

EXPLAINERINDIA

Explained | Challenging the Special Marriage Act, 1954

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Why are Sections 6 to 10 of the Special Marriage Act under scrutiny? How are these provisions being misused?



The story so far: The Supreme Court on Monday dismissed a writ petition challenging provisions of the Special Marriage Act (SMA), 1954 requiring couples to give a notice

declaring their intent to marry 30 days before their marriage.

What does the petition seek? What did the court say?

The Supreme Court on Monday dismissed a writ petition challenging the Constitutional validity of certain provisions of the SMA under which couples seek refuge for inter-faith and inter-caste marriages. The writ petition has called these provisions violative of the right to privacy guaranteed under Article 21 of the Constitution as they require couples to give a notice of 30 days before the date of marriage inviting objections from the public. The writ petition filed by counsels K. R. Sripathi and Anupama Sripathi and advocate on record Sriram Parakkat has also said that the provisions contravene Article 14 on prohibition of discrimination on grounds of religion, race, caste and sex as well as Article 15 on right to equality as these requirements are absent in personal laws.

A Bench of Justices Dinesh Maheshwari and Bela M. Trivedi rejected the writ petition on the grounds that the petitioner, 35-year-old Athira Sujatha, was no longer an aggrieved party as she had already solemnised her marriage under SMA. The petitioner's lawyers said that they were now deliberating on an alternative approach to initiate this litigation such as through a public interest litigation involving other victims. Another writ petition in *Nandini Praveen vs Union of India & Others* filed on similar grounds was admitted by the Supreme Court in 2020 and the government's reply to is awaited.

What are the provisions that have been challenged?

Section 5 of the SMA requires couples getting married under it to give a notice to the Marriage Officer 30 days before the date of marriage. The writ seeks striking down of provisions that follow in Section 6 to Section 10. Section 6 requires such a notice to be then entered into the Marriage Notice Book maintained by the Marriage Officer, which can be inspected by "any person desirous of inspecting the same". These notices have to be also affixed at a "conspicuous place" in the office of the Marriage Officer so that anyone can raise an objection to the marriage. Section 7 provides the process for making an objection such as if either party has a living spouse, is incapable of giving consent due to "unsoundness of mind" or is suffering from mental disorder resulting in the person being unfit for marriage or procreation. Section 8 specifies the inquiry procedure to be followed after an objection has been submitted.

The petition reads, "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. 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."

How do these provisions make couples vulnerable?

These public notices have been used by anti-social elements to harass couples getting married. In Athira's case, who got married in 2019 under SMA, her marriage notice containing her address was circulated on Facebook and WhatsApp calling on people to visit her parents and make them "aware" about her marriage. While Athira had the support of her parents, for many others who often marry without their parent's consent this can be life-threatening. There have been instances, where marriage officers have gone over and beyond the law and sent such notices to the parents of the couple leading to a Muslim woman in Delhi being confined to her house by her parents in March 2020 until her boyfriend filed a habeus corpus in the Delhi High Court. Following another petition, the Sub-Divisional Magistrate (SDM) was slapped with a contempt notice and the Delhi government issued a warning to all SDMs in the State. The Haryana government has laid down 16 pre-requisites which ask couples to issue a notice in a newspaper and that such notices be sent to their parents. In certain States, couples have to seek a no-objection certificate from their parents. The Maharashtra Department of Registration and Stamps publicly shares the details of couples marrying under SMA on its website and so did the Kerala government until Athira came forward and pointed out that this allowed communal elements to access personal details and threaten and harass couples. Many also complain about the behaviour of the staff at the SDM's office who often delete or delay applications and dissuade couples from marrying under SMA and ask them to convert at a Arya Samaj temple. With as many as 11 States passing anti-conversion (or so called love-jihad) laws, parents and the State are now armed to punish and harass such couples.

THE GIST

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