

## A STUDY ON SPECIAL MARRIAGE ACT,1954

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### ABSTRACT:

The Special Marriage Act, 1954 accommodates a common marriage of two Indians, without the need of denying their separate religion. The Act accommodate common marriage that would empower people to get hitched outside of their individual group commands, numerous group based laws did not accommodate entomb – group or bury – position relational unions. Numerous a period marriage outside of one's own rank or religion brings about social exclusion. The Act gives authenticity to such relational unions. It precluded station or religious boundaries to marriage and gave an absolutely common and non – formal stately marriage. The Act wins not just in instances of bury – religious or entomb – standing relational unions, or love relational unions but on the other hand is pertinent on same religion relational unions. The Act additionally offers a choice to enlist relational unions executed according to one's very own laws. This arrangement of consequent enrolment empowers gatherings to profit of common and uniform cures in spite of the solemnisation of marriage through execution of religious services. This guides them in beating the requirements postured in their very own laws. On the premise of Research issue, the scientist presumes that Registration is a 1954 accommodates necessary enlistment as without the enrolment marriage

won't be substantial. The one of a kind element of the Special Marriage Act, 1954 is that any marriage solemnized in some other shape under some other law, Indian or nonnative, between any two people can be enlisted under the Act. The marriage under this Act is basically polite marriage and is required to finish the common conventions. Gatherings who plan to get hitched under the Special marriage Act might give a notice in writing in the predetermined shape to the Marriage Officer of the region in which no less than one of the gatherings to the marriage has lived for a time of at least thirty days instantly going before the date on which such notice is given

#### KEY WORDS

Registration, Social ostracism., Community, Non ritualistic, Legitimacy , Solemnisation

#### INTRODUCTION:

The Special Marriage Act furnishes with the a few conditions for marriage under segment 4. The conditions said in the area 4 of Specific Marriage Act are to some degree like that of segment 5 of Hindu Marriage Act. Preceding the marriage, a notice of aim to wed must be given to the Registrar of Marriages.<sup>2</sup> The marriage is contracted at the common registry within the sight of marriage officer designated by the state and three observers as said in the Act.<sup>3</sup> No religious customs or services are required from the marriage to be finished. It's upon the gathering that they need to do marriage ceremonies or not. Then again, marriage ceremonies constitute the imperative component of the marriage under Hindu Marriage Act without which a marriage winds up turning into a void marriage i.e. void stomach muscle Inuit. The Special Marriage Act, 1954 requires certain preliminaries to the solemnisation of marriage. The marriage under this Act is basically polite marriage and is required to finish the common conventions. Gatherings who plan to get hitched under the Special marriage Act might give a notice in writing in the predetermined shape to the Marriage Officer of the region in which no less than one of the gatherings to the marriage has lived for a time of at least thirty days instantly going before the date on which such notice is given. The Marriage Officer is required to keep every one of the notification with the record of his office and to enter a genuine duplicate of each such notice in Marriage Notice Book and the Book is available to just for inspection. The notice of marriage is additionally to be distributed by the Marriage Officer. Before the termination of thirty days from the date on which the notice was distributed any individual can protest the marriage that it would

contradict any of the conditions specified in segment 4 of the act. After the expiry of thirty days from the date on which the notice was distributed the marriage might be solemnized. Prior to the marriage is solemnized the gatherings and three witnesses might sign a presentation in the frame give underneath, and the announcement should be counter marked by the Marriage Officer. Thus the marriage is solemnized in the wake of finishing every one of the means specified previously. 'Marriage' is viewed as a hallowed organization in our Indian subcontinent. It is a basic piece of our way of life. India is a differing nation and in this way has individuals from various religions and societies, living here. When it comes to relational unions in India, masterminded relational unions are viewed as the most ideal approach to get a kid and a young lady to tie the conjugal bunch. Indian guardians are the ones who appreciate it, ideal from the young lady or kid they need their kid to get hitched to, till the date and time of marriage. The Special Marriage Act 1954 wholly changes the situation in respect of prohibited degrees in marriage. One of the conditions for an intended civil marriage to be solemnised under this Act is that “the parties are not within the degrees of prohibited relationship” [Section 4 (d)]. The Act makes a provision for relaxation of the rule of prohibited degrees in marriage i.e. the parties can marry if custom governing one of the parties permits such a marriage between them.<sup>4</sup> Relaxation of the net of prohibited degrees on the ground of custom is also permissible under Hindu Marriage Act, but it does not require a gazette notification by the State Government in this regard with is required under the Specific Marriage Act.

### **Methods and Materials**

This paper is an outcome of analytical analysis form secondary data. The secondary data includes books, research journals, research articles , international publications from various websites which gave importance to Special marriage act 1954 This research is based on doctrinal method.

### **HYPOTHESIS:**

- There is no significant in special marriage act 1954 in Indian law
- There is significant in special marriage act 1954 in Indian law

**Marriage and Its Registration under Special Marriage Act:**

Under the Special Marriage Act, 1954 any 'two people's can play out a marriage. The entomb – religious or bury – shared relational unions are conceivable in India just under the Special Marriage Act, 1954. Under the Act a marriage must be in a common marriage shape, however parties are allowed to play out some other extra custom or religious functions in the event that they need to. The Act furnishes with conditions identifying with solemnisation of unique marriage under Section 4. Right off the bat, neither one of the parties ought to have a companion living at the season of the marriage. Secondly, the physical and mental limit of the both the gatherings ought to be according to the area requires. Thirdly, the age of the gatherings. Violation of any of the conditions said above will give void status to the marriage. The Special Marriage Act 1954 completely changes the circumstance in regard of denied degrees in marriage. One of the conditions for an expected common marriage to be solemnized under this Act is that "the gatherings are not inside the degrees of precluded relationship". The articulation "degrees of disallowed relationship" is characterised in Section 2 (b) of the Act as "a man and any of the people specified in Part I of the First Schedule and a lady and any of the people specified in Part II of the said Schedule." Thus, the Act fuses its own rundown of denied degrees in marriage, isolate for people. Consequently all first cousins – fatherly and maternal, parallel and cross – are put by the Special Marriage Act in the class of restricted conjugal relationship. The Act, in any case, does not put any second cousin in its two arrangements of precluded degrees in marriage. The Act gives unwinding gave that custom representing one of the gatherings licenses marriage between them. For instance under Muslim individual law marriage between the primary cousins is allowed. The Special Marriage Act, 1954 requires certain preliminaries to the solemnisation of marriage. The marriage under this Act is basically polite marriage and is required to finish the common conventions. The notice of marriage is additionally to be distributed by the Marriage Officer. Before the lapse of thirty days from the date on which the notice was distributed any individual can protest the marriage that it would negate any of the conditions specified in segment 4 of the Act.

Personal Laws –The various personal laws have different procedure for their marriage and follow different rituals and religious ceremonies for the solemnisation of the marriage.

**Hindu Law:**

Under Hindu Marriage Act, 1955 conditions for the solemnisation of marriage are provided under section 5. Conditions mentioned in Section 5(i), (ii), (iii) and (iv) is somewhat similar to that of conditions mentioned in section 4 of the Special Marriage Act, 1954 with subtle variance. Violation of condition mentioned in section 5(iii)19 of Hindu Marriage act, 1955 will not make the marriage void while the violation of section 4(c) of the Special Marriage Act, 1954 will make the marriage void under Section 24(1)(i)20 of the Special Marriage Act, 1954. section 5(iv) and (v) of Hindu Marriage act, 1955 and section 4(iv) of the Special Marriage Act, 1954 defines the degree of prohibited relationship but the Special Marriage Act, 1954 provides relaxation in the degree of prohibited relationship. Section 7 provides with ceremonies of the marriage and performance of the certain religious rituals and ceremonies is mandatory

**Muslim Law :**

According to the Muslim notion of marriage, the nature of marriage is contractual. A system of private registration of marriages with the kazis has always prevailed among the Indian Muslims. Though in principle Islamic law does not require a ritual solemnisation of marriage, among the Muslims of India marriages are invariably solemnized by religious officials known as the “kazi”. The short ceremony performed by the kazi, known as “nikah”, begins with formally obtaining consent of the parties – first of the bride and then of the groom – and ends with recitation from the Holy Quran followed by prayers. In Muslim law all first cousins both on the paternal and maternal sides are outside the ambit of prohibited degrees in marriage. Before, or immediately after, the ceremony the kazi prepares a nikah-nama (marriage certificate) which gives full details of the parties and is signed by both of them, and by two witnesses. The kazi authenticates the nikah nama by putting his signatures and seal on it. Printed forms of standard nikah nama in Urdu and Hindi are stocked by all kazis who fill in it

Under Section 8 of the Hindu Marriage Act 1954, there exists a provision for registration of marriages.

**Christian Law :**

The Indian Christian Marriage Act 1872 provides that every marriage both parties to which are, or either party to which is, Christian shall be solemnized in accordance with its provisions. The Indian Christian Marriage Act 1872 is obsolete in so far as it makes a

distinction between “Christians” and “Indian Christians”. It also makes separate provisions for followers of various Churches including Church of England, Church of Scotland and Church of Rome. The Act provides separate rules for the solemnisation and registration of marriages of Indian Christians and other Christians.

**Punishment of bigamy:**

Every person whose marriage is solemnized under this Act and who, during the lifetime of his or her wife or husband, contracts any other marriage shall be subject to the penalties provided in section 494 and section 495 of the Indian Penal Code, 1860 (45 of 1860), for the offence of marrying again during the lifetime of a husband or wife, and the marriage so contracted shall be void.

**SPECIAL MARRIAGE ACT ACT -1954**

**1. Scope of the Act**

The Special Marriage Act deals with inter caste and inter-religion marriages. Inter-caste marriage is a marriage between people belonging to two different castes. Gone are the days when people used to marry blindly wherever their parents decided them to. Now the youth has its own saying and choice and they prefer getting married to someone who has a better compatibility with them rather than marrying someone who belongs to their caste or their religion. It is them who have to live with their partner for the entire life and thus caste or religion is not a matter of utmost consideration at all now. Love is a beautiful emotion and it should not be weighed with something like caste or religion. All religions are equal and marriage amongst it should not be a big deal. Caste or religion is conferred on us by birth and not by choice, then why are people of lower castes seen with shame and disdain? India is a diverse country and things like this that happens here, is a thing of pity. Thus, the Special Marriage Act is a special legislation that was enacted to provide for a special form of marriage, by registration where the parties to the marriage are not required to renounce his/her religion.

**2. Application of the Act**

This information is the most important one for every Indian to know as it is through this that they can avail them. This Act covers marriages among Hindus, Muslims, Christians,

Sikhs, Jains and Buddhists. This act applies to every state of India, except the state of Jammu & Kashmir. This Act extends not only to the Indian citizens belonging to different castes and religions but also to the Indian nationals living abroad.

### **3.Requirements**

As Indians believe in marriages with proper rituals, customs and ceremonies involving pomp and show & extravagant celebrations, the Special Marriage Act does not require any of them. The basic requirement for a valid marriage under this Act is the consent of both the parties to the marriage. If both the parties are ready to marry each other, that suffices it; here caste, religion, race, etc. cannot and do not act as a hindrance to their union. For marriage under this Act, the parties need to file a notice expressing their intention to marry each other, with the Marriage Registrar of the district in which at least one of the parties to the marriage has resided for at least 30 days preceding the date on which such notice is being filed. The marriage is then said to be solemnized after the expiry of 30 days from the date on which such notice has been published. But if any person related to the parties objects this marriage and the Registrar finds it to be a reasonable cause of objection, then he can cancel the marriage on such grounds. For a valid marriage, it is also required that the parties give their consent to the marriage in front of the Marriage officer and three witnesses. These are the basic requirements for a valid marriage under the Special Marriage Act, which every Indian must know.

### **4.Conditions:**

The conditions required to be followed for this special form of marriage is not very different from the requirements of other normal marriages, which happen within the caste. These are the conditions to be eligible for a marriage under this Act: –

- The bridegroom must be at least 21 and the bride must be at least 18 years of age at the time of marriage. This is the minimum age limit for a boy/girl to marry, respectively.
- Both the parties must be monogamous at the time of their marriage; i.e. they must be unmarried and should not have any living spouse at that time.
- The parties should be mentally fit in order to be able to decide for themselves e., they must be sane at the time of marriage.

- They should not be related to themselves through blood relationships; i.e. they should not come under prohibited relationships, which will otherwise act as a ground to dissolve their marriage.
- Changes with the Emergence of Special Marriage Act in India

### **5.Legitimacy of children**

A marriage is said to be void, where the conditions mentioned in point no.4 are not met with, and the children from such marriages who would have been legitimate if the marriage had been valid, shall be legitimate, whether such child is born before or after the commencement of the Marriage Laws

### **6.Application on succession Rights**

Another important point that every Indian should have knowledge about SMA is that, the succession to property of persons married under this act or any marriage registered under this act and that of their children will be governed under the Indian Succession Act. But, if the parties to the marriage belong to Hindu, Buddhist, Sikh or Jain religions, then the succession to their property will be governed under the Hindu succession Act.

### **7.Restriction on Divorce during 1st yr of marriage**

Any person married under the Special Marriage Act, must know about this important provision of the Act. The parties cannot petition for divorce to the District court unless and until one year has expired from the date of their marriage as registered in the marriage books. But, in cases where the court is of the opinion that the petitioner has suffered exceptional hardships or the respondent has shown exceptional depravity on their part, a petition for divorce would be maintained, but if any misrepresentation is found on the part of the petitioner to apply for divorce before the expiry of 1 yr, the court may if any order has been passed, state the order to take effect only after the expiry of 1 yr, as mentioned in sec. 29 of the Act.

### **8.Can they remarry?**

Talking, about the option of remarriage available to marriages of persons registered under SMA,one important thing that has to be paid attention is that, where the marriage has been dissolved and there is no right of appeal available, or there is no petition made for it in



the required period, or appeal if presented is dismissed, then the parties may remarry, as provided by the Act.

### **9. The general and legal Understanding**

The general understanding is that only marriages in one's own caste is sacred and auspicious while the legal aspects of it as discussed above, doesn't make marriages under this act any less sacred or valid. Our Law under its provisions gives the right to every citizen to marry any person of their choice and have a happy life. But this opinion is supported as well as criticised by many. Some consider it to be valid, some not. The influence of arranged marriages over the love marriage has brought about this situation, which even after judgements and laws being passed more often in this respect, hasn't brought about a major change in the mindsets of people who are in support and opinion of marriages within the religion and caste

### **Conclusion and Recommendations:**

Inter-standing marriage segment of marriage with regards to Special Marriage Act. Marriage is viewed as a holy organization in India. It is a fundamental piece of our way of life. India is a various nation and subsequently has individuals from various religions and societies, dwelling here. We know about the degree of impact that rank and religion have in our country. is still thought about an unthinkable in numerous spots in our nation. India takes after an exceptionally unbending structure of the position framework. Individuals are required to wed inside their position and whoever weds out of their station and challenge the customary hindrances are avoided in the general public. There are various respect killings revealed ordinary and tragically, they demonstrate pride in doing as such. Accordingly there came a grave requirement for a law to defend the interests of those individuals who transcended these station and religious partitions, to wed for affection. So the parliament authorize the Special Marriage Act, 1954 individuals of India and every single Indian national in outside nations, regardless of the rank and religion. On the premise of Research issue, the analyst infers that Registration is a 1954 accommodates obligatory enlistment as without the enrollment marriage won't be legitimate. The one of a kind component of the Special Marriage Act, 1954 is that any marriage solemnized in some other shape under some other law, Indian or nonnative, between any two people can be enlisted under the Act. Enlistment of marriage is obligatory under the Indian Christian Marriages Act, 1872. Parsi

Marriage and Divorce Act, 1936 makes important Registration of Marriages yet without enrollment the marriage does not wind up invalid. In Muslim law, a marriage is viewed as a common contract and the Qazi, or administering cleric, likewise records the terms of the marriage in a nikahnama, which is given over to the wedded couple i.e. there is an arrangement of private enlistment of marriage. Under Section 8 of the Hindu Marriage Act 1954, there exists an arrangement for enrollment of relational unions. Be that as it may, it's left to the contracting gatherings to either solemnize the marriage before the sub-recorder or enlist it subsequent to playing out the function in congruity with Hindu convictions.

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