, we mean, no one shall be permitted to interfere in the fructification of the said choice. If the right to express one's own choice is obstructed, it would be extremely difficult to think of dignity in its sanctified completeness. When two adults marry out of their volition, they choose their path; they consummate their relationship; they feel that it is their goal and they have the right to do so. And it can unequivocally be stated that they have the right and any infringement of the said right is a constitutional violation. The majority in the name of class or elevated honour of clan cannot call for their presence or force their

appearance as if they are the monarchs of some indescribable era who have the power, authority and final say to impose any sentence and determine the execution of the same in the way they desire possibly harbouring the notion that they are a law unto themselves or they are the ancestors of Caesar or, for that matter, Louis the XIV. The Constitution and the laws of this country do not countenance such an act and, in fact, the whole activity is illegal and punishable as offence under the criminal law."

The impugned provisions seriously hamper the rights of the couples to marry with dignity, which forms the right to life under Article 21 of the Constitution of India.

- K. Further, in *Shafin Jahan v. Asokan K.M.* (2018) 16 SCC 368, this Hon'ble Court reiterated that a person's right to marry a person is an integral part of Article 21 which is enshrined in the Constitution. It was held:

"84. A marriage can be dissolved at the behest of parties to it, by a competent court of law. Marital status is conferred through legislation or, as the case may be, custom.

Deprivation of marital status is a matter of serious import and must be strictly in accordance with law. The High Court in the exercise of its jurisdiction under Article 226 ought not to have embarked on the course of annulling the marriage. The Constitution recognises the liberty and autonomy which inheres in each individual. This includes the ability to take decisions on aspects which 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 a 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 Constitution guarantees to each individual the right freely to practise, profess and propagate religion. Choices of faith and belief as indeed choices in matters of marriage lie within an area where individual autonomy is supreme. The law prescribes conditions for a valid marriage. It provides remedies when relationships run aground. Neither the State nor the law can dictate a choice of partners or limit the free ability of every person to decide on these matters. They form the essence of personal liberty

under the Constitution. In deciding whether Shafin Jahan is a fit person for Hadiya to marry, the High Court has entered into prohibited terrain. Our choices are respected because they are ours. Social approval for intimate personal decisions is not the basis for recognising them. Indeed, the Constitution protects personal liberty from disapproving audiences."

The impugned provisions are liable to be struck down on the strength of the ratio in this judgment as well.

In the said matter, the court noted that intimacies of marriage lie within a core zone of privacy which is inviolable. Therefore, publication of personal information in a public office as a pre-condition for a marriage under the SMA violates the rights of individuals in choosing their life partner as accorded fundamental rights. The leakage of private information of the parties to marriage violates their right to privacy, causing them to face social stigmatization and prejudice from the society for having married a person from another religion or caste. The instances of honour killing in case of inter-religious and inter-caste marriages are not



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negligible. Hence, publication of personal information under Sections 6(2) and 6 (3) of the Act leads to putting the lives of parties to marriage at risk and is violative of their right to privacy and protection of personal information.

L. It is submitted that the legality of various additional requirements with regard to publication of notice of intended marriage under Section 6 of the Special Marriage Act has been challenged in A and anr v. State of Haryana and ors. (CWP No.15296 of 2018 (O&M)), Kuldeep Singh Meena v. State of Rajasthan and ors (D.B. Civil Writs No. 17080/2017), and in Pranav Kumar Mishra & anr. v. Govt. of Nct. of Delhi & anr. (WP(C) No.748/2009). In Kuldeep Singh Meena v. State of Rajasthan and ors (D.B. Civil Writs No. 17080/2017), the Delhi High Court held that sending notices to the residences of the parties to marriage is violative of their right to privacy and is an unwarranted procedure. The court noted as follows:

"8. It becomes clear on a textual reading of the relevant provisions of the Act and the information procured from the website of the Govt. of Delhi that no requirement of posting

negligible. Hence, publication of personal information under Sections 6(2) and 6 (3) of the Act leads to putting the lives of parties to marriage at risk and is violative of their right to privacy and protection of personal information.

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"8. It becomes clear on a textual reading of the relevant provisions of the Act and the information procured from the website of the Govt. of Delhi that no requirement of posting

of notice to applicants" addresses or service through the SHO, or visit by him is prescribed in either the Act or the website. The Petitioner's concerns and apprehensions are justified. Absent any legal compulsion - as is the position - for sending notices to residential addresses in case of solemnization of the marriage, in terms of Sections 4 and 5, their dispatch can well amount to breach of the right to privacy, which every individual is entitled to (Ref Govind v. State of MP, (1975) 2 SCC 148, R. Rajagopal v. State of T.N. (1994) 6 SCC 632, District Registrar and Collector v. Canara Bank (2005) 1 SCC 496.

9. It is to be kept in mind the that the Special Marriage Act was enacted to enable a special form of marriage for any Indian national, professing different faiths, or desiring a civil form of marriage. The unwarranted disclosure of matrimonial plans by two adults entitled to solemnize it may, in certain situations, jeopardize the marriage itself. In certain instances, it may even endanger the life or limb of one at the other party due to parental interference."

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Likewise, publication of personal details of the parties to marriage under Sections 6(2) and (3) of the Act is an unwarranted disclosure of matrimonial plans that is capable of endangering the personal data and life of the parties to marriage and the law needs to be struck down as unconstitutional. Recently, the Hon'ble Punjab- Haryana High Court in A and anr v. State of Haryana and ors. (CWP No.15296 of 2018 (O&M)) considered the legality of procedure followed under the SMA and held as follows:

"9. In the considered view of this Court the CMCL, except as indicated below, deserves to be disregarded as its terms and conditions largely violate the rights to privacy of the petitioners which is now declared fundamental right. The provisions appear particularly offensive and excessive executive action beyond the purview of the Act and have, therefore, to be ignored save and except the provision of residence/domicile to confer jurisdiction on the Marriage Officer in the last sentence of condition No.11. But the word "permanent" in condition 11 will be read down to mean also temporary residence which would suffice if stay is for 30 days prior to the filing of the application under Section 5 of

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the Act. The petitioners are willing to provide their respective passports to prove their domiciles and places of permanent/temporary residence in Gurugram/ for 'A' and Faridabad for 'B'. This should suffice and be excepted by the Marriage Officer, Gurugram. However, condition No.14 is to be 5 of 8 CWP No.15296 of 2018 (O&M) obeyed as it has statutory backing and shall be employed in the manner prescribed under Section 14 of the Act. Advance notice to parents of the petitioners shall be dispensed with as are not required to strictly maintain privacy rights, their right to life and liberty in view of the rulings of the Delhi High Court and the Rajasthan High Court in cases Pranav Kumar Mishra & anr. v. Government of NCT of Delhi & anr, WP (C) 748 of 2009 decided on 18.04.2009 in which ruling the Division Bench of the Delhi High Court held while considering similar circumstances and the provisions of the Act.

Also, the court stated as follows:

"12. It is suggested to the State of Haryana to suitably modify and simplify the CMCL to bring it in line with the Act

by minimal executive interference. It may restrict the list to conditions which account for fundamental procedure avoiding unwarranted overload of obstructions and superfluity. The State is not concerned with the marriage itself but with the procedure it adopts which must reflect the mind-set of the changed times in a secular nation promoting inter-religion marriages instead of the officialdom raising eyebrows and laying snares and land mines beneath the sacrosanct feet of the Special Marriage Act, 1954 enacted in free India to cover cases not covered by any other legislation on marriages as per choice of parties for a court marriage."

In the aforementioned cases, the constitutional validity of Section 6 was not challenged, but legality of procedures adopted by the executive under Section 6 of the Act were considered. The procedure of sending notices to the residences of the parties to the marriages was held as violative of the privacy rights of the individuals. It is submitted that publication of such personal information on a public space in the marriage office as warranted under Sections 6(2) and S. 6 (3) of the Act is a potential threat to

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life of the parties to the marriage. Their personal information including their occupation, place of dwelling and address of permanent residence is put up for public scrutiny. Such demographic information can be misplaced and misused which is not just violation of right to privacy but can also endanger the lives of parties to marriage, thereby also violating right to life under Article 21 of the Constitution.

- M. Reports of honour killings and violence against inter caste and inter religious couples are predominant. One of the ways to access details of the couples marrying under the SMA is through the public notice under Sections 6(2) and 6(3) of the Act. In *Lata Singh v. State of U.P. & another*, AIR SCW 3499, the Hon'ble judges have noted:

"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. If the parents of the boy or girl do not approve of such inter-caste or inter-religious marriage the maximum they can do is that they can cut off social relations with the son or the daughter, but they cannot give threats or commit or instigate acts of violence and cannot harass the person who undergoes such inter-caste or inter-religious marriage. We, therefore, direct that the administration/police authorities throughout the country will see to it that if any boy or girl who is a major undergoes inter-caste or inter-religious marriage with a woman or man who is a major, the couple are not harassed by any one nor subjected to threats or acts of violence, and anyone who gives such threats or harasses or commits acts of violence either himself or at his instigation, is taken to task by



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instituting criminal proceedings by the police against such persons and further stern action is taken against such persons as provided by law."

The impugned provisions are liable to be struck down as unconstitutional in the spirit of this judgment as well.

- N. In many cases, this Hon'ble Court has stressed on the importance to encourage the inter-faith marriages. In Valsamma Paul (Mrs) v. Cochin University, (1996) 3 SCC 545, it was held:

"24. The approach in reconciling diverse practices, customs and traditions of the marriages as one of the means for social and national unity and integrity and establishment of Indian culture for harmony, amity and self-respect to the individuals, is the encouragement to inter-caste, intersect, inter-religion marriages from inter-region. The purposive interpretation would, therefore, pave way to establish secularism and a secular State."

The impugned provisions act as hindrances to this aspiration.

- O. As per Section 11 of the SMA, "before the marriage is solemnized the parties and three witnesses shall, in the presence of the Marriage Officer, sign a declaration in the form specified in the Third Schedule to this Act, and the declaration shall be countersigned by the Marriage Officer." Apart from the parties the witnesses are also giving declaration to the effect that the parties to the marriage satisfy the criteria laid down by Section 4 of the SMA. Therefore, there is no requirement of calling for objection from the public.
- P. Therefore, the impugned provisions are liable to be struck down as violative of fundamental rights of the couples under Articles 14, 19 and 21 of the Constitution of India.

#### PRAYER

It is therefore most respectfully prayed that this Hon'ble Court may be pleased to:

- A. Strike down Sections 6(2), 7, 8 and 10 of the Special Marriage Act, 1954 as unjust, illegal and unconstitutional;

- B. Strike down S. 6 (3) of the Special Marriage Act, 1954 to the extent to which it says "that Marriage Officer shall thereupon cause a copy thereof to be affixed to some conspicuous place in his office" as unjust, illegal and unconstitutional.
- C. Strike down Section 9 of the Special Marriage Act, 1954 to the extent to which it deals with inquiry under Section 8 of the Special Marriage Act as unjust, illegal and unconstitutional;
- D. Pass such other order (s) in favour of the petitioner herein, as this Hon'ble Court may deem fit and proper in the interest of justice.;

AND FOR THIS ACT OF KINDNESS, THE PETITIONER AS IN DUTY BOUND SHALL EVER BE GRATEFUL.

Drawn by:

Adv. Aruna A.

Adv. Thulasi K. Raj

Adv. Maitreyi S. Hegde

Settled by:

Adv. Kaleeswaram Raj

DRAWN ON: 27.08.2020

NISHE RAJEN SHONKER

FILED ON: 31.08.2020

ADVOCATE FOR THE PETITIONER



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personal gain nor any personal interest in the matter and the petition is being instituted purely in public interest.

4. That the contents of the I.A. are true and correct and nothing false has been stated therein.
5. That the Annexures filed with the WP are true and correct copies of their respective original.

*Nandias*

DEPONENT

VERIFICATION:

I, the above named deponent do hereby verify that the contents of paragraphs 1 to 4 of this affidavit are true and correct to the best of my knowledge and belief and nothing material has been concealed there from. Verified on this 27<sup>th</sup> day of August, 2020 at Ernakulam.

*Nandias*

DEPONENT

APPENDIX:

**Constitution of India 1949**  
**Article 14,15 & 23(1)(2)**

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14. Equality before law The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to

(a) access to shops, public restaurants, hotels and palaces of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public

(3) Nothing in this article shall prevent the State from making any special provision for women and children

(4) Nothing in this article or in clause ( 2 ) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes

23. Prohibition of traffic in human beings and forced labour

(1) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law

(2) Nothing in this article shall prevent the State from imposing compulsory service for public purpose, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them

4 True Copy

6. Marriage Notice Book and publication.

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(2) The Marriage Officer shall cause every such notice to be published by affixing a copy thereof to some conspicuous place in his office.

(3) Where either of the parties to an intended marriage is not permanently residing within the local limits of the district of the Marriage Officer to whom the notice has been given under Sec. 5, the Marriage Officer shall also cause a copy of such notice to be transmitted to the Marriage Officer of the district within whose limits such party is permanently residing, and that Marriage Officer shall thereupon cause a copy thereof to be affixed to some conspicuous place in his office.

7. Objection to marriage.- (1) Any person may, before the expiration of thirty days from the date on which any such notice has been published under sub-section (2) of Sec. 6, object to the marriage on the ground that it would contravene one or more of the conditions specified in Sec.4.

(2) After the expiration of thirty days from the date on which notice of an intended marriage has been published under sub-section (2) of Sec. 6, the marriage may be solemnized, unless it has been previously objected to under sub-section (1).

(3) The nature of the objection shall be recorded in writing by the Marriage Officer in the Marriage Notice Book, be read over and explained if necessary, to the person making the objection and shall be signed by him or on his behalf.

8. Procedure on receipt of objection.- If an objection is made under Sec. 7 to an intended marriage the Marriage Officer shall not solemnize the marriage until he has inquired into the matter of the objection and is satisfied that it ought not to prevent the solemnization of the marriage or the objection is withdrawn by the person making it; but the Marriage Officer shall not take more than thirty days from the date of the objection for the purpose of inquiring into the matter of the objection and arriving at a decision.

(2) If the Marriage Officer upholds the objection and refuses to solemnize the marriage, either party to the intended marriage may, within a period of thirty days

from the date of such refusal, prefer an appeal to the District Court within the local limits of whose jurisdiction the Marriage Officer has his office, and the decision of the District Court on such appeal shall be final, and the Marriage Officer shall act in conformity with the decision of the Court.

9. Powers of Marriage Officers in respect of inquiries.- (1) For the purpose of any inquiry under Sec.8, the Marriage Officer shall have all the powers vested in a Civil Court under the Code of Civil Procedure, 1908(5 of 1908), when trying a suit in respect of the following matters, namely: (a) summoning and enforcing the attendance of witnesses and examining them on oath; (b) discovery and inspection; (c) compelling the production of documents; (d) reception of evidence on affidavits; and (e) issuing commissions for the examination of witnesses; and any proceeding before the Marriage Officer shall be deemed to be a judicial proceeding within the meaning of Sec.193 of the Indian Penal Code(45 of 1960). 2) If it appears to the Marriage Officer that the objection made to an intended marriage is not reasonable and has not been made in good faith he may impose on the person objecting costs, by way of compensation not exceeding one thousand rupees, and award the whole, or any part thereof to the parties to the intended marriage, and any order of costs so made may be executed in the same manner as a decree passed by the District Court within the local limits of whose jurisdiction the Marriage Officer has his office.

10. Procedure on receipt of objection by Marriage Officer abroad.- Where an objection is made under Sec.7 to a Marriage Officer in the State of Jammu and Kashmir in respect of an intended marriage in the State and the Marriage Officer, after making such inquiry into the matter as he thinks fit, entertains a doubt in respect thereof, he shall not solemnize the marriage but shall transmit the record with such statement respecting the matter as he thinks fit to the Central Government, and the Central Government, after making such inquiry into the matter and after obtaining such advice as it thinks fit, shall give its decision thereon in writing to the Marriage Officer shall act in conformity with the decision of the Central Government.

4 True copy



ANNEXURE - P / 1  
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THE SECOND SCHEDULE  
(See section 5)  
NOTICE OF INTENDED MARRIAGE

To  
Marriage Officer for the District.

We hereby give you notice that a marriage under the Special Marriage Act, 1954, is intended to be solemnized between us within three calendar months from the date hereof.

Name	Condition	Occupation	Age	Dwelling place	Permanent place dwelling if present dwelling place not permanent	Length of residence
A.B.	<u>Unmarried</u> <u>Widower</u> Divorcee					
C.D.	<u>Unmarried</u> <u>Widow</u> Divorcee					

Witness our hands this .....day of.....20.....

(Sd.) A.B.,  
(Sd.) C.D.,

u True copy u



**GOVERNMENT OF INDIA**

**LAW  
COMMISSION  
OF  
INDIA**

ANNEXURE - P/2  
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**Prevention of Interference with the Freedom of Matrimonial  
Alliances (in the name of Honour and Tradition): A Suggested  
Legal Framework.**

**Report No.242**

**AUGUST 2012**

न्यायभूति पी० वी० रेड्डी  
(पूर्व न्यायाधीश, भारत का उच्चतम न्यायालय)  
**Justice P. V. REDDI**  
(Former Judge, Supreme Court of India)  
अध्यक्ष  
भारत का विधि आयोग  
**Chairman**  
**Law Commission of India**



नई दिल्ली / New Delhi  
दूरभाष / Tele : 23019465 (R)  
23384475 (O)  
फैक्स / Fax : 23792745 (R)

22 August 2012

Dear Minister Sri Salman Khurshid ji,

The report of the Law Commission of India on "Prevention of Interference with the Freedom of Matrimonial Alliances (in the name of Honour and Tradition): A Suggested Legal Framework" is attached hereto. Pursuant to the assurance given by the Union Home Minister in the Parliament that various aspects relating to "honour killings" will be got examined, a reference was made to the Law Commission of India by the Dept. of Legal Affairs.

2. The law proposed by the Commission under the title of "Prohibition of interference with the Freedom of Matrimonial Alliances Bill" is intended to curb the social evil of the caste councils / *panchayats* interfering with and endangering the life and liberty of young persons marrying partners belonging to the same *gotra* or a different caste / religion. These offending acts imperiling the liberty of young persons marrying or intending to marry according to their wishes are being perpetrated in certain parts of the country in the name of honour and tradition. It is felt that such honour crimes can be effectively checked by prohibiting the assembly or gathering of such members of *panchayats* for the purpose of condemning the marriage and taking further action of harming or harassing them. Three offences are created under the proposed legislation and they are punishable with mandatory minimum punishment. The proportionality of punishment has however been kept in view. The provisions of this proposed Bill are without prejudice to and not in derogation of the provisions of Indian Penal Code. In respect of the offences not specifically covered under the provisions of this act, the general provisions of Penal Code can be taken resort to. The preventive and protection measures to be taken by the District Magistrate / SDM have also been laid down. A Presumption as envisaged by Section 5 has been recommended. Steps to be taken for counselling and creating legal awareness are also suggested. Incidentally, critical comments have been offered on a recent judgment of Supreme Court in *Bhagwandas* case that the so-called 'honour killings' cases shall be treated as rarest of rare cases warranting death sentence.

The proposed Bill is at Annexure-I of the Report.

With regards and good wishes,

(P.V. Reddi)

Sri Salman Khurshid, M.P.  
Hon'ble Union Minister for Law and Justice  
Shastri Bhawan  
New Delhi

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**Prevention of Interference with the Freedom of Matrimonial Alliances  
(in the name of Honour and Tradition):  
A Suggested Legal Framework**

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**Prevention of Interference with the Freedom of Matrimonial Alliances (in the name of Honour and Tradition):  
A Suggested Legal Framework.**

**1. Introduction**

1.1 Pursuant to the discussion in the Parliament on a Calling Attention Motion and the assurance given by the then Union Home Minister that various aspects relating to "honour killings" will be got examined, a reference was made to the Law Commission of India by the Ministry of Law and Justice in September 2009. That is how the subject has been taken up for consideration.

1.2 At the outset, it may be stated that the words 'honour killings' and 'honour crimes' are being used loosely as convenient expressions to describe the incidents of violence and harassment caused to the young couple intending to marry or having married against the wishes of the community or family members. They are used more as catch phrases and not as apt and accurate expressions.

1.3 The so-called 'honour killings' or 'honour crimes' are not peculiar to our country. It is an evil which haunts many other societies also. The belief that the victim has brought dishonour upon the family or the community is the root cause of such violent crimes. Such violent crimes are directed especially against women. Men also become targets of attack by members of family of a woman with whom they are perceived to have an 'inappropriate relationship'. Changing cultural and economic status of women and the

women going against their male dominated culture has been one of the causes of honour crimes. In some western cultures, honour killings often arise from women seeking greater independence and choosing their own way of life. In some cultures, honour killings are considered less serious than other murders because they arise from long standing cultural traditions and are thus deemed appropriate or justifiable. An adulterous behaviour of woman or pre-marital relationship or assertion of right to marry according to their choice, are widely known causes for honour killings in most of the countries. The report of the Special Rapporteur to U.N.<sup>1</sup> of the year 2002 concerning cultural practices in the family that are violent towards women indicated that honour killings had been reported in Jordan, Lebanon, Morocco, Pakistan, United Arab Republic, Turkey, Yemen and other Persian Gulf countries and that they had also taken place in western countries such as France, Germany and U.K. mostly within migrant communities. The report "Working towards the elimination of crimes against women committed in the name of honour"<sup>2</sup> submitted to the United Nations High Commissioner for Human Rights is quite revealing. Apart from the other countries named above, according to the UN Commission on Human Rights, there are honour killings in the nations of Bangladesh, Brazil, Ecuador, India, Israel, Italy, Morocco, Sweden, Turkey and Uganda. According to Mr. Widney Brown, Advocacy Director for Human

<sup>1</sup> [http://www.unhchr.ch/huridocda/huridoca.nsf/e06a5300f90fa0238025668700518ca4/42e7191fae543562c1256ba7004e963c/\\$FILE/G0210428.pdf](http://www.unhchr.ch/huridocda/huridoca.nsf/e06a5300f90fa0238025668700518ca4/42e7191fae543562c1256ba7004e963c/$FILE/G0210428.pdf)

<sup>2</sup> [http://www.unhchr.ch/Huridocda/Huridoca.nsf/e06a5300f90fa0238025668700518ca4/985168f508ee799fc1256c52002ae5a9/\\$FILE/N0246790.pdf](http://www.unhchr.ch/Huridocda/Huridoca.nsf/e06a5300f90fa0238025668700518ca4/985168f508ee799fc1256c52002ae5a9/$FILE/N0246790.pdf)

Rights Watch, the practice of honour killing “goes across cultures and across religions”. There are reports that in some communities, many are prepared to condone the killing of someone who have dishonoured their family. The 2009 European Parliamentary Assembly noted the rising incidents of honour crimes with concern. In 2010, Britain saw a 47 % rise of honour-related crimes. Data from police agencies in the UK report 2283 cases in 2010 and most of the attacks were conducted in cities that had high immigrant populations. The national legal Courts in some countries viz., Haiti, Jordon, Syria, Morocco and two Latin American countries do not penalize men killing female relatives found committing adultery or the husbands killing their wives *in flagrante delicto*. A survey by Elen R. Sheelay<sup>3</sup> revealed that 20% of Jordanites interviewed simply believe that Islam condones or even supports killing in the name of family honour which is a myth.

1.4 As far as India is concerned, “honour killings” are mostly reported from the States of Haryana, Punjab, Rajasthan and U.P. Bhagalpur in Bihar is also one of the known places for “honour killings”. Even some incidents are reported from Delhi and Tamil Nadu. Marriages with members of other castes or the couple leaving the parental home to live together and marry provoke the harmful acts against the couple and immediate family members.

1.5 The Commission tried to ascertain the number of such incidents, the accused involved, the specific reasons, etc., so as to have an idea of the general crime scenario in such cases. The Government authorities of the

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<sup>3</sup> Quoted in Anver Emon’s Article on Honour Killings.

States where incidents often occur have been addressed to furnish the information. The Director (SR) in the Ministry of Home Affairs, by her letter dated 26 May 2010, also requested the State Governments concerned to furnish the necessary information to the Commission. However, there has been no response despite reminder. But, from the newspaper reports, and reports from various other sources, it is clear that the honour crimes occur in those States as a result of people marrying without their family's acceptance and for marrying outside their caste or religion. Marriages between the couple belonging to same *Gotra* (family name) have also often led to violent reaction from the family members or the community members. The Caste councils or *Panchayats* popularly known as '*Khap Panchayats*' try to adopt the chosen course of 'moral vigilantism' and enforce their diktats by assuming to themselves the role of social or community guardians.

## **2. The dimensions of problem and the need for a separate law**

2.1 The rising incidence of commission of murders of persons marrying outside their caste or religion and other serious offences perpetrated or hostility generated against them and also causing harm to their close relatives or a section of the community on considerations of caste and '*gotra*' are matters of grave concern. Those who may be directly involved in the actual commission of acts of violence or murder are either part of a community or section of the people and may also include members of the family concerned in the case of objected marriages. Very often such incidents and offences are not even taken cognizance at the threshold. The domineering position and



strength wielded by caste combinations and assemblies, silence or stifle the investigating and prosecuting agencies. In so far as the caste or community *panchayats* play a constructive role in addressing the common problems concerning the society or amicably settling the disputes between the local inhabitants and families, dissuading the people from a criminal path, the mission and the work of these village elders and *Panchayatdars* can be commended; but, if they exceed their limits, as it is often happening, impose their decisions in matters relating to matrimony and interfere with the legitimate choices of youngsters and indulge in acts of endangering their life and liberty, the law cannot remain a silent spectator in our progressive democratic polity wedded to cherished constitutional values.

2.2 As said earlier, incidents involving grave offences committed against persons marrying or proposing to marry *sagotras* or outside their castes/religions are periodically reported. It is learnt that number of cases go unreported for fear of reprisals or cascading effects. The intervention of caste/community assemblies in the name of 'Khap Panchayats', 'Katta Panchayats' etc. in the occurrence of these offences and other related incidents involving serious life and liberty consequences, are frequently noticed. Such assemblies gathered on caste/community lines assume to themselves the power and authority to declare on and deal with 'objectionable' matrimonies and exhibit least regard for life and liberty and are not deterred by the processes of administration of justice. The penal law lacks direct application to the illegal acts of such caste assemblies. Innocent youth are

harassed and victimized while such assemblies continue to wield unhindered authority and also seem to resist any suggestion of being subjected to any social control.

2.3 The pernicious practice of *Khap Panchayats* and the like taking law into their own hands and pronouncing on the invalidity and impropriety of *Sagotra* and inter-caste marriages and handing over punishment to the couple and pressurizing the family members to execute their verdict by any means amounts to flagrant violation of rule of law and invasion of personal liberty of the persons affected.

2.4 *Sagotra* marriages are not prohibited by law, whatever may be the view in olden times. The Hindu Marriage Disabilities Removal Act, 1946 was enacted with a view to dispel any doubts in this regard. The Act expressly declared the validity of marriages between the Hindus belonging to the same 'gotra' or 'pravara' or different sub-divisions of same caste. The Hindu Marriage Act does not prohibit *sagotra* or inter-caste marriages.

2.5 The views of village elders or family elders cannot be forced on the willing couple and no one has a right to use force or impose far-reaching sanctions in the name of vindicating community honour or family honour. There are reports that drastic action including wrongful confinement, persistent harassment, mental torture, infliction of or threats of severe bodily harm is resorted to either by close relations or some third parties against the so-called erring couple either on the exhortations of some or all the *Panchayatdars* or with their connivance. Several instances of murder of

one or the other couple have been in the news. Social boycotts and other illegal sanctions affecting the young couple, the families and even a section of local inhabitants are quite often resorted to. All this is done in the name of tradition and honour. The cumulative effect of all such acts have public order dimensions also.

2.6 In a recent case – *Arumugam Servai vs. State of Tamil Nadu* [reported in (2011) 6 SCC 405], the Supreme Court strongly deprecated the practice of *khap/katta panchayats* taking law into their own hands and indulging in offensive activities which endanger the personal lives of the persons marrying according to their choice. In another case, *Lata Singh vs. State of U.P.* (2006, 5 SCC 475), the Supreme Court observed and directed as under:

*"This is a free and democratic country, and once a person becomes a major he or she can marry whosoever he/she likes. If the parents of the boy or girl do not approve of such inter-caste or inter-religious marriage the maximum they can do is that they can cut off social relations with the son or the daughter, but they cannot give threats or commit or instigate acts of violence and cannot harass the person who undergoes such inter-caste or inter-religious marriage. We, therefore, direct that the administration/police authorities throughout the country will see to it that if any boy or girl who is a major undergoes inter-caste or inter-religious marriage with a woman or man who is a major, the couple are not harassed by any one nor subjected to threats or acts of violence, and any one who gives such threats or harasses or commits acts of violence either himself or at his instigation, is taken to task by instituting criminal proceedings by the police against such persons and further stern action is taken against such persons as provided by law. We sometimes hear of 'honour' killings of such persons who undergo inter-caste or inter-religious marriage of their own free will. There is nothing honourable in such killings, and in fact they are nothing but barbaric and shameful acts of murder committed by brutal, feudal minded persons who deserve harsh punishment. Only in this way can we stamp out such acts of barbarism".*

2.7 Some proposals are being mooted proposing amendments to Section 300 I.P.C. by way of including what is called 'Honour Killing' as murder and shifting the burden of proof to the accused. These proposals have been studied. The views from various quarters at an informal level have also been ascertained. After a preliminary examination of these and certain other models of law, the framework of proposed law has been prepared and annexed to the Consultation Paper. The Consultation paper together with the draft Bill prepared is at **Annexure II**. The views of the public were invited with reference thereto. We shall advert to the responses received and the Commission's views thereon. The draft legislation has been slightly recast by the Commission after further consideration. The draft Bill now proposed by the Law Commission is at **Annexure I**.

2.8 The idea underlying the provisions in the draft Bill is that there must be a threshold bar against congregation or assembly for the purpose of objecting to and condemning the conduct of young persons of marriageable age marrying according to their choice, the ground of objection being that they belong to the same *gotra* or to different castes or communities. The Panchayatdars or caste elders have no right to interfere with the life and liberty of such young couples whose marriages are permitted by law and they cannot create a situation whereby such couples are placed in a hostile environment in the village/locality concerned and exposed to the risk of safety. Such highhanded acts have a tendency to create social tensions and disharmony too. No frame of mind or belief based on social hierarchy can

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claim immunity from social control and regulation, in so far as such beliefs manifest themselves as agents of enforcement of right and wrong. The very assembly for an unlawful purpose viz. disapproving the marriage which is otherwise within the bounds of law and taking consequential action should be treated as an offence as it has the potential to endanger the lives and liberties of individuals concerned. The object of such an assembly is grounded on disregard for the life and liberty of others and such conduct shall be adequately tackled by penal law. This is without prejudice to the prosecution to be launched under the general penal law for the commission of offences including abetment and conspiracy.

2.9 Given the social milieu and powerful background of caste combines which bring to bear intense pressure on parents and relatives to go to any extent to punish the 'sinning' couples so as to restore the community honour, it has become necessary to deal with this fundamental problem. Any attempt to effectively tackle this socio-cultural phenomenon, rooted in superstition and authoritarianism, must therefore address itself to various factors and dimensions, viz, the nature and magnitude of the problem, the adequacy of existing law, and the wisdom in using penal and other measures of sanction to curb the power and conduct of caste combines. The law as it stands does not act either as a deterrence or as a sobering influence on the caste combinations and assemblies who regard themselves as being outside the pale of law. The socio-cultural outlook of the members of caste councils or

*Panchayats* is such that they have minimal or scant regard for individual liberty and autonomy.

### **3. Salient features of the proposed Bill**

3.1 We may broadly indicate the general lay-out and the main features of the proposed legislation. Given the fact that the powerful influence of the caste or community *Panchayats* and the aggressive role played by them in controlling the freedom of choice of the marrying couple is the root cause of honour related crimes, there must be a check on such unwarranted interference by the members of *Panchayats*. The couple marrying against the wishes of members of the bodies like *khap panchayats* ought not to be driven to a state of insecurity and misery. Their life and liberty is 'endangered' because they are exposed to threats and socio-economic deprivations. The close family members of the couple are also brought into the picture to enforce the diktats of such informal body of *panchayats* / councils. This is directly affecting the community and the family life in the villages, thereby posing a threat to social order and peace. As there is a need to divest the *panchayatdars* or caste 'elders' of their self assumed hegemony and controlling influence in these matters, this Bill has been thought of, on balancing various considerations. It is proposed that there should be a threshold bar against the congregation or assembly for the purpose of disapproving an intended marriage or the conduct of the young couple and this objectionable conduct of the *panchayatdars* should be brought within the

purview of penal law. A preventive provision prohibiting such assemblies and penalizing the participation in such assemblies has also been introduced.

3.2 Having rendered the convening and conduct of such assemblies unlawful and punishable under law, consequential penal provisions dealing with offences committed in relation thereto have been proposed. Two sections are proposed to be introduced, i.e., Section 3, which makes punishable the acts endangering liberty, which are also particularized in the Section. The other Section, i.e., Section 4 would deal with criminal intimidation by the members of unlawful assembly or others to secure compliance with the illegal decision of the assembly. Such acts of criminal intimidation which are punishable under the general law, i.e., the Indian Penal Code have been specifically introduced for the purpose of meting out higher punishment to those members of unlawful assembly. The other penal provisions and the situations referred to above are not taken care of nor covered by the provisions of Penal Code. At any rate, there is a room for doubt as regards the invocation of the provisions of IPC. However, the criminal acts other than those falling under the three penal provisions of the Act can still be dealt with under the provisions of the Penal Code including the provisions relating to abetment and conspiracy. For instance, if a persons who is a party to the unlawful assembly has committed or abetted the commission of an offence of grievous hurt against the targeted couple or one of them or their relatives, the IPC provisions will be attracted. That is why Section 5 has been introduced to make it clear that the provisions of Sections 2, 3, and 4 of the proposed Bill

are without prejudice to the provisions of IPC. In order to have sufficient deterrent effect, mandatory minimum punishments have been prescribed while taking care to see that such punishment has an element of proportionality. Apart from these penal provisions, a specific section has been proposed to empower the District Magistrate or the SDM to take preventive measures and a further obligation is cast on them to take note of the information laid before them by the marrying couple or their family members and to extend necessary protection to them. The officials are made accountable for the failure or omission on their part to take necessary steps to prevent unlawful assembly (caste *panchayats*, etc.) or to give protection to the targeted couple. It has been provided that the offences shall be tried by a Court of Sessions in the District presided over by the Sessions Judge or Additional Sessions Judge as notified by the High Court. The need for constitution of special courts can be reviewed at a later stage. The offences are cognizable, non-bailable and non-compoundable.

3.3 The overlapping with the provisions of IPC has been, as far as possible, avoided. Though, at first look, it may appear that the offence of unlawful assembly is nothing other than what we find in Section 141 of IPC, it needs to be pointed out that the unlawful assembly of the kind contemplated by the proposed Bill does not strictly fall within the scope of the said section. The ingredients of 'unlawful assembly' under the Indian Penal Code and the unlawful assembly contemplated by Section 2 of the proposed Bill are not the same. Moreover, a punishment higher than that prescribed for unlawful



assembly under IPC has been prescribed under Section 2. As regards Section 4 dealing with criminal intimidation, as already clarified, this Section has been introduced with a view to provide for higher punishment in the case of acts of criminal intimidation by the members of unlawful assembly within the meaning of this Bill. Thus, the provisions of the proposed Bill coupled with those in IPC would, it is hoped, be effectively able to combat the menacing trend of dastardly actions and drastic social sanctions directed against the hapless young couple and their families.

**4. Autonomy of choices and liberty – a value to be protected.**

4.1 The autonomy of every person in matters concerning oneself – a free and willing creator of one's own choices and decisions, is now central to all thinking on community order and organization. Needless to emphasize that such autonomy with its manifold dimensions is a constitutionally protected value and is central to an open society and civilized order. Duly secured individual autonomy, exercised on informed understanding of the values integral to one's well being is deeply connected to a free social order. Coercion against individual autonomy will then become least necessary.

4.2 In moments and periods of social transition, the tensions between individual freedom and past social practices become focal points of the community's ability to contemplate and provide for least hurting or painful solutions. The wisdom or wrongness of certain community perspectives and practices, their intrinsic impact on liberty, autonomy and self-worth, as well

as the parents' concern over impulsive and unreflective choices – all these factors come to the fore-front of consideration.

4.3 The problem, however, is the menacing phenomena of repressive social practices in the name of honor triggering violent reaction from the influential members of community who are blind to individual autonomy. How best to tackle it is the question. In this context, the instrumentalist role of law to grapple with such situations assumes importance. The thought behind the proposals in this report is to bring to greater focus on the conduct which endangers life and liberty and to highlight the civilizing perceptions on liberty and autonomy.

4.4 Social protection has consistently been the paramount goal of modern criminal law. Criminal punishment typically achieves such protection through its capacity to motivate people to conform to socially acceptable rules of behaviour with threats of serious penalties for non-conformity. "Punishment serves as a weapon which society uses to prevent conduct which

harms or threatens to harm its interests"<sup>4</sup> The largest social interests or community values cannot be judged by a handful of influential persons whose beliefs are grounded in superstition and dogmas totally opposed to constitution and the laws.

4.5 The self-styled *Panchayats* or assembly of people constitute a close knit section of people bonded by certain common perspectives and values. Caste plays a pivotal role in this bondage. Having regard to the hegemony and the social or political power available to these Panchayats, their dictates on questions of caste relationships, matrimony etc. are formidable. Different caste groups have their own combinations. While these assembly of people may be playing some role in protecting certain basic cultural mores, their deviant role in subjecting to peril the life and liberty of persons who do not conform to their views and values cannot be condoned and it needs to be directly tackled and necessarily subjected to the disciplines of law. It would be unwise and socially incorrect to leave life and liberty of vulnerable people, at the mercies of dominant and authoritarian caste councils and such other groups whose commands and decisions cannot be easily ignored by the family and community members. The law should aim at counter-acting the misdirected power and domineering position of the caste / Community *Panchayats* in so far as they act as centers of coercion and

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<sup>4</sup> See the Article "A more Principled approach to Criminalizing negligence: A Prescription for Legislature" by Garfield, Leshie Yalof, Associate Professor, Pace University School of Law (1998).

intimidation. Regard and respect for life, liberty and autonomy of persons need to be the larger focus and the perceived strength of such assemblies or combinations will have to be appropriately dealt with by law.

## **5. Whether 'honour killing' to be included in Section 300 IPC:**

5.1 The Commission is of the view that there is no need for introducing a provision in Section 300 IPC in order to bring the so-called 'honour killings' within the ambit of this provision. The existing provisions in IPC are adequate enough to take care of the situations leading to overt acts of killing or causing bodily harm to the targeted person who allegedly undermined the honour of the caste or community. The motive behind killing a person does not furnish real justification to introduce a separate provision in section 300, as is contemplated to be done under the proposed Government's Bill (as published in the newspapers). Probably, the addition of such clause may create avoidable confusion and interpretational difficulties.

## **6. Burden of proof**

6.1 Further, shifting the burden of proof on the basis of mere accusations of involvement in the serious offence of murder etc or abetment thereof is not desirable. Such a move will be against the cardinal principles of jurisprudence accepted and absorbed into our criminal justice system. If burden of proof has to be shifted in such a case, logically, it will have to be done in a large number of other heinous crimes. We find neither logic nor rationale in treating the accused in the so-called honour killing cases as a separate class in the matter of application of doctrine of burden of proof. The

rooted in the conceptual misgivings. It must be seen that the provisions of this Act coupled with those in IPC can be simultaneously worked in some areas and they can be complementary to each other. Care has also been taken to see that the offence dealt with under general criminal law are not, as far as possible, brought within the purview of the proposed law. It has been made clear that the provisions of this law are not in derogation of those in IPC, but will be in addition thereof. However, the Commission would like to clarify that bringing the offence of criminal intimidation into the gamut of this law is to prescribe more severe punishment. The Commission is of the view that instead of adding the same provision in IPC, it is better that this stand alone law dealing with honour crimes should contain such provision.

7.7 One more response has come from the Law Department of Government of Madhya Pradesh. Apart from suggesting the increase of length of imprisonment, it has been suggested that the 'pardon' shall be granted to an accused who is willing to depose as prosecution witness so that there would be better scope for conviction.

## **8. Counselling and awareness**

8.1 Apart from legislation to effectively curb honour related crimes, it is equally important that the steps should be taken to organise counselling programmes for the village communities, for instance to explain to them that *sagotra* marriages are not opposed to law, religion '*sadachar*' or medical science. In the initial stages, social workers and volunteers may not be in a position to accomplish this task as there may meet stiff resistance and they

may not be able to build up much needed trust. The spiritual or religious leaders or respected elderly persons like retired officials and political personalities, members of legal profession, teachers, etc., can be requested to address the village gatherings and explain to them the real position and the need to shed superstition and abominable practices. So also the services of medical practitioners of repute should be utilised by the official establishment to convince the people that the *sagotra* marriages do not have any adverse effects on the health and well-being of the couple or progeny. Side by side, discourses on electronic media by respected persons and scholars should be organised. Media too can play very useful role in shaping the mindset of the people concerned. So also, the District and Taluqa Legal Services bodies can undertake this task through appropriate means.

## **9. Registration of marriage**

9.1 In order to avoid unnecessary hassles and harassment from external sources directed against the couple who are intending to marry and even their family members who would like to go according to their wishes, it is desirable that the procedure under the Special Marriage Act is simplified. The time gap between the date of giving notice of marriage and the registration should be removed and the entire process of registration of marriage should be expedited. The domicile restriction should also be removed. We are aware, that already an amendment is proposed to the Special Marriage Act by the Government of India by introducing a Bill in the Parliament. It is, therefore,

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not necessary to make a detailed study and give specific recommendation on this aspect.

#### **10. A recent Supreme Court Judgment, Re: Death sentence**

10.1 Before we conclude this Report, we would like to refer to one recent decision of the Supreme Court wherein a direction of far reaching consequences has been given by the Supreme Court while laying down the proposition that the so-called honour killing comes within the category of rarest of the rare cases deserving death punishment. It was observed "this is necessary as a deterrent for such outrageous, uncivilized behaviour. All persons who are planning to perpetrate 'honour killing' should know that the gallows await them". This decision in *Bhagwan Das Vs. State (NCT of Delhi)* [(2011) 6 SCC 396] as well as the decision in *Arumugam Servai* (supra) were rendered by the same Bench. A copy of the judgment was directed to be sent to all the High Courts who shall circulate the same to all the Sessions Judges. Following this judgment, in the recent times, as seen from the newspaper reports, almost all the accused in the so-called honour killing murder cases were sentenced to death by the Sessions Courts in U.P. and Delhi. With great respect, we are constrained to say that such a blanket direction given by the Supreme Court making death sentence a rule in "honour killings" cases, makes a departure from the principles firmly entrenched in our criminal jurisprudence by virtue of a series of decisions rendered by larger Benches of

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Supreme Court, for e.g. *Bachan Singh Vs. State of Punjab*<sup>5</sup> and *Machhi Singh Vs. State of Punjab*<sup>6</sup>. It is settled law that aggravating and mitigating circumstances should be weighed and it is only in very exceptional and rare cases, death sentence should be imposed. Death sentence, in other words, is a last resort. Further, where there is more than one accused, the degree of participation and culpability may vary. It is needless to emphasis that each case must be judged by the facts and circumstances emerging in that case. No hard and fast rule can be laid down in the light of the Supreme Court's consistent approach towards death sentence vs. life imprisonment issue. This judgment in the case of *Bhagwan Das* is bound to create uncertainty in the state of law and we are sure that in the near future, the correctness of such proposition will be tested by a larger Bench of Hon'ble Supreme Court.

## 11. Summary of Recommendations

11.1 In order to keep a check on the high-handed and unwarranted interference by the caste assemblies or *panchayats* with *sagotra*, inter-caste or inter-religious marriages, which are otherwise lawful, this legislation has been proposed so as to prevent the acts endangering the liberty of the couple married or intending to marry and their family members. It is considered necessary that there should be a threshold bar against the congregation or assembly for the purpose of disapproving such marriage / intended marriage and the conduct of the young couple. The members gathering for such

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<sup>5</sup> (1980) 2 SCC 684

<sup>6</sup> AIR 1983 SC 957

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ANNEXURE - P/3

8/23/2020

Why Does the Secular Indian State Discourage Inter-Religious Marriages? | NewsClick

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## Why Does the Secular Indian State Discourage Inter-Religious Marriages?

(</why-does-secular-indian-state-discourage-inter-religious-marriages>) [R.Nithya](/author/R.Nithya) (</author/R.Nithya>) 15 Nov 2013

Preeti started reading in detail the Special Marriage Act after she was engaged to marry her boyfriend Javed. She knew about the Act before, but hadn't studied its contents closely until then. When she reached the part on the application for registration of marriage under the Act, she found "bizarre things" in it. "There is a part that requires you to state that you are not an idiot," said Preeti, a teaching professional in Mumbai.

Preeti and Javed filed a 'Notice of Intended Marriage' at an office of a Sub-Divisional Magistrate (SDM) in Nagpur where Preeti's parents lived. The SDM there was suspicious about the couple from the start, but the absence of Javed's parents at the time of the filing of the notice made him further suspicious. "He asked my fiancé if he was running away from his house," Preeti said. Also, an error made by the lawyer they had hired to fill out their form cost them dearly. "Now the SDM wasn't interested in pushing the marriage. He was very reluctant from the start."

Religious prejudices of marriage officers and the glitches in the Special Marriage Act make it hard for couples in inter-religious relationships to marry under the Act that intends to facilitate such marriages without religious conversion.

The Special Marriage Act 1954 was drafted to provide a space for couples from different religions, castes, races, nationalities, and Indian couples living outside of India to solemnize and register their marriage. It replaced the 1872 British Act of the same name, and came into effect on January 1, 1955.

In its simplest form, the process of marrying under the Special Marriage Act looks like this: A couple files a 'Notice of Intended Marriage' with the SDM in whose jurisdiction either the man or the woman has lived for at least 30 days. Then, they both file an affidavit. A copy of the notice is put up on the public notice board at the SDM's office for 30 days. Anybody objecting to their marriage on the grounds specified in the Act (prohibited relationships, underage, insanity, and a living spouse) can file an objection within the 30-day time period. If there is no objection or if an objection is overruled, the SDM solemnizes the marriage on a chosen date in the presence of three witnesses.



([https://www.newsclick.in/userfiles/court%20marriage\(1\).jpg](https://www.newsclick.in/userfiles/court%20marriage(1).jpg))

Image via <http://easylaw-matrimonial-law-india.blogspot.in> (<https://easylaw-matrimonial-law-india.blogspot.in>)

However, the simpler the process sounds on paper, the more daunting it is in reality.

Co-founder and Convener of "Dhanak" (a group of inter-faith/castes couples), Asif Iqbal, said that the SDMs often doubt the intentions of the couples and discourage them from marrying under the Special Marriage Act. Section 5 of this Act that requires one of the parties to have resided in the area for 30 days is a hurdle for couples who elope from their town or city to get married in another. They have no choice of an immediate marriage under the Act.

**“The law says that one person needs to have an evidence of a 30-day stay in the area, but they ask for evidence for both people,” Anirudh said. “But agreement on a phone bill is a proof of residence; but the SDMs demand a voter’s id for proof. There is another way to get residential proof, and that is by police verification. But the SDMs do not inform the couples about it,” he added.**

**Some SDMs have been whimsically dispatching letters to the parents of couples who file a notice of intended marriage, although the law doesn’t require them to do so. Addressing this matter, the Delhi High Court in 2009 ordered the marriage officers to refrain from dispatching such letters to the parents as it is a breach of the right to privacy of the couples.**

**Out of their personal bigotry and prejudice, SDMs often suggest inter-religious couples to marry under personal laws instead of the Special Marriage Act. The major personal laws on marriage in India such as the Hindu Marriage Act enacted in 1955 and the Muslim Personal Law (Shariat) Application Act of 1937 require both people to belong to the religion under whose personal law they seek to marry. Thus, one or both persons need to convert.**

**Under the Special Marriage Act, putting up a copy of the notice on the display board for 30 days gives a chance to parents to find out, intervene and break the alliance. Even worse, it attracts harassment of the couples from radical religious groups who object to the marriage. In Faridabad, a couple intending to get married under the Special Marriage Act is required to publish a notice about the same in a newspaper. With terms and conditions like these, it seems the state allows radical religious groups a free run in interfering in personal matters of young couples and intimidating them.**

**This practice of publicly displaying a copy of the notice has been carried on from the previous British legislation. It appears that the practice has been derived from the British custom of ‘calling the banns’ in which an announcement is made on three successive Sundays before a marriage at the church. This British hangover has troubled inter-religious couples as frivolous and false objections delay and sometimes abort solemnization of the marriage.**

**The much promoted secular character of the Indian state turns out to be a complete hogwash in the case of the Special Marriage Act, like in several other cases, as the state itself restricts intermixing of different communities. Some provisions in the Act suggest that the state was ambivalent about allowing inter-religious marriages without making the couples pay for it. For instance, Section 19 of the Special Marriage Act states that “the marriage solemnized under this Act of any member of an undivided family who professes the Hindu, Buddhist, Sikh or Jain religion shall be deemed to effect his severance from such family.”**

**According to Section 21 of the Act, “... succession to the property of any person whose marriage is solemnized under this Act and to the property of the issue of such**

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**marriage shall be regulated  
by the provisions of the said Act (Indian Succession Act, 1925) ..." However, an amendment  
made**

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to this Section reads "Where the marriage is solemnized under this Act of any person who professes the Hindu, Buddhist, Sikh or Jain religion with a person who professes the Hindu, Buddhist, Sikh or Jain religion, Secs. 19 and 21 shall not apply."

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Thus, the Act clearly says that a Hindu\* marrying under the said Act shall cut off ties from his/her family only when he/she marries a non-Hindu. The Act also states that succession to property of any Hindu\* who marries a non-Hindu will be regulated by the provisions of the Indian Succession Act of 1925, and not by the provisions of the Hindu Succession Act of 1956.

This means that ancestral property which is an heir's right under the Hindu Succession Act (unlike in the Indian Succession Act) ceases to be a right once the heir marries a non-Hindu.

Similarly, succession to property of two non-Hindus (for instance, two Muslims) marrying each

other under the Special Marriage Act shall be governed under the Indian Succession Act of 1925, and not under their personal laws.

The Act suggests that the only case where a person can enjoy the benefits of his/her personal succession laws even after marrying under the Special Marriage Act is when he/she is a Hindu\* married to a Hindu\*. By bringing in such an amendment, the Act clearly implies a strong bias of the state against inter-religious and non-Hindu couples.

After a failed attempt in Nagpur, Preeti and Javed decided to apply in Mumbai where they both studied. A relative of Javed, who was a judge in a District Court in Mumbai, had called up the

SDM at whose office Preeti and Javed had applied, and asked him to carry through the process without unnecessary delays. The relative also commanded the SDM to pin up the copy of their notice on the board in a way that doesn't attract much attention.

Even as most inter-religious relationships face disapproval from families (<http://newsclick.in/tags/when-religious-identity-trumps-love-building-new-relationships>), Preeti and Javed got married with support from theirs. "What is shocking is how the state makes it hard for inter-religious couples to get married," Preeti said.

\*Hindu here is meant to include Hindu, Sikh, Buddhist and Jain.

(Names have been changed to protect identity)

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## Inter-Caste or Inter-Religious Marriages and Honour Related Violence in India

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**Abstract:** Honour Crimes are a kind of Human Rights Violation in which the young men of much liberal thoughts, one who don't believe in the chains of caste and creed are targeted, by harassing and murdering them. This is due to the reality that our patriarchal society is too narrow-minded to permit an Inter-Caste Marriage or Inter-Religious Marriage. India has seen an exorbitant rise in these Honour Crimes. This paper deals with the socio-legal and judicial frameworks of „Honour Crimes“ in India and the uncertainties surrounding the different judgments. The paper also emphasizes and criticizes the government's casual approach in encountering the massive problem.

**Keywords:** Honour Crimes, Inter-religious marriage, Khap Panchayat, Human Rights

### I. INTRODUCTION

Honour related violence is a global phenomenon<sup>[1]</sup> and has been widely reported in countries such as Iran, Turkey, Afghanistan, Iraq, Saudi Arabia, Egypt, Palestine, Jordan, Bangladesh, Algeria, Brazil, Ecuador, Morocco, Israel, Ethiopia, Somalia, Uganda, the Balkans, Sweden, Holland, Germany, Italy, Yemen, India and many more countries<sup>[2]</sup>. It is a belief that the dishonour of the family or the community is the root cause of such violent crimes. Such violent crimes are directed especially against women. Men also become targets of attack by members of family of a woman with whom they are perceived to have an „inappropriate relationship“.

In India, there's been a tremendous rise [about 792%] in „Honour Killings“, in the year 2015, mainly due to the fact that most of them were left unreported by the police. There's been a rigorous data collection by the National Crime Records Bureau [NCRB]<sup>[3]</sup>. A campaign by the various women Organizations has seen a separate data collection by the bureau. There were no gender-wise data for the crime until then. The state of Uttar Pradesh, which is the most inhabited to Honour Killings, was reported have more than 125 Honour Killings in the data collection conducted by NCRB.

„Honour killings“ and „honour crimes“ describe the incidents of violence and harassment caused to the young couple intending to marry or having married against the wishes of the community or family members<sup>[4]</sup>. „Honour killings“ and „honour crimes“ targeting men and women is apparent in a variety of forms and is usually carried out together with a combination of other human rights violations. These offences, which are considered as a misdeed or insult marrying without the will of parents or having a relationship that the family considers to be inappropriate and rebelling against the community and social matrimonial customs. These crimes encompass a range of apparent form of violence from unlawful confinement, assault, acid burning, humiliation, torture and exploitation and face the risk of the worst violence, terror, deprivation, discrimination and devaluation, rape and of course the most classic and extreme form of cold blooded murder. These acts of killing women and men are justified on the basis that the offence has brought dishonour and shame to family or community.

Honour of the male members of the family is understood to reside in the bodies of the women of the family, and in protecting this honour the men aim to regulate and direct women's sexuality and freedom to exercise any control over their own choices/lives. Unfortunately the only responses found adequate enough to achieve this multipurpose aim are that they reaffirm the physical and social dominance of the male members over the female members and manifest themselves in acts of violence against the women. Women who marry a man of their choice moreover take recourse to law, placing themselves outside the traditional scheme; by the public nature of their action, they shame their guardians leading them to resort to violence to restore their honour. Marriage arrangements are delicate and seen to involve serious balancing acts. Any disturbance regarding this balance by woman, refusing a father's choice are considered to affect the father's standing in society.

### II. CAUSES OF HONOUR CRIMES AND ROLE OF KHAP PANCHAYAT

Changing cultural and economic status of women and the women going against their male dominated culture has been one of the causes of honour crimes. In some western cultures, honour killings often arise from women seeking greater independence and choosing their own way of life. In some cultures, honour crimes are considered less serious than other murders because they arise from long standing cultural traditions and are thus

deemed appropriate or justifiable. An adulterous behaviour of woman or pre-marital relationship or assertion of right to marry according to their choice, are widely known causes for honour crimes in most of the countries.

In Indian society "honour crimes" are mostly reported from the States of Haryana, Punjab, Rajasthan and U.P and Bihar. Marriages with members of other castes or the couple leaving the parental home to live together and marry provoke the harmful acts against the couple and immediate family members. Honour crimes occur in those States where people marrying without their family's acceptance and for marrying outside their caste or religion. Marriages between the couple belonging to same Gotra have also often led to violent reaction from the family members or the community members. The „Khap Panchayats" try to adopt the chosen course of „moral vigilantism" and work as the role of social or community guardians<sup>[5]</sup>. In Northern India, particularly in the Haryana region, young persons are challenging the caste and kinship ideologies upheld by the senior male members of the caste by breaching the sexual codes and taboos, by defying demands of caste status, hyper gamy and village exogamy and are thereby, discarding the notions of honour. Elopement of the young couples in love in defiance of their family, caste-village customs and sentiments result in direct violence perpetrated by the male family members on them and more particularly on the girl. Breach of the caste and community moral norms, family and kinship codes by a woman leads to greater social pressure and protest since it is treated as a direct attack on the patriarchal power and is deemed fit to be crushed, controlled and channeled. Women's respectability determines that of the men, family and the whole caste. This kind of social thought leads to either killing the woman or forcing her to commit suicide by the family members. Many times, she is forced to enter into a greatly compromised marriage where the bridegroom is either a widower, an old man, a man with children, a handicapped or drunkard, not matching her educational qualifications or a fit for nothing person. Thereafter, the family severs all connections with her<sup>[6]</sup>.

Whenever, a young couple elopes after marriage or for marrying, usually the girl's family tries to criminalize their action and contest the validity of the marriage. It is alleged that the girl is a minor and charges of kidnapping, abduction, wrongful confinement or rape is slapped against her husband and his family members for harassing them. For the loss of their family's honour, the honour of the offending family is attacked. This strategy is adopted to force the married couple to surface or to withdraw from the much disputed marriage. After surfacing, in majority of the cases, they run the risk of humiliation, physical injury, death and decisions of caste panchayats. Death penalty is regarded a valid method of retrieving the lost honour. At times, the woman is pressurized by her family to support their case of kidnapping or is sometimes solitarily confined by the family members or is sent to the state run protective homes<sup>[7]</sup>.

For re-establishing the family honour, presumed guilty girl or woman must be retrieved and punished and cannot be disowned. Usually absorbing her back into the traditional *biradari* network being a difficult task, her physical elimination appears to be a better honourable option open to her family. She is made to take the stigma which can be removed only by extinguishing her i.e., the object of dishonour. On the contrary, no stigma attaches to the perpetrators of the honour crimes by the society who are absolved of their guilt on the premise that sacrificing the natural bonds of love and kinship for preserving and restoring honour purifies the family. In North India, honour crimes are slowly showing their ugly head even in other parts of the country. Moreover, violence and crimes behind „closed doors" hardly leaves any remedy for them<sup>[8]</sup>. Preservation of family honour at all costs results into her safety, choices and rights being compromised.

### III. CONSTITUTIONAL AND LEGISLATIVE PROVISIONS IN INDIA

Honour crimes are violation of Articles 14, 15 (1) and (3), 17, 18, 19 and 21 of the Constitution of India. The Article 21 under the chapter of Fundamental Rights of the Indian Constitution guarantees the Right to Life and Liberty to all persons irrespective of their citizenship. Through various relevant judgments of the Supreme Court of India, the existing provisions in constitution are sufficient to protect various human rights including the right to life. The landmark judgments interpreting the rights to life conclude that the right to life means the right to live with dignity and it also includes the right to livelihood, right to education and right to health and so on. However, the interpretation through judgments do not particularly comprise the right to marry the girl or boy of one's own choice but it is implied that it includes the right to live with dignity corroborates the same.

In cases where the khap panchayats have compellingly separated married couples who are of eligible age to get married, these have violated the provisions under the Indian Constitution. The Indian Majority Act, Section-3, 1857 states that every person domiciled in India shall attain the age of majority on completion of 18 years and not before. Unless a particular personal law specifies otherwise, every person domiciled in India is deemed to have attained majority upon completion of 18 years of age. However, in the case of a minor for whose person or property, or both, a guardian has been appointed or declared by any court of justice before the age of 18 years, and in case of every minor the superintendence of whose property has been alleged by the Court of Wards, age of majority will be 21 years and not 18.

The Act is relevant in cases where the khap panchayats have forcefully separated married couples who are of eligible age to get married. It is a violation of the provisions under this Act. The main reason behind the enactment of the Special Marriage Act, 1954 was to provide a special form of marriage for the people of India and all Indians residing in foreign countries, irrespective of the religion or faith followed by either party, to perform the intended marriage.

Sagotra marriages are not prohibited by law, whatever may be the view in olden times. The Hindu Marriage Disabilities Removal Act, 1946 was enacted with a view to dispel any doubts in this regard. The Act expressly declared the validity of marriages between the Hindus belonging to the same „gotra“ or „pravara“ or different sub-divisions of same caste. The Hindu Marriage Act does not prohibit sagotra or inter-caste marriages<sup>[9]</sup>.

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was enacted by the Parliament of India, in order to avert atrocities against Scheduled Castes and Scheduled Tribes. The intention of the Act was to help the social inclusion of Dalits into Indian society. It defines acts such as forcing an SC/ST to eat or drink any inedible or obnoxious substance, removing clothes, parading naked or with painted face or body, assaulting, dishonouring and outraging the modesty of an SC/ST woman, sexual exploitation of an SC/ST woman, forcing an SC/ST to leave his or her house or village as punishable. The Act is linked to honour crimes because numerous incidents of honour crimes are in relation to caste and religion. The Protection of Human Rights (Amendment) Act, 2006 makes the provision for protection of individual rights of human beings and the constitution of a National Human Rights Commission, State Human Rights Commission and Human Rights Courts for better protection of human rights of individuals.

Honour crimes are considered as brutal crimes of homicide under the IPC (Indian Penal Code). Section 299 and 301 of the IPC, deals with culpable homicide not amounting to murder while Section 300, deals with murder. Honour crimes amount to homicide and murder because the acts are done with the intention of murdering the victims as they have purportedly brought dishonour upon the family. The perpetrators can be punished as per Section 302 of the IPC. The members of the family as well as community can also be prosecuted under Section 302 of IPC for instigating suicide those who transgress the so called norms of the community.

The National Commission for Women has drafted a Bill titled “Prevention of Crimes in the name of Honour and Tradition”. The Bill is closer in the line of thinking to the law proposed by the Law Commission. It suggests certain prohibitive and penal measures. It provides for recording of declaration of an intended marriage by the couple concerned as a means of seeking protection apart from penalizing the acts of harassment etc. caused to the woman or her partner. However it misses the necessity and desirability of the focus on directly dealing with unlawful assemblies and their vicious influences. Further, the offences under general law are also included in the said Bill. But, certain aspects contained in that Bill have been usefully incorporated in the proposed law.

The problem of forced marriages has a different dimension as the members of khap panchayats are not directly involved in these kinds of marriages eventually leading to no action taken against the convicted by the police. They can be effectively taken care of within the ambit of general penal law and Child Marriages (Prohibition) Act. Further, it is felt that by enlarging the scope of the proposed law to include offensive conduct of individual family members / relatives, the integrity of the proposed law will be lost as far as it aims to replace or substitute the entire corpus of existing criminal law on the subject of „Honour Crimes“.

#### IV. JUDICIAL RESPONSE ON HONOUR CRIMES

In the case of *Arumugam Servai vs. State of Tamil Nadu* <sup>[10]</sup> the Supreme Court strongly deprecated the practice of khap/katta panchayats taking law into their own hands and indulging in offensive activities which endanger the personal lives of the persons marrying according to their choice.

In the land mark judgment of *Lata Singh vs. State of U.P.* <sup>[11]</sup> the Supreme Court observed and directed as under:

*“This is a free and democratic country, and once a person becomes a major he or she can marry whosoever he/she likes. If the parents of the boy or girl do not approve of such inter-caste or inter-religious marriage the maximum they can do is that they can cut off social relations with the son or the daughter, but they cannot give threats or commit or instigate acts of violence and cannot harass the person who undergoes such inter-caste or inter-religious marriage. We, therefore, direct that the administration/police authorities throughout the country will see to it that if any boy or girl who is a major undergoes inter-caste or inter-religious marriage with a woman or man who is a major, the couple are not harassed by any one nor subjected to threats or acts of violence, and anyone who gives such threats or harasses or commits acts of violence either himself or at his instigation, is taken to task by instituting criminal proceedings by the police against such persons and further stern action is taken against such persons as provided by law. We sometimes hear of ‘honour’ killings of such persons who undergo inter-caste or inter-religious marriage of their own free will.*



*There is nothing honourable in such killings, and in fact they are nothing but barbaric and shameful acts of murder committed by brutal, feudal minded persons who deserve harsh punishment. Only in this way can we stamp out such acts of barbarism".*

In a case of **Bhagwan Das vs. State (NCT of Delhi)** <sup>[13]</sup> the Supreme Court opined:

*"The so-called honour killing comes within the category of rarest of the rare cases deserving death punishment. This is necessary as a deterrent for such outrageous, uncivilized behaviour. All persons who are planning to perpetrate „honour killing" should know that the gallows await them". [This decision in Bhagwan Das Vs. State (NCT of Delhi) as well as the decision in Arumugam Servai (supra) were rendered by the same Bench.]*

A copy of the judgment was directed to be sent to all the High Courts who shall circulate the same to all the Sessions Judges. Following this judgment, in the recent times, as seen from the newspaper reports, almost all the accused in the so-called honour killing murder cases were sentenced to death by the Sessions Courts in U.P. and Delhi. With great respect, we are constrained to say that such a blanket direction given by the Supreme Court making death sentence a rule in "honour killings" cases, makes a departure from the principles firmly entrenched in our criminal jurisprudence by virtue of a series of decisions rendered by larger Benches of Supreme Court, for e.g. **Bachan Singh Vs. State of Punjab** <sup>[14]</sup> and **Machhi Singh Vs. State of Punjab** <sup>[15]</sup>. It is settled law that aggravating and mitigating circumstances should be weighed and it is only in very exceptional and rare cases, death sentence should be imposed. Death sentence, in other words, is a last resort. Further, where there is more than one accused, the degree of participation and culpability may vary. It is needless to emphasize that each case must be judged by the facts and circumstances emerging in that case. No hard and fast rule can be laid down in the light of the Supreme Court's consistent approach towards death sentence vs. life imprisonment issue. This judgment in the case of Bhagwan Das is bound to create uncertainty in the state of law and we are sure that in the near future, the correctness of such proposition will be tested by a larger Bench of Hon'ble Supreme Court <sup>[16]</sup>.

## V. RECOMMENDATION OF THE LAW COMMISSION OF INDIA

Law Commission of India in its Report No.242 of 2012<sup>[17]</sup> has recommended a Suggested Legal Framework for proposal of bill entitled „Prevention of Interference with the Freedom of Matrimonial Alliances (in the name of Honour and Tradition)". The main recommendation of the proposed bill is as follows:

1- In order to keep a check on the high-handed and unwarranted interference by the caste assemblies or panchayats with sagotra, inter-caste or inter-religious marriages, which are otherwise lawful, this legislation has been proposed so as to prevent the acts endangering the liberty of the couple married or intending to marry and their family members. It is considered necessary that there should be a threshold bar against the congregation or assembly for the purpose of disapproving such marriage / intended marriage and the conduct of the young couple. The members gathering for such purpose, i.e., for condemning the marriage with a view to take necessary consequential action, are to be treated as members of unlawful assembly for which a mandatory minimum punishment has been prescribed.

2 -So also the acts of endangerment of liberty including social boycott, harassment, etc. of the couple or their family members are treated as offences punishable with mandatory minimum sentence. The acts of criminal intimidation by members of unlawful assembly or others acting at their instance or otherwise are also made punishable with mandatory minimum sentence.

3- A presumption that a person participating in an unlawful assembly shall be presumed to have also intended to commit or abet the commission of offences under the proposed Bill is provided for in Section 6.

4- Power to prohibit the unlawful assemblies and to take preventive measures are conferred on the Sub-Divisional / District Magistrate. Further, a SDM/DM is enjoined to receive a request or information from any person seeking protection from the assembly of persons or members of any family who are likely to or who have been objecting to the lawful marriage.

5- The provisions of this proposed Bill are without prejudice to the provisions of Indian Penal Code. Care has been taken, as far as possible, to see that there is no overlapping with the provisions of the general penal law. In other words, the criminal acts other than those specifically falling under the proposed Bill are punishable under the general penal law.

6- The offence will be tried by a Court of Session in the district and the offences are cognizable, non-bailable and non-compoundable.

Since the report by the Law Commission on „Honour Crimes" falls in the Concurrent list of the Indian Constitution, the Central Government's viewpoint was that to look for the opinions of the state Governments and Union Territories. The Central Government sought for the opinions and reports from the various State Governments on Law Commission's recommendations. About 22 states and Union Territories [Andhra Pradesh, Haryana, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Meghalaya, Mizoram, Nagaland, Orissa, Punjab, Rajasthan, Uttar Pradesh, West Bengal and Union Territories of Chandigarh, Dadara And Nagara Haveli,

Daman And Diu, Lakshadweep and Puducherry] have supported the Law commission's recommendations but the government stated that after discussions and consultations, decisions will be taken for a new legal framework refusing to further tell the a fixed timeline for the process.

## VI. CONCLUSIONS

In several parts of India, there are hierarchical patterns of castes-within-caste and people belonging to a sub-caste of any caste do not marry their children to another sub-caste. Therefore, inter-caste marriages can be visibly seen as forbidden among all castes. The upper castes in the many parts of India are very possessive about their caste and assume themselves as superior in the scale of the caste-hierarchy in the region. Hence, they perceive inter-caste pre-marital or marital relationships of their daughters as a symbol of huge dishonour. This perception results into the honour based violence but actually the magnitude, extent and dimensions of these causes including elopements, unaccepted secret marriages and instant disclosure of sexual relationships further aggravates the problem which results into the murders of the girls, the boys or the couples.

In India where almost half of the population is that of women and they have always been ill-treated and deprived of their right to life and personal liberty as provided under the constitution of India. At present, women's have proved themselves in almost every section of life affirming that they are no less than men due to their hard work whether at home or working places.

Law Commission of India in its Report No.242 of 2012 has recommended a suggestive Legal Framework for proposal of bill entitled „Prevention of Interference with the Freedom of Matrimonial Alliances (in the name of Honour and Tradition)". Reforming the laws is, in many ways, only a cosmetic solution. India already has a series of laws and other mechanisms in place designed to protect from honour crime. The problem is that exiting laws are rarely enforced. The Indian court system is clogged with cases. As aforementioned, the government has stated that after discussions and consultations only, the decision to enforce a new legal framework will be taken and further not specifying the timeline which is a concern as cases are filed in courts in multitudes, Honour Killings are carrying out at an enormous rate and police officials have got no idea to tackle the problem and add to that the government's casual way of dealing with such a serious crisis. The government institutions are rarely held accountable for failure, and rife with bureaucratic apathy. To attain a genuine deterrent for perpetrators of honour crime will require a more better-trained police, more judges and more efficient court.

It is the need for society to look deep within and work to root out the evil of honour crime from our mindset. Civil society groups, Government officials and NGO's, and many more are working to improve the situation of evil of honour crime. For the honour crime, a change is required in the culture itself. Some part of India remains a deeply conservative. To change this arena requires a revolution in thinking and viewing the fundamental relationship between men and women.

## REFERENCES

- [1]. Warraich S.A., 'Honour Killings' and the Law in Pakistan, in Welchman L. and Husain S. (Eds.), (2005). *Honour: Crimes, Paradigms, and Violence against Women*, London: Zed Books at 7.
- [2]. Ali Yazmin, (2008). *Honor, The State, and its Implications: An Examination of Honor Killing in Jordan and the Efforts of Local Activists* (A Thesis Submitted to the Graduate Faculty of Auburn University) at 9.
- [3]. *Crime in India*(2015). <http://ncrb.nic.in/StatPublications/CII/CII2015/FILES/Compendium-15.11.16.pdf> Retrieved November 19, 2016.
- [4]. Law Commission of India in its Report No.242 of 2012 at 1.
- [5]. *Ibid* at 4
- [6]. Chowdhary, P. (2007). *Contentious Marriages, Eloping Couples: Gender, Caste and Patriarchy in Northern India*. New Delhi: Oxford University Press at 10-11
- [7]. Welchman, L., & Hossain, S. (Ed.). (2005). *Honour*. Victoria: Spinifex Press & London:
- [8]. *Supra* no. 1, Zed Books at 308-330
- [9]. Walker, A. (1987). *Woman physiologically considered as to Mind, Morals, Marriage, Matrimonial Slavery, Infidelity and Divorce*. Delhi: Motilal Banarsidass Publishers at 25.
- [10]. *Supra* no. 4 at 6
- [11]. (2011) 6 SCC 405]
- [12]. (2006), 5 SCC 475)
- [13]. (2011) 6 SCC 396
- [14]. (1980) 2 SCC 684
- [15]. AIR 1983 SC 957
- [16]. *Supra* no. 4 at 26
- [17]. *Ibid* at 26 and 27

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ANNEXURE-P/5

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# ALJAZEERA

FEATURE / ASIA

## Against all odds: Meet India's happy interfaith couples

*We speak to spouses of different faith backgrounds who have married, against the backdrop of rising obstinate attitudes.*

by Adnan Bhat 25

Jun 2018



Surabhi Jamal, who is of Hindu background, and 55-year-old Muslim Parvez Jamal say there was no Hindu-Muslim binary between them or their families [Courtesy of the Jamal family]

**New Delhi, India** - The struggles of couples from different faiths have been at the heart of Bollywood films for decades, with audiences rooting for star-crossed lovers.

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In recent years, however, having a relationship in India with a partner of a different religion has become increasingly fraught with danger.

There is the so-called "love jihad" conspiracy, that has seen right-wing Hindus accuse Muslims of forcing Hindu women to Islam, in an attempt to eradicate Hinduism.

Then there are cases of violent, often fatal intervention in an interfaith union.

India reported an 800 percent increase in so-called "honour killings" in 2015, with 251 people killed.

A Facebook page by the name of Hindutva Varta (Hindutva Talk) recently listed the details of 102 Hindu-Muslim couples, calling on people to attack the Muslim partner. That page was removed earlier this month.

Also earlier in February, Ankit Saxena, a 23-YEAR-OLD photographer was killed on the streets of New Delhi, allegedly by members of his Muslim girlfriend's family, according to local media.

In January, a 20-YEAR-OLD Hindu woman killed herself in the state of Karnataka, having been harassed and bullied by locals over her friendship with a Muslim man.

And on Wednesday, Tanvi Seth, a Hindu woman in Lucknow, tweeted Indian Foreign Minister Sushma Swaraj describing an episode of "humiliation" and "moral policing" at the passport office.

An official allegedly denied them passports, reportedly asked her Muslim husband, Anas Siddiqui, to convert for their marriage to be "accepted" and for her to change her Hindu surname.

In these troubling times, Al Jazeera spoke to five couples of various generations from different religious backgrounds about their challenges, hopes and achievements.

'The objection came from the community'

Wasim, a 37-year-old Muslim scientist, and Deottima Dutta, 33, a Hindu.



**Wasim:** "We have never thought of the creator in terms of, 'Who is God? Who is Allah?' It never mattered to either of us. But of course, that's not how people around us thought when we fell in love.

We met each other about 15 years ago. It's been 12 years since we have been married.

When I told my family about her, they were quite happy. They didn't mind that she is a Hindu.




*The objection largely came from the members of my community - my neighbours and extended family ... They kept insisting that she should be converted, if at all this has to happen.*

WASIM

The objection largely came from the members of my community - my neighbours and extended family. They were openly protesting the idea of me getting married to a Hindu woman, they were not happy about it. They kept insisting that she should be converted, if at all this has to happen.

For her, however, the pressure came from her own family, who put their foot down saying this marriage cannot happen.

 After trying to convince them for a couple of months, we finally decided to tie the knot without their permission. We left home and got married and registered under the 1954 Special Marriage Act (*The 1954 Special Marriage Act guarantees Indian citizens and nationals of other countries the right to marry, regardless of either partner's religion*).

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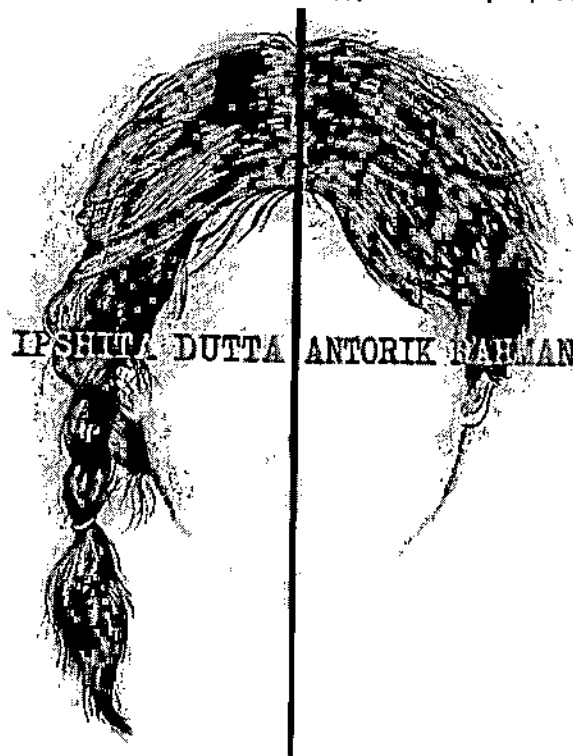


Illustration by Al Jazeera's Jawahir Hassan Al-Naimi

After a few years of disengagement, eventually, both our families accepted us and even organised a gathering which was devoid of any religious ceremonies.

We have two children - our eight-year-old son Antorik Rahman and six-year-old daughter Ipshta Dutta. A year ago, when we were trying to get admission for our daughter in the school in which we had enrolled our son, the principal was very confused to see the remarkably different names.

'How can they be siblings?' she asked.

We were asked to send in our marriage certificate to prove that we were actually married to each other."

'There was no need to imbibe a new religion'

Surabhi Jamal, who is of Hindu background, and 55-year-old Muslim, Parvez Jamal.

**Surabhi:** "We have been married for almost 30 years. We met in Mumbai in 1982 through some common friends. He was in filmmaking and also did some modelling back then. In 1989, we got married.

Even though I'm a Maharashtrian and he's from Kashmir, there was no Hindu-Muslim binary between us or the families.

My family members attended the wedding and so did his.

Between 1996 and 2016, we mostly lived in Kashmir. I worked as a teacher and Parvez focused on filmmaking. We have two daughters, both in their early twenties.

In Srinagar, people just take you in and they'll never ask you a penetrating question. There was no need to imbibe a new religion, but customs yes, and I enjoyed that.

*In Srinagar, once some men had come to our house and they asked Parvez if I prayed. My family and Parvez told them it's none of their business and that was the end of it.*

SURABHI

There was a couple of experiences, though.

Before our marriage, I remember people in the neighbourhood would ask Parvez about his intention in marrying me. And in Srinagar, once some men had come to our house and they asked Parvez if I prayed. My family and Parvez told them it's none of their business and that was the end of it.

But some of my students [in interfaith relationships] have written about not finding places to rent.

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If I could sum up how well our families took it, then there could be no better example than my father. He would visit us in Kashmir every year until he died. I think he fell in love with Kashmir too."

## 'We left everything behind to get married'

Tejveer, a 22-YEAR-OLD Hindu and Saira, a 21-YEAR-OLD Muslim.

**Tejveer:** "We have been married for two months now. We have had to leave our families, our homes, our friends - just everything behind to get married.

We fell in love with each other when we were in school. Nobody knew about it other than our friends. We knew it would bring trouble if people came to know a Hindu boy and Muslim girl were going out together. Our friends teased us about it. And one day, eventually, both our families found out. There was a lot of trouble, especially at her home. Her brothers had locked her up.

*Our families are still on the lookout for us, we don't want them to find us. We just want to live peacefully.*

TEJVEER

We both tried to convince them. We tried for months but nothing came of it. Both our families were too stubborn, so we knew we had to run away from them. There was no other way for us to be together otherwise, and that's what we did. We ran away and came to Delhi. Then we got married. It hasn't been easy here, either.

Renting a place proved to be a big hassle. People would be nice to us at first, show us around, and even negotiate the rent. But then, when they would hear our names, it made them really tense.

Now I work as a video editor and do some camera work, and she mostly stays home.



Our families are still on the lookout for us, we don't want them to find us. We just want to live peacefully.

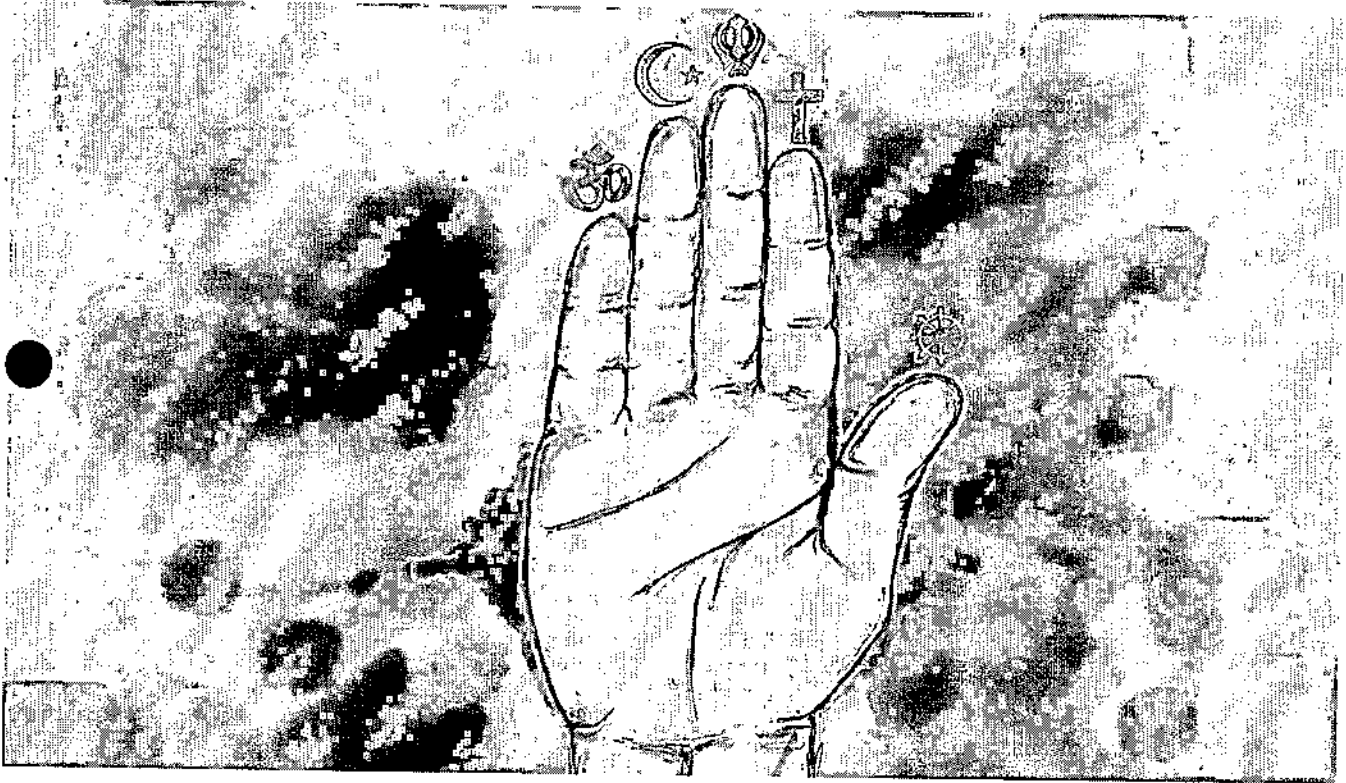


Illustration by Al Jazeera's Jawahir Hassan Al-Naimi

'We will let our daughter decide her religion'

Arun George, a 35-year-old Christian and Maneka Rao, a Hindu

**Arun:** "We got married in 2012 and very honestly, we've really not faced any challenges. Despite my wife being Hindu and me a Christian, we've never faced anything because of our differences in faith, at least externally.

As a couple, the challenges we've faced are more to do with adapting to each other's cultures, but religion has never been in the mix.

Although, we couldn't do a church marriage because we didn't want to convert - without this a church wedding wasn't possible.

The other thing came up recently was what religion our daughter should practice. We will let her decide what religion she wants to follow, when she wants to.

I don't think [being in an interfaith relationship is] that bad in some sections [of society]. But that said, I have a friend who happens to be a Muslim married to a Hindu woman, and I can tell you they go through hell.

**'Nobody objected to it'**

Gulzar Hussain, a 40-year-old Shia Muslim and Sumy Paul, a 37-year-old Malayali Christian

**Gulzar:** "She is an extrovert. She got along with the family, the neighbours and even the extended family in no time.

We met when both were in a law school in Delhi in 2007 and three years later we decided to marry. To be honest, we haven't had to face any problems.

*Nobody objected to it. Not her family, not my family or neighbours. They were, in fact, all really happy about it.*

GULZAR

When we had to meet her parents before the marriage, I wasn't nervous. Similarly, when we went back to Kargil for our wedding, everything fell into the place. Nobody objected to it. Not her family, not my family or neighbours. They were, in fact, all really happy about it.

Some people do face problems but that wasn't the case for us.

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8/22/2020

Against all odds: Meet India's happy interfaith couples | Asia | Al Jazeera

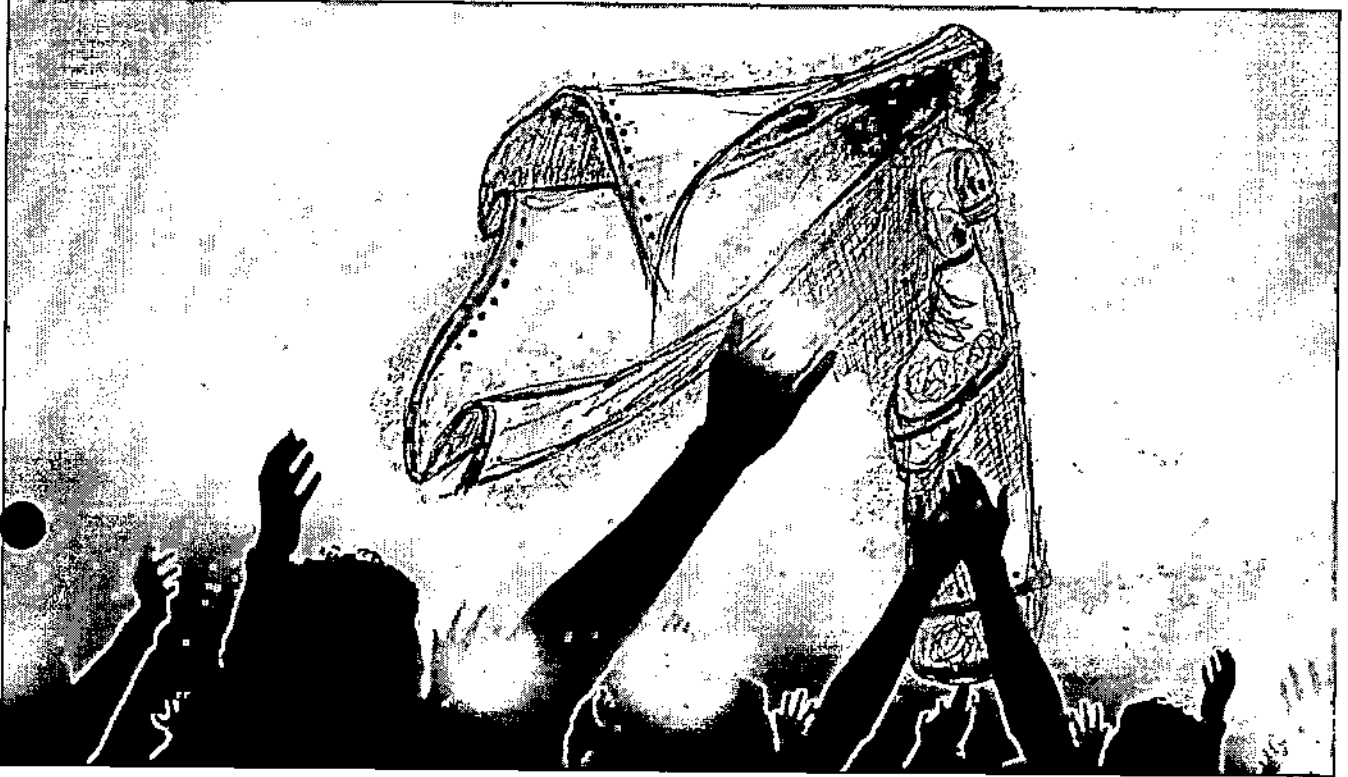


Illustration by Al Jazeera's Jawahir Hassan Al-Naimi

Although, there was this one instance:

Once, we were travelling back from Srinagar airport. Our tickets had been booked together but after seeing our names, the people on the counter refused to give us the boarding passes. We had to speak to the security official in charge and explain to him that we are married.

Every time my father would visit us Delhi, he would bring her Kashmiri shawls and other gifts. She had a special relationship with him, but I know there are people who face a lot of problems.

We are both practicing lawyers and we truly believe that if the constitution allows us to get married, there should be no reason for anyone to object. That's mostly how our story has been."

SOURCE: AL JAZEERA NEWS

8/22/2020

Against all odds: Meet India's happy interfaith couples | Asia | Al Jazeera

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ANNEXURE - P/6

**Government of India**

**Law Commission of India**

**Consultation Paper**

**on**

**Reform of Family Law**

**31 August 2018**

## Acknowledgements

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The Ministry of Law and Justice made a reference to the Law Commission of India dated 17<sup>th</sup> June, 2016 to 'examine matters in relation to uniform civil code'. The issue of uniform civil code is vast, and its potential repercussions, untested in India. Therefore, after detailed research and a number of consultations held over the course of two years, the Commission is presenting its consultation paper on reform of family laws in India.

The Commission thanks all individuals and organisations who became a part of this process. It thanks groups and non-government organisations, that organised consultations and invited the Chairman of the Commission to academic institutions as well as other seminars for discussions on family law. The Commission also would like to place on record its appreciation for individuals who gave their valuable time to come for meetings on various issues relating to family law. The Commission expresses its gratitude towards all women's organisations, religious organisations, other civil society initiatives and experts in field of family law who provided the commission with oral and written submissions concerning various aspects of family law.

The Commission places on record its special thanks to Dr Saumya Saxena, Ms. Preeti Badola, Ms. Oshin Belove, Mr. Setu Gupta, and Ms. Anumeha Mishra for their research and assistance in preparation of this Consultation paper.

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**Consultation Paper on**

**Reform of Family Law**

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## 1. INTRODUCTION:

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1.1. In June 2016 through a reference by the Government of India, the Law Commission was entrusted with the task of addressing the issues concerning a uniform civil code. The Law Commission of India has taken this opportunity to address the ambiguity that has long surrounded the questions of personal law and uniform civil code in India. This consultation paper has been an endeavour to understand, acknowledge and finally suggest potential legislative actions which would address discriminatory provisions under all family laws. In doing so, the Commission has endeavoured to best protect and preserve diversity and plurality that constitute the cultural and social fabric of the nation.

1.2. Various aspect of prevailing personal laws disprivilege women. This Commission is of the view that it is discrimination and not difference which lies at the root of inequality. In order to address this inequality the commission has suggested a range of amendments to existing family laws and also suggested codification of certain aspects of personal laws so as to limit the ambiguity in interpretation and application of these personal laws.

1.3. Whether or not 'personal law' are laws under Article 13 of the Constitution of India or if indeed they are protected under Articles 25-28, has been disputed in a range of cases the most notable being *Narasu Appa Mali*.<sup>1</sup> In the absence of any consensus on a uniform civil code the Commission felt that the best way forward may be to preserve the diversity of personal laws but at the same time ensure that personal laws do not contradict fundamental rights guaranteed under the Constitution of India. In order to achieve this, it is desirable that all personal laws relating to matters of family must first be

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<sup>1</sup> *State of Bombay v. Narasu Appa Mali* AIR 1952 Bom 84.



Amendment Act, in 1988, mutual consent was recognised as a ground for divorce, however, the Act does not recognise irretrievable breakdown of marriage as ground for divorce or community of property which should be incorporated.

2.109. Further, section 33 which applies in the case where the ground for divorce is adultery, makes the person with whom the adultery was committed, a co-defendant. This should be deleted. Marriage is premised on an understanding between two individuals, while adultery should remain a ground for divorce for both parties, the inclusion of the third person for purposes of compensation, only serves to commoditise the person who has committed the adultery as though compensation monetary or otherwise is settlement for damages. Under no religion it is permissible that a husband can treat his wife as chattel. The issue of adultery as discussed earlier is sub judice before the Supreme Court.<sup>89</sup>

#### **SPECIAL MARRIAGES ACT, 1954**

2.110. While the SMA, 1954 has often been considered a model law, it suffers from various serious lacunae. One of the major problems highlighted in the series of consultations held by the Commission was that the 30-day notice period after the registration of marriage under the Act is often misused. The 30-days period offers an opportunity to kin of the couple to discourage an inter-caste or an inter-religion marriage. It is of paramount importance in the current scenario that couples opting into cross-community marriages are adequately protected. While previous Law Commission's 242<sup>nd</sup> Report 'Prevention of Interference with the Freedom of Matrimonial Alliances (in the name of Honour and Traditions): A Suggested Legal Framework' (2012) have discussed honour killings and the power of the *Khap Panchayats*, it is important to ensure that at least, willing couples can access the law to exercise their right to marry when social attitudes are against them.

<sup>89</sup> *Joseph Shine v. Union of India* WP(Crl) No. 194/2017

2.111. Recently, the procedure for registration under SMA, 1954, was challenged in the Punjab and Haryana High Court in *A & Anr. v. State of Haryana & Ors.*<sup>90</sup> and the court strongly urged the State to modify the Court Marriage Check List (CMCL) so that inter-religious marriages are promoted and not hampered.

2.112. It is suggested to the State of Haryana to suitably modify and simplify the CMCL to bring it in line with the Act by minimal executive interference. It may restrict the list to conditions which account for fundamental procedure avoiding unwarranted overload of obstructions and superfluity. The State is not concerned with the marriage itself but with the procedure it adopts which must reflect the mind-set of the changed times in a secular nation promoting inter-religion marriages instead of the officialdom raising eyebrows and laying snares and land mines beneath the sacrosanct feet of the Special Marriage Act, 1954 enacted in free India to cover cases not covered by any other legislation on marriages as per choice of parties for a court marriage.

2.113. Thus, while the 30-day period was retained, bearing in mind that this would also aid in transparency, particularly if facts about previous marriage, real age, or a virulent disease were concealed from either spouse, the object of the Act was to enable couples to marry by their own will and choosing. Increasingly, with moves to announce such a notice online, or with registrars directly contacting parents of the couple, the purpose of the Act, 1954 is being defeated.

2.114. The Commission urges a reduction of this period to bring the procedure in line with all other personal laws, where registration of under Hindu Marriage Act, 1955 can be attained in a day and signing of a Nikahnama also confers the status of husband and wife on the

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<sup>90</sup> CWP No. 15296/2018(O&M), decided on 20/07/2018

couple immediately. This procedural tediousness forces couples to adopt alternate measure of marrying in a religious place of worship or converting to another religion to marry. Moreover, it also discourages couples from registering their marriage altogether because marriages outside the purview of the Act, remain valid even without registration, or marriage may take place anywhere (jurisdiction). Steps for the protection of the couples can be taken, if there is reasonable apprehension of threat to their life or liberty, and the couple request for the same<sup>91</sup>. Thus, the requirement of a thirty days notice period from sections 5, 6, 7, and 16 needs to be either deleted or adequate protections for the couple need to be in place.

2.115. All other general amendments such as introduction of irretrievable marriage as ground for divorce and community of property discussed earlier must also be incorporated in the SMA, 1954.

<sup>91</sup> *Shashi v. PIO Sub-divisional Magistrate Civil Lines, CIC/SA/A/2016/001556*

20. The Commission (CIC) recommends both the Governments Union and States, to consider:

a) Incorporating a column or leaving sufficient space for declaration in the application form for registration about reasonably apprehended threat to their life or liberty for exercising their choice and request for protection, and direct Marriage Officers to get the report from the concerned Station Housing Officer after due enquiry of the allegations of threat and secure their lives, if SHO concludes the threat is *prima facie* real, or

b) Take any other adequate measures to offer protection to would be partners, including taking up the draft Bill referred above with necessary changes.

21. The Commission, as per Section 19(8)(a)(iv), require public authority i.e., the Marriage Officers or SDMs, to:

a) incorporate declaration about apprehended threat in the application form, and provision for due enquiry by SHO, b) provide necessary protection in the standard operative practice or procedure,

c) add a warning against assaulting the liberty of would be partners in the form of notice for solemnization & registration of marriage, and d) ensure wide reach to the mandatory notices to be issued under law, by placing the same on the official website, in an easily accessible link, highlighting under the title of 'marriage registration notices' as that is mandatory duty of public authorities under Section 4(1)(d) to facilitate the interested persons (including parents or guardians) to know and raise objections, if any, to safeguard the interests of the partners to the proposed marriage.

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ANNEXURE - P/7

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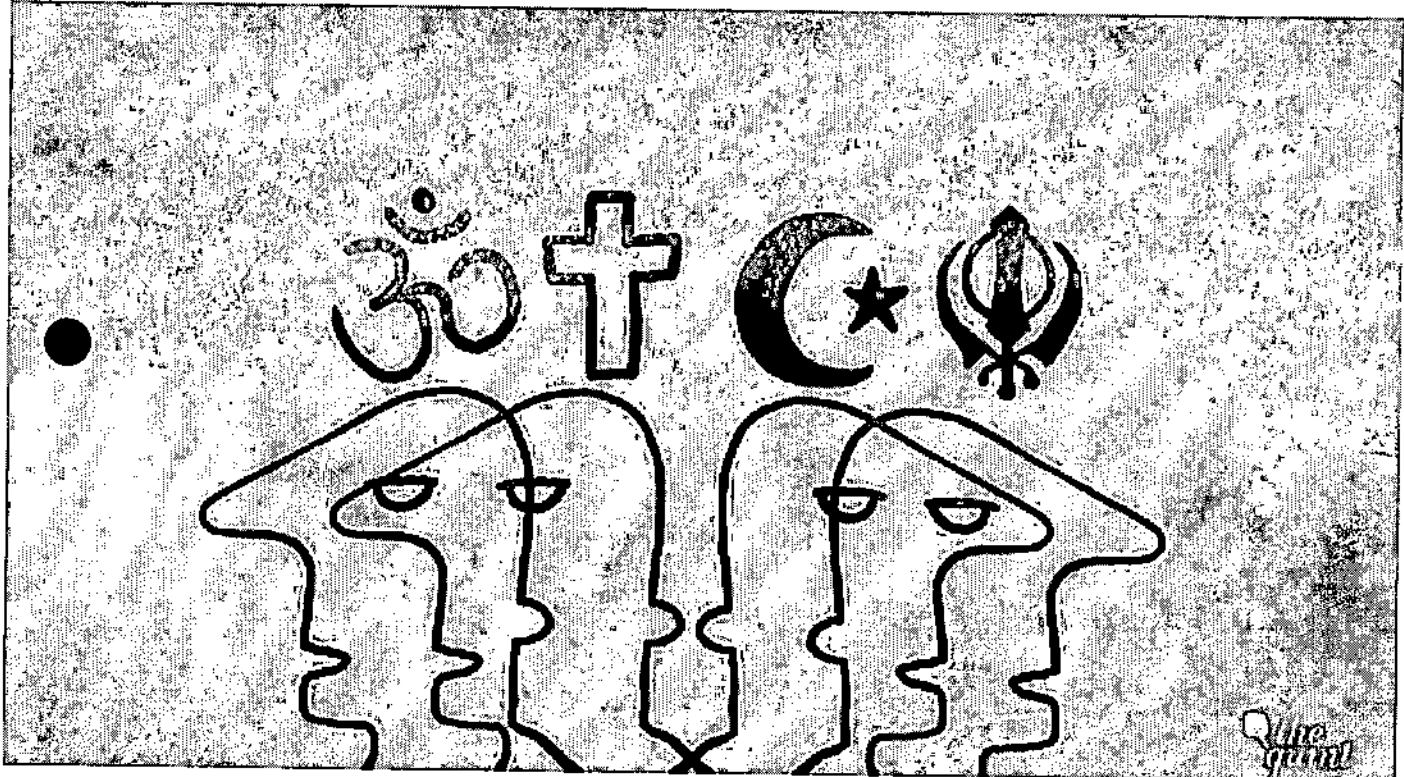
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# Confused About Special Marriage Act? Inter-faith Couples Take Heed

Can inter-faith couples get married under the Special Marriage Act? Here's how the process works

VAKASHA SACHDEV  
Updated: 28 Feb 2019, 01:03 PM IST

EXPLAINERS  
8 min read



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## Snapshot

Sahil Khan, a Muslim man, was recently thrashed by a mob when he arrived at the Ghaziabad court to get married to a Preeti Singh, a Hindu woman. The couple had chosen the Ghaziabad court since they were told it was a safe and easy process there – the mob, getting to know that an inter-faith marriage was about to take place, decided to prove otherwise. This followed another incident in Vadodara where the relatives of a Muslim girl ransacked the family home of a Hindu man whom she had eloped with.

On 20 July, the Punjab & Haryana High Court had to inform the Haryana government that its Court Marriage Check List (to be followed for registering a marriage under the Special Marriage Act) violated the fundamental right to privacy, and exceeded the authority given to state governments to frame rules under the Act.

What connects these incidents? The legal formalities to be followed for registering inter-faith marriages, and the ways in which these have been twisted to create complications that put couples at risk.

Here's what the law on such marriages actually entails, and what to watch out for when trying to register them.

## Confused About Special Marriage Act? Inter-faith Couples Take Heed

### 1. The Special Marriage Act 1954: Origins and Compromises

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### **3. Process for Registering a Marriage Under the Special Marriage Act**

[Expand](#)

### **4. The 30-Day Objection Period and its Misuse**

[Expand](#)

### **5. Court Rulings That can Help Couples Being Harassed**

[Expand](#)

## **The Special Marriage Act 1954: Origins and Compromises**

The Special Marriage Act (SMA) was enacted in 1954 as part of a series of reforms to personal laws in India that Jawaharlal Nehru had made a priority. The SMA was meant to be a legislation to govern marriages that could not be solemnised according to religious customs – which essentially meant inter-faith or inter-caste marriages.

It can also be used by couples from the same community who don't want their marriage (and ancillary issues like divorce) governed by relevant personal laws – a marriage performed in accordance with religious rites can also be registered under the SMA afterward.

A similar law had existed since 1872, but it included some extremely problematic elements, including renunciation of religion by anyone getting married under it, and no provision for dissolution or nullification of marriage. Renunciation as a precondition was removed for marriages among Hindus, Sikhs, Buddhists and Jains in 1922, but this wasn't enough, necessitating the 1954 SMA.

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The SMA was supposed to be a way of circumventing cultural taboos against marrying outside one's religion or caste. But while it does provide for this, it came into being at a time when Nehru was embroiled in a bitter struggle with Hindu conservatives both within the Congress and outside it, who were not pleased with his proposals for reforming the Hindu personal law, and were also not happy with the idea of unrestricted inter-religious marriages.

As a result, the SMA came to include a number of provisions meant to serve as a compromise between Nehru and the conservatives, two of which stand out:

- 1 The requirement of a notice period before a marriage can be conducted – which makes the process more cumbersome;
- 2 If a Hindu, Buddhist, Sikh or Jain marries outside of these communities, they are no longer considered part of the "undivided family" – which means they cannot inherit ancestral property if they marry a Muslim, Christian, etc.

### What are the Conditions for Getting Married Under the Special Marriage Act?

The SMA applies to the whole of India except Jammu & Kashmir. Citizens of India residing in Jammu & Kashmir but from another State/UT can also get married in accordance with the SMA.

Interestingly, the language of the core provisions of the SMA is gender-neutral ("any two persons", "the parties"), which means it could textually apply to same-sex marriages. However, other provisions imply that one party to the marriage has to be male and the other female (Section 4(c), for instance), and in context, the SMA was intended to apply to heterosexual marriages only.

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- 1 Neither of them has a living spouse;
- 2 Neither of them is incapable of giving consent to the marriage because of an unsound mind;
- 3 Neither of them has been suffering from a mental disorder which makes them unfit for marriage or having children;
- 4 Neither of them has been subject to recurrent attacks of insanity;
- 5 The man is 21 years old or older, and the woman is 18 years or older;
- 6 They are not within the "degrees of prohibited relationship". This concept broadly prohibits incest, as well as marriages between first cousins, and certain relations by marriage.

If a couple wants to register a marriage under the SMA, the conditions are essentially the same (Section 15, SMA).

### Process for Registering a Marriage Under the Special Marriage Act

If a couple wants to get married or register their marriage under the SMA – as an inter-faith marriage would involve – the following steps need to be followed:

- 1 First, the couple has to give notice in writing to the "Marriage Officer" of the district in which at least one of them has been residing for the last 30 days. [Section 5, SMA] The marriage is supposed to be scheduled within three months from the date of the notice.

The format for the notice under Section 5 of the SMA

- 2 Once the notice has been received by the Marriage Officer, this has to be 'published' by displaying it in their office in a conspicuous place. A copy



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marriage IF it contravenes one of the conditions for marriage (age, capacity to consent, no incest, etc). [Section 7, SMA] If there are no objections, the marriage can be solemnised at the end of the 30-day period.



If someone does object to the marriage, then the Marriage Officer has to conduct an inquiry into whether or not the objection is valid within 30 days of receiving the objection. During this time, the marriage cannot take place. If the Marriage Officer decides the objection is valid and refuses to solemnise the marriage, either the bride or groom can file an appeal before the district court within 30 days of the refusal. [Section 8, SMA]



Once any objections are dealt with, the bride and groom and three witnesses have to sign a declaration in the presence of the Marriage Officer, who then countersigns it. [Section 11, SMA]



After all this, the marriage can finally be solemnised, either at the Marriage Officer's office (usually in the district court) or some other place. Each party has to say to the other in the presence of the Marriage Officer and the three witnesses and in any language understood by the parties, "I, (A), take the (B), to be my lawful wife (or husband)." [Section 12, SMA]



After the solemnisation, the Marriage Officer registers the details in a certificate, which is signed by the parties to the marriage and the three witnesses. Once the certificate is entered in the "Marriage Certificate Book", this becomes conclusive evidence of a marriage under the SMA. [Section 13, SMA]

## The 30-Day Objection Period and its Misuse

[Sushant Singh Rajput Case](#)[Prashant Bhushan Case](#)[US Elections 2020](#)[My Report](#)[WebQoof](#)[NEON](#)[discussed above:](#)

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It is quite clear that this requirement was inserted in the SMA to provide an opportunity for the families or communities of bride or groom to get to know about the impending wedding, and make attempts to dissuade the couple. It precludes elopement because of the 30-day residence requirement and because the Marriage Officer has to publish the information.

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As many inter-faith marriages still take place in circumstances where the families or communities object to the union and where the lives of the couples are at risk, this procedural step is not just cumbersome, but dangerous as well, defeating the entire point of having a legislation like the SMA.

If this weren't bad enough in itself, local authorities often use the notice requirement as a way to impose even more onerous conditions on a couple.

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Haryana's Court Marriage Check List for Gurugram (Gurgaon), for instance, required the notice to be sent to the home address of the couple, and, incredibly, publication in a national newspaper. It also specified that the bride and groom couldn't be staying in the same place at the time of applying, which is not a precondition in the SMA or even any religious marriage law.

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Even keeping aside the safety implications (which are grave), such requirements are unnecessary violations of a couple's privacy. As privacy is a fundamental right, it cannot

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## Court Rulings That can Help Couples Being Harassed

It goes without saying that the courts have found such additional requirements to be illegal.

The Delhi High Court objected to this in the 2009 case of *Pranav Kumar Mishra vs Govt of NCT Of Delhi*, where it held that Marriage Officers could not send notices to the residences of couples. Justice Ravindra Bhat said this would violate the right to privacy, and that:

"It is to be kept in mind that the Special Marriage Act was enacted to enable a special form of marriage for any Indian national, professing different faiths, or desiring a civil form of marriage. The unwarranted disclosure of matrimonial plans by two adults entitled to solemnize it may, in certain situations, jeopardize the marriage itself. In certain instances, it may even endanger the life or limb of one at the other party due to parental interference."

In February 2018, the Rajasthan High Court affirmed this reasoning in *Kuldeep Singh Meena vs State of Rajasthan*, noting that the SMA only requires the notice to be displayed on a display board at the Marriage Officer's office. The high court makes it very clear that apart from the conditions specified in the SMA, authorities cannot impose additional requirements on couples.

In July 2018, the Punjab and Haryana High Court emphasised that the SMA had to be implemented in a way to promote inter-faith marriages when striking down the Gurugram Check List, holding that:

"The state is not concerned with the marriage itself but with the procedure it adopts which must reflect the mind-set of the changed times in a secular nation promoting inter-religion



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Of course, since the SMA itself allows for objections to be raised against an impending marriage, it isn't as though the legislation itself is free from meddling. However, such objections can only be made on the grounds specified in Section 4 of the SMA – the conditions discussed earlier.

Even these aren't perfect. For instance, they allow for objections where one party suffers from a mental disorder, which should be something the parties to the marriage should be concerned about, and nobody else, not even the families of the couple. But at least they don't allow objections on the ground of community sentiment or parental consent, and so on, which the recent Hadiya case showed can still be used to interfere in the lives of consenting adults to ridiculous lengths.

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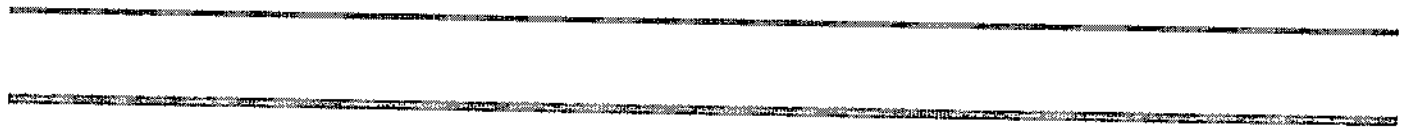
8/22/2020

Inter-Faith Marriages Under Special Marriage Act: Process, Problems and Remedies by Courts

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8/23/2020

The couples on the run for love in India - BBC News

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ADVERTISEMENT

## The couples on the run for love in India

🕒 13 April 2019



Ravindra and Shilpaba married against all odds

Most Indian families still prefer marriages arranged within their religion and caste. Marriages outside these rigid boundaries have often led to violent consequences, including "honour" killings. But some young Indians are still willing to defy their families and communities for love, reports the BBC's Divya Arya.

Ravindra Parmar knew that pursuing a relationship with an upper-caste woman would be dangerous.

He is a Dalit (formerly known as "untouchable"), a caste that sits at the lowest rung of India's social ladder. The woman he fell in love with, Shilpaba Upendrasinh Vala, is a Rajput - a Hindu warrior caste near the apex of the system.

The yawning gap between his position and hers is something rarely bridged in Indian society.

"We are not even allowed to walk past their area and I had dared to marry into their family," he says.

**Listen to the radio version of this story here**

"Those who marry inter-caste are seen as aliens. The perception is that they are terrorists who revolt in society."

Ravindra and Shilpaba were born and brought up in two villages separated by more than 100km (62 miles) in the western state of Gujarat.

They met on Facebook and would spend hours taking digs at each other. But all that friendly banter had a deep impact on Shilpaba.

"I was like any other village girl limited to home and college, but he broadened my horizon, made me realise that my life has more meaning," she says.

Social media has opened a space that did not exist a few decades ago. Rigid caste and religious divides meant that the possibility of meeting, interacting and striking friendships in public places was neither possible nor encouraged.

The caste system is hereditary, and the practice of marrying within the caste ensures that the hierarchy is perpetuated. Caste divisions have deep roots in history and Dalit men who have married women from upper castes have been killed.

Marriages across caste or religion in India are uncommon. According to the India Human Development Survey, only about 5% of Indian marriages are inter-caste.

The onus of upholding tradition, culture and "purity" falls on the woman and if she marries outside traditional boundaries, she is seen as besmirching the honour of the community and her family.

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The couples on the run for love in India - BBC News

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Shilpaba had to flee from her village to marry Ravindra

The anger and backlash can lead to violent attacks and killings.

Shilpaba had to flee from her village to marry Ravindra. But the threat of violence has continued to hang over them: they have moved between houses and cities a dozen times in the past three years. Ravindra is a trained engineer but had to leave his job and has had to do daily-wage labour wherever they have lived to make ends meet.

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Shilpaba says the stress became unbearable. They started blaming each other for their situation and she even contemplated taking her own life.

"Ravindra convinced me out of it, as that was no solution," she says. "Now we are both studying law with a vision to take up human rights cases and make our parents proud through our work."

<https://www.bbc.com/news/world-asia-india-47823588>



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The couples on the run for love in India - BBC News

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"Maybe then they will see that we didn't take this decision to just have fun and they will accept us."

## 'Shocking' level of prejudice

The latest data available from the National Crime Records Bureau (NCRB) shows that 77 murder cases in 2016 were reported with "honour killing" as the motive.

Such violence is highly under-reported and these numbers do not accurately reflect social attitudes that may be growing more conservative.

A 2016 survey, Social Attitudes Research for India (Sari), conducted across Delhi, Mumbai, and the states of Uttar Pradesh and Rajasthan found the majority of respondents opposed to inter-caste and inter-religious marriages.

In fact they were in favour of a law banning such marriages.

"It is quite shocking that despite rising levels of literacy and education, prejudicial beliefs do not reduce. In fact, they are worryingly high," says Professor Amit Thorat of Jawaharlal Nehru University, who worked on the Sari survey.

"Religious and traditional values around hierarchies, around the notion of purity and pollution seem to be more sacrosanct and valuable than human rights, the right to live or the right to marry by choice."

## Feeling unsafe

Bibi Ayisha and Aditya Verma were 17 years old when they fell in love. They too found each other on Facebook. That they were born into different religions - she is Muslim, he is Hindu - did not matter to them. But their families fiercely opposed the relationship.



Ayisha and Aditya met on Facebook

Aditya was born and grew up in Delhi. After finishing school, he enrolled in a college in the southern Indian city of Bangalore only because Ayisha lived there. But that sign of his dedication couldn't win her parents over: he was still a Hindu.

Madly in love, and after waiting for two years, Ayisha ran away with Aditya. They moved to Delhi but, like Ravindra and Shilpaba, they still did not feel safe.

"We were so scared that for five months we stayed in a room. Neither of us was working at that time. I thought if I stepped out, I would be killed, because I was Muslim and he was Hindu," says Ayisha.

In February 2018, 23-year old Ankit Saxena was murdered in broad daylight in the capital Delhi for having a relationship with a Muslim woman.

The woman's parents and two others were arrested and the trial is ongoing.

8/23/2020

The couples on the run for love in India - BBC News

Ayisha says that after that incident, the fear of a possible honour killing started feeling very real.

"Even if we went out briefly, I was constantly looking around and if I saw anyone with a beard, I thought that they were members of my family coming to kill me."

### Spreading awareness

Her fears have been set against the backdrop of an India where religious polarisation is increasing. A Hindu nationalist government has been in power since 2014 and is accused of normalising anti-Muslim sentiment.

"I think the present environment is such that rather than bringing people and religions together, it is trying to fan the fires of division," says Prof Thorat.



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marriage unless Ayisha adopts Hinduism.

Both of them are opposed to adopting the other's religion - and losing their own.

"When we fell in love, I knew she was a Muslim and she knew I was Hindu. We don't want that any of us should lose our identity," Aditya says.

India passed a law in 1872 that enables legal registration of a marriage between a man and woman of different religions or caste without any conversion.

### The Hindu-Muslim marriage stuck in India's Supreme Court

#### Caste-hatred in India - what it looks like

Aditya found out about the Special Marriage Act through Asif Iqbal and Ranu Kulshreshtha, a couple who married inter-faith back in 2000.

Soon after their marriage - in the aftermath of the anti-Muslim riots in Gujarat in 2002 - they witnessed targeting of couples like themselves and a lack of any support mechanisms.

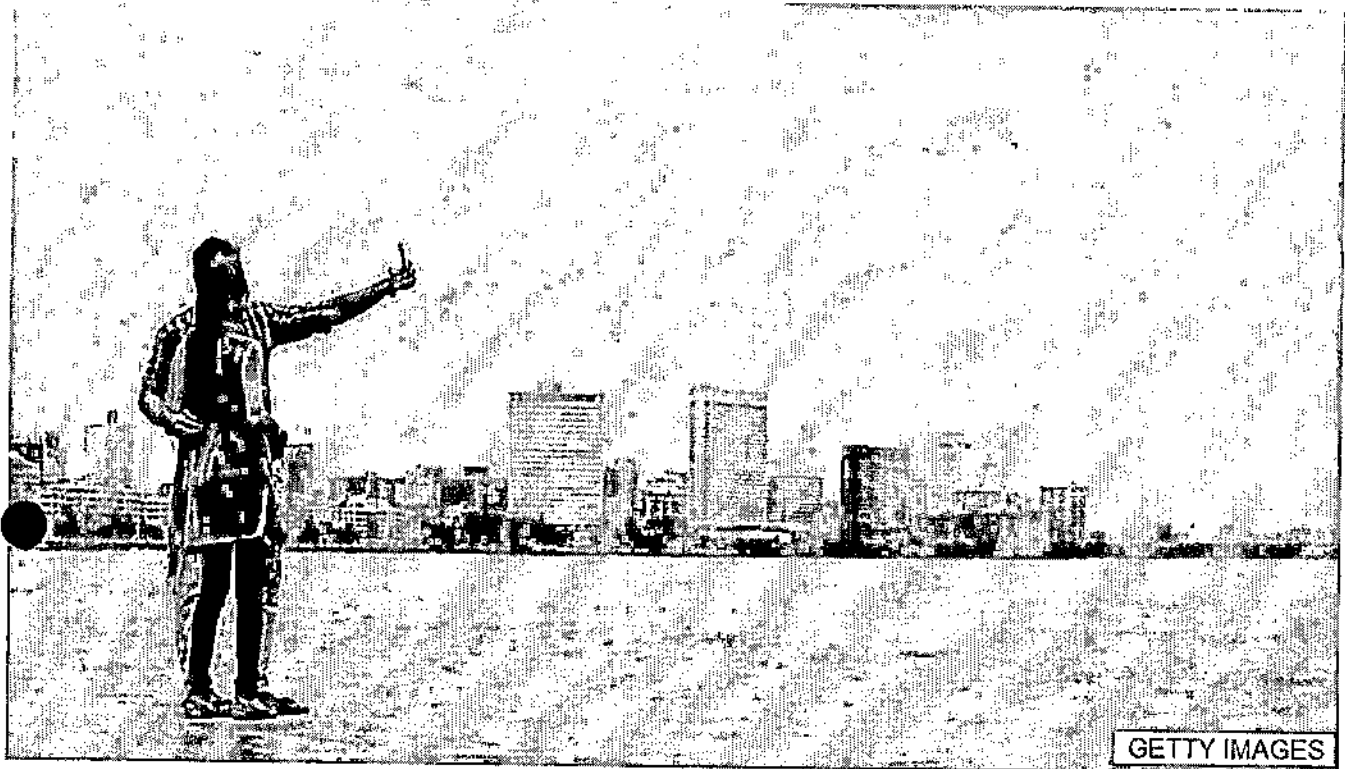
They set up an organisation called Dhanak, which spreads legal awareness and provides counselling as well as safe houses to couples who want to marry inter-faith or inter-caste.

But awareness about the Special Marriage Act is very low. It also has a rule that requires a notice about the intended marriage to be displayed at a public place for a month, giving opportunity to anyone to place an objection.

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Marriages across caste or religion in India are uncommon

"This provision is often misused by fanatic Hindu groups like Bajrang Dal, Vishwa Hindu Parishad, and Muslim organisations like Nizam-e-Mustafa, who would approach the families and pressure them to stop their daughters as daughters are easy targets," explains Asif Iqbal.

According to him, the local police also do not encourage such marriages and instead play an active role in stopping them, especially in smaller towns.

Rekha Sharma, chairperson of the government's advisory body, the National Commission for Women, agrees.

"The government needs to do more in sensitising the police and legal officers about this, as the law helps in stopping conversion yet still enabling inter-faith marriage," she says.

But she adds that lasting change cannot come only by enforcing laws, but by changing social mindsets.

Acceptance is key for the survival of such couples as they deal with severe social and economic isolation.

'Trust and love'

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The Dhanak network has helped Ayisha feel safe. She has now met many couples like her and Aditya, and it gives her immense hope.

"If you trust your partner and love them very much, then nothing else should matter. You should not waste time worrying about family and society. They will come around eventually," she says.

After their marriage, Ravindra and Shilpaba decided to change their surname to Bharatiya, which means Indian.

They decided to drop their original surnames since it revealed their respective castes.

Ravindra is an idealist - he believes that more inter-caste marriages will lead to a future India where caste divisions will cease to be an issue.

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

I.A.No. OF 2020

WRIT PETITION (CIVIL) NO. OF 2020

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IN THE MATTER OF:

Nandini Praveen

... Petitioner

Vs.

Union of India

... Respondents

**APPLICATION FOR PERMISSION TO FILE A LENGTHY SYNOPSIS**

**AND LIST OF DATES**

1. The above Writ Petition is filed.
2. The facts of the case had been fully detailed in the Writ Petition and the same is not repeated for the sake of brevity and the same may be read as part of this Application.
3. The synopsis and list of dates of the above matter is slightly lengthy and beyond the prescribed pagination. However the above lengthy list of dates is essential and required for proper narration of chronological events of facts and law involved in the present matter. It is therefore just and necessary that this Hon'ble court may be pleased to grant permission to the petitioner to file lengthy list of dates.

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4. In order to bring the entire facts and circumstances in the correct perspective, a slightly lengthy synopsis and list of dates than what has been prescribed by the Rules. However the same is necessary for a proper adjudication of the present Writ Petition. It is therefore just and necessary that this Hon'ble Court may be pleased to permit the Applicant to file a Lengthy synopsis and List of dates.

**PRAYER**

In the circumstances it is most respectfully prayed that this Hon'ble Court may be pleased to:

- i). permit the Applicant to file a Lengthy synopsis and List of dates. and
- ii). Pass any such further order as this Hon'ble Court may deem fit and proper in the circumstances of the case.

AND FOR THIS ACT KIINDNESS THE HUMBLE PETITIONER SHALL AS IN DUTY BOUND EVER PRAY.

FILED BY:

FILED ON : 31.08.2020

(NISHE RAJEN SHONKER)

NEW DELHI.

ADVOCATE FOR THE PETITIONER