



Special Marriage Act 1954

For Prelims: Special Marriage Act (SMA), 1954, Fundamental Rights

For Mains: Special Marriage Act (SMA), 1954,, K.S. Puttaswamy v UOI (2017), Right to Privacy, Personal Liberties.

Why in News

Recently, the law that governs inter-faith marriages in the country, the [Special Marriage Act \(SMA\), 1954](#), is being challenged in the Supreme Court.

- In 2021, petitions were filed to strike down several of its provisions.

The Special Marriage Act (SMA), 1954

- It is the 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.
- This Act includes **Hindus, Muslims, Christians, Sikhs, Jains, and Buddhists marriages**.
- This Act applies not only to Indian citizens who belong to different castes and religions but also to Indian nationals who live abroad.

About the Current Petition

- **Section 5** of the SMA requires a **person marrying** under this law to give a notice of intended marriage.
- **Section 6(2)** says it should be **affixed at a conspicuous place at the office of the marriage officer**.
- **Section 7(1)** allows any person to object to the marriage within 30 days of the publication of the notice, failing which a marriage can be solemnised under **Section 7(2)**.
- Due to these provisions breaching personal liberties, several inter-faith couples approached the Court, **challenging Sections 6 and 7 of the Act**.

Key Points

- **About Interfaith Marriages:**
 - The matrimonial relationship developed between two individuals having different religious faiths.
 - Although marrying into a different religion is a matter of choice for an adult, there are certain issues regarding the same.
- **Issues with Interfaith Marriages:**

- Interfaith marriages are believed to be a **forced conversion of one of the spouses (mostly women)**.
- As per the Muslim Personal law, in order to get married to a non-Muslim, **conversion of religion is the only way**.
- Hindu religion allows **only monogamy** and those **who want to marry a second time take another course**.
- There is no provision regarding **caste determination of children born out of such marriages**.
- The Special Marriage Act, 1954 is **not compatible with backwardness of the society**.
- There is debate over the validity of **Article 226 in the context of annulling the interfaith marriage by the high court**.
 - **Article 226**: Power of high courts to issue certain **writs**.
- **Challenges with Contemplating Laws for Interfaith Marriages:**
 - **Against Fundamental Rights**: Interference of the law in an individual's choice of marriage violates the existing fundamental rights such as:
 - **Right to equality (Article 14),**
 - **Right to Freedom & Personal Liberty (Article 19),**
 - **Freedom of Religion and Right to Life (Article 25 and Article 21).**
 - **Against Secularism**: Indian Constitution enshrines **secularism** as one of the cardinal principles.
 - **Article 25 of the Indian constitution** provides the freedom to practice any religion of one's choice.
 - Hence, in India inter-faith marriages are allowed as the constitution allows one to convert to a different religion from what one was born with and further the personal laws of the religion have provisions.
 - **Asymmetrical With Various Supreme Court's Judgements:**
 - The Supreme Court in ***Shafin Jahan v Ashok KM (2018)***, has upheld the right to marry a person of one's choice as a part of Article 21.
 - According to the Supreme Court, the Constitution protects the ability of each individual to pursue a way of life or faith to which she or he seeks to adhere.
 - Therefore, the right to marry a person of one's choice is integral to Article 21 of the Constitution.
 - Further, Supreme Court in ***K.S. Puttaswamy v UOI (2017)*** judgement held that **"right of choice of a family life" as a fundamental right**.
 - **Patriarchal Roots**: This shows the law has deep-seated patriarchal roots, wherein women are infantilised, placed under parental and community control, and denied the right to take life decisions, should those decisions not be agreeable to their guardians.

Way Forward

- In order to avoid inclusion of any further laws, there should be acceptance of the special marriage act, 1954 at the mental and social level.
- The rights should not be exploited; conversion of religion for marriage only is not at all wise.

Source: TH