



Special Marriage Act, 1954

Why in News

Recently, the **Allahabad High Court** has struck down the provisions under **Section 5 of the [Special Marriage Act](#)** that required parties to give a 30-day mandatory public notice of their intention to marry.

Key Points

▪ Special Marriage Act (SMA), 1954:

- The Special Marriage Act is a **central legislation** made to **validate and register interreligious and inter-caste marriages in India**.
- It allows two individuals to solemnise their marriage through a **civil contract**.
- **No religious formalities** are needed to be carried out under the Act.

▪ Provisions of the Special Marriage Act:

- **Section 4:** There are **certain conditions** laid down in Section 4 of the Act:
 - It says that neither of the parties should have a spouse living.
 - Both the parties should be **capable of giving consent**; should be sane at the time of marriage.
 - The parties shall **not be within the prohibited degree of relations** as prescribed under their law.
 - While **considering the age**, the **male must be at least 21 and the female be 18 at least**.
- **Section 5 and 6:**
 - Under these sections, the parties wishing to marry are **supposed to give a notice for their marriage** to the Marriage Officer in an area where one of the spouses has been **living for the last 30 days**. Then, the marriage officer publishes the notice of marriage in his office.
 - **Anyone having any objection to the marriage** can file against it within a period of 30 days. If any such objection against the marriage is sustained by the marriage officer, the marriage can be rejected.

▪ Details of the verdict

◦ Observations:

- The **provision for mandatory publication of notice**, derived through “simplistic reading” of the particular law, “would **invade the fundamental rights of liberty and privacy**, including within its sphere freedom to choose for marriage without interference from state and non-state actors, of the persons concerned”.
- The court also noted that despite the secular law for marriage, a majority of marriages in the country happen as per religious customs. It said that **when marriages under personal law do not require a notice or invitation for objections, such a requirement is obsolete in secular law** and cannot be forced on a couple.

- **Publishing marriage details made optional:** The court made it optional for the parties to the intended marriage to make a request in writing to the Marriage Officer to publish or not to publish a notice under Section 5 and 6 of the Act of 1954.
- **Directives for Marriage officer:** In case the parties do not make such a request for publication of notice in writing, the Marriage Officer shall not publish any such notice or entertain objections to the intended marriage and proceed with the solemnization of the marriage. However, in case the officer has any doubt, he could ask for appropriate details/proof as per the facts of the case.
- **Basis of Judgement is progressive rulings by the Supreme Court:**
 - [Aadhaar case \(2017\)](#) which made the [right to privacy](#) a fundamental right under **Article 21** of the Constitution of India.
 - **Hadiya Marriage Case (2018)** which held that the **right to choose a partner is a fundamental right.**
 - **Navtej Singh Johar vs. Union of India case (2018)** in which the court decriminalised homosexuality striking down the [Section 377 of IPC](#).
- **Benefits of the verdict**
 - It would **decrease the cases of conversion for marriage**, as the delay under the special marriage Act 1954 was forcing many couples to marry by converting.
 - It shall **remove hindrances to inter-faith and inter-caste marriages**, and thus could promote ideals of **secularism and egalitarianism.**
 - It shall provide **relief to interfaith couples from being targeted by vigilante groups.**
- **Issue related to the verdict:**
 - Doing away with the public notification of the marriage **could increase the cases of cheating**, for example cases of duping by a married spouse.
 - It can facilitate anti social activities such as forceful conversion.

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