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**THE SPECIAL MARRIAGE ACT, 1954**

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## **The Special Marriage Act ,1954**

### **INTRODUCTION**

The Special Marriage Act deals with inter-caste and inter-religion marriages. Inter caste marriage is a marriage between people of two different castes. The days had gone by when people used to marry wherever their parents decided to blindly. The youth now have their own saying and choice and prefer to marry someone who is more compatible with them than marrying someone who belongs to their caste or religion. It is them who have to live for the whole of their life with their partner and therefore, caste or religion is not a matter of utmost consideration now at all. Love is a beautiful emotion, and something like caste or religion should not weigh it up. All religions are equal, and marriage shouldn't be a big deal among them. We are conferred on caste or religion by birth and not by choice, so why are people of the lower castes seen with shame and disdain? India is a diverse country, and it is a pity to see things like this happening here. The Special Marriage Act is, therefore, a special law enacted to provide for a unique form of marriage by registration wherein the parties to the marriage do not have to renounce their religion.

### **IMPORTANT PROVISIONS (in short)**

#### **Section 4. Conditions relating to solemnization of special marriage.-**

Notwithstanding anything contained in any other law for the time being in force relating to the solemnization of marriages, a marriage between any two persons may be solemnized under this Act, if at the time of the marriage the following conditions are fulfilled namely:

- (a) Neither party has a spouse living;
- (b) neither party- (i) is incapable of giving a valid consent to it in consequence of unsoundness of mind, or (ii) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or (iii) has been subject to recurrent attacks of insanity or epilepsy;
- (c) the male has completed the age of twenty-one years and the female the age of eighteen years;
- (d) the parties are not within the degrees of prohibited relationship
- (e) where the marriage is solemnized in the State of Jammu and Kashmir, both parties are citizens of India domiciled in the territories to which this Act extends.

#### **Section 5. Notices of intended marriage:**

When the marriage is intended to be solemnised under this act, parties have to give notice in writing in the specified form to Marriage Officer of the district where at least one of the parties resided there for thirty days preceeding to the notice.

#### **Section 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.

### **Section 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.

### **Section 11. Declaration by parties and witnesses.-**

Both the parties and three witnesses shall, in the presence of marriage officer, sign a declaration in the Form specified and Form is countersigned by Marriage Officer.

#### **13. Certificate of marriage.-**

(1) When the marriage has been solemnized the Marriage Officer shall enter a certificate thereof in the Form specified in the Fourth Schedule in a book to be kept by him for that purpose and to be called the Marriage Certificate Book and such certificate shall be signed by the parties to the marriage and the three witnesses.

(2) On a certificate being entered in the Marriage Certificate Book by the Marriage Officer, the certificate shall be deemed to be conclusive evidence of the fact that a marriage under this Act has been solemnized and that all formalities respecting the signatures of witnesses have been complied with.

### **Section 16. Procedure for registration.-**

Upon receipt of an application signed by both the parties to the marriage for the registration of their under this chapter, the Marriage Officer shall give public notice thereof in such manner as may be prescribed and after allowing a period of thirty days for objection and after hearing any objection received within that period, shall, if satisfied that all the conditions mentioned in Sec. 15 are fulfilled, enter a certificate of the marriage in the Marriage Certificate Book in the Form specified in the Fifth Schedule and such certificate shall be signed by the parties to the marriage and by three witnesses.

## **Section 19. Effect of marriage on member of undivided family-**

The marriage solemnized under this Act of any member of an undivided family who professes the Hindu, Buddhist, Sikh or Jaina religion shall be deemed to effect his severance from such family.

## **Section 20. Rights and disabilities not affected by Act.-**

Subject to the provisions of Sec. 19, any person whose marriage is solemnized under this Act, shall have the same rights and shall be subject to the same disabilities in regard to the right of succession to any property as a person to whom the Caste Disabilities Removal Act, 1850 (21 of 1850), applies.

## **Section 21: Succession To property of parties :**

Notwithstanding any restrictions contained in the Indian Succession Act, 1925 (39 of 1925), with respect to its application to members of certain communities, succession to the property of any person whose marriage is solemnized under this Act and to the property of the issue of such marriage shall be regulated by the provisions of the said Act and for the purposes of this section that Act shall have effect as if Chapter III of Part V (Special Rules for Parsi Intestates) had been omitted therefrom.

## **22. Restitution of conjugal rights.-**

When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other the aggrieved party may apply by petition to the District Court for restitution of conjugal rights, and the Court, on being satisfied of the truth of the statements made in such petition, and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.

## **23. Judicial separation.-**

(1) A Petition for judicial separation may be presented to the District Court either by the husband or the wife.-

(a) on any of the grounds specified in sub-section (1) and sub-section (1-A) of Sec. 27 on which a petition for divorce might have been presented; or

(b) on the grounds of failure to comply with a decree for restitution of conjugal rights and the Court, on being satisfied of the truth of the statements made in such petition, and that there is no legal ground why the application should not be granted, may decree judicial separation accordingly.

(2) Where the Court grants a decree for judicial separation, it shall be no longer obligatory for the petitioner to cohabit with the respondent, but the Court may, on the application by petition of either party and on being satisfied of the truth of the statements made in such petition rescind the decree if it considers it just and reasonable to do so.

**24. Void marriages.-**(1) Any marriage solemnized under this Act shall be null and void (and

may, on a petition presented by either party thereto against the other party, be so declared) by a decree of nullity if-

(i) any of the conditions specified in sub-section (a),(b), (c) and (d) of Sec. 4 has not been fulfilled : or

(ii) the respondent was impotent at the time of the marriage and at the time of the institution of the suit.

(2) Nothing contained in this section shall apply to any marriage deemed to be solemnized under the Act within the meaning of Sec. 18, but the registration of any such marriage under Chapter III may be declared to be of no effect if the registration was in contravention of any of the conditions specified in sub-section (a) to (e) of Sec. 15:

**25. Voidable marriages.-** Any marriage solemnized under this Act shall be voidable and may be annulled by a decree of nullity, if-

(i) the marriage has not been consummated owing to the wilful refusal of the respondent to consummate the marriage ;or

(ii) the respondent was at the time of the marriage pregnant by some person other than the petitioner; or

(iii) the consent of either party to the marriage was obtained by coercion or fraud, as defined in the Indian Contract Act, 1872 (9 of 1872):

Provided that in the case specified in Cl.(ii) the Court shall not grant a decree unless it is satisfied-

(a) that the petitioner was at the time of the marriage ignorant of the facts alleged;

(b) that proceedings were instituted within a year from the date of the marriage; and

(c) the marital intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of existence of the grounds a decree :

Provided further that in the case specified in clause (iii), the Court shall not grant a decree if,-

(a) proceedings have not been instituted within one year after the coercion had ceased or, as the case may be, the fraud had been discovered; or

(b) the petitioner has with his or her free consent lived with the other party to the marriage as husband and wife after the coercion had ceased or as the case may be, the fraud had been discovered.

## **27. Divorce.-**

(1) Subject to the provisions of this Act and to the rules made thereunder, a petition for divorce may be presented to the District Court either by the husband or the wife on the ground that the respondent-

- (a) has, after the solemnization of the marriage had voluntary sexual intercourse with any person other than his or her spouse; or
- (b) has deserted the petitioner for a continuous period of not less than two years immediately proceeding the presentation of the petition; or
- (c) is undergoing a sentence of imprisonment for seven years or more for an offence as defined in the Indian Penal Code (45 of 1860); or
- (d) has since the solemnization of the marriage treated the petitioner with cruelty; or
- (e) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind, and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

## **28. Divorce by mutual consent.-**

(1) Subject to the provisions of this Act and to the rules made thereunder, a petition for divorce may be presented to the District Court by both the parties together on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved.

(2) On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in sub-section (1) and not later than eighteen months after the said date, if the petition is not withdrawn in the meantime, the District Court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnized under this Act and that the averments in the petition are true, pass a decree declaring the marriage to be dissolved with effect from the date of the decree.

30. Re-marriage of divorced persons- Where a marriage has been dissolved by a decree of divorce, and either there is no right of appeal against the decree or if there is such a right of appeal, the time for appealing has expired without an appeal having been presented or an appeal has been presented but has been dismissed, either party to the marriage may marry again.

## **31. Court to which petition should be made.-**

(1) Every petition under Chapter V or Chapter VI shall be presented to the District Court within the local limits of whose original civil jurisdiction-

- (i) the marriage was solemnized; or
- (ii) the respondent, at the time of the presentation of the petition resides; or
- (iii) the parties to the marriage last resided together; or (iv) the petitioner is residing at the time of the presentation of the petition, in a case where the respondent is, at that time, residing outside the territories to which this Act extends or has not been heard of as being alive for a period of seven years by those who would naturally have heard of him if he was alive.

(2) Without prejudice to any jurisdiction exercisable by the Court under sub-section (1), the District Court may, by virtue of this sub-section, entertain a petition by a wife domiciled in

the territories to which this Act extends for nullity of marriage or for divorce if she is resident in the said territories and has been ordinarily resident , therein for a period of three years immediately preceding the presentation of the petition and the husband is not resident in the said territories.

### **33. Proceedings to be in camera and may not be printed or published.-**

(1) Every proceeding under this Act shall be conducted in camera and it shall not be lawful for any person to print or publish any matter in relation to any such proceeding except a judgment of the High Court or of the Supreme Court printed or published with the previous permission of the Court.

(2) If any person prints or publishes any matter in contravention of the provisions contained in sub-section (1), he shall be punishable with fine which may extend to one thousand rupees.

### **Provisions Which Are Hurdle Practically In Getting Married**

- 1) Section 5 of the Act is the first hurdle which deals with the notice of intended parties requiring at least one of them must have resided in the district for a period of not less than 30 days immediately preceding the date on which such notice is given to the Marriage Office of the district.
- 2) Section 6 requires the Marriage Office to make copies of all notices open for inspection at all reasonable times, without fee, by any person desirous of inspecting the same, and to publish every notice by affixing a copy at some conspicuous place in the office. If either of the parties to an intend marriage is not a permanent resident in the district in which the notice has been given, then the Marriage officer of that district has to send the notice to Marriage Officer of the district in which the parties may have permanent residence and that officer, in turn, has to publicise it.
- 3) Section 7 enables any person before the expiry of 30 days from the date on which such notice has been published, to object to the marriage on the grounds that it will contravene one or more of the conditions specified in section 4 viz neither party has a spouse living, neither party is incapable of giving a valid consent in consequence of unsoundness of mind, the requirement of minimum age and that they are not within the prohibited relationship.
- 4) Sections 8 requires the Marriage Officer to inquire into the objection and satisfy



himself that it does not prevent the solemnization of the marriage. If the objection is upheld within 30 days, either party to the intended marriage can appeal to the district court, whose decision shall be final.

5) Section 19 is punitive in character. It says 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.

Justice S. Ravindra Bhat in case of [Pranav Kumar Mishra v. Govt. of NCT, delhi](#), WP(C) No. 748/2009 Delhi High Court, observed : “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 or the other party due to parental interference. In such circumstances, if such a procedure is being adopted by the authorities, it is completely whimsical and without authority of law.”

### Suggestions

- 1) The provision of a month gap as mention in section 5 should be annulled so as to prevent the parties from being harassed.
- 2) Section 4 are reasonable yet the fact that similar conditions are not applicable to marriage held outside the purview of the Act makes one wonder whether they are just.
- 3) The need for such a provision as mention in section 19 is inexplicable especially when such severance could result in deprivation of inheritance and other rights of the couple intending to marry under this so called secular Act.



## **CONCLUSION**

Inter-standing marriage segment with respect to the Special Marriage Act. In India, marriage is considered as a sacred, divine, and was called the holy union. It's a basic piece of our way of life. India is a large nation, and thereafter people from different religions and cultures live here. We know the degree of influence that rank and religion have in our country is still being thought of in numerous places in our nation as unimaginable. India takes over the position framework after an exceptionally unbending structure. Individuals are required to marry within their position, and anyone who marries out of their station and challenges the customary hindrances in the general public is avoided. There are numerous normal and tragically exposed admiration for killings; they are proud to do as well. Accordingly, a serious provision for the law came to wed for affection and to defend the interests of those individuals who transcended those stations and religious partitions. Thus the Parliament approved the Special Marriage Act of 1954 for individuals of India and for every single Indian national of outside nations, irrespective of rank or religion. The one of a kind aspect of the Special Marriage Act of 1954 is that any marriage solemnized in any other manner under any other law, Indian or nonnative, between any two persons may be enlisted under the Act.

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## About the Author



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I'm Aarohi Adbe, student of B.A.LLB 3rd year from Manikchand Pahade law college Aurangabad, Maharashtra. Amazing experience interning with LEGALEAGLE LAW FORUM and got to increase my knowledge. People were very supportive and were always there to solve the queries. Every work was on time which actually motivated me to complete my work before deadline.