

LOOPHOLES IN THE SPECIAL MARRIAGE ACT, 1954

Vedashree Avinash Adsule*

The Special Marriage Act of 1954 was a landmark legislation in India. The stigma that was attached to the marriages in the few particular religions, the SMA was a try to remove such stigma and work towards the welfare of the citizens. However, this legislation also contains a few inconsistencies, which restrain the act from its full and proper implementation. These inconsistencies and loopholes are discussed in this article.

PURPOSE OF ENACTMENT OF SPECIAL MARRIAGE ACT

Before the enactment of this legislature, inter-caste and inter-faith marriages were prohibited. It was always a norm that the marriage shall be with a person of the same religion, marrying against the religion or caste was held to be a taboo. In spite of these traditions and customs, if someone married a person against the norm, they were supposed to be a sin in society. They were totally isolated from the basic population and were treated with hatred. The instances of honor killing are not new to the age, these are the result of inter-caste and inter-faith religion.

Due to the absence of any lawful legislation, these couples couldn't be protected lawfully. Hence there was a need for a law that could give recognition to such marriages. The enactment of the Special Marriage Act in 1954 eased the way for the Indian citizen to get married to any other Indian citizens who is of a different caste, creed, or even religion, provided that the boy has completed 21 years and the girl, 18 years. However, there are also a few inconsistencies with the act and its provisions.

LOOPHOLES IN THE SMA

Lengthy and complex procedure: One of the prominent loopholes in the Special Marriage Act, of 1954 is the lengthy and intricate procedure it entails. The act requires the couple to give a 30-day public notice regarding their intention to marry. This notice can be objected to by any individual who may have valid reasons, such as parental objections, social pressures, or personal grudges. This provision provides an opportunity for unnecessary interference and harassment, leading to potential delays and complications in the marriage process. But what if the family members themselves raise any objections? There have varying instances where

*FIRST YEAR, BA LLB, NALSAR UNIVERSITY OF LAW, HYDERABAD.

the couple trying to marry under SMA has been harassed. This defeats the objective of the SMA to marry beyond caste, faith, and creed.

Privacy concerns: Another significant loophole in the act pertains to privacy concerns. The Special Marriage Act mandates the publication of the marriage notice in the local district offices, which can be viewed by the public. In a country like India, where societal pressure and conservative mindsets still prevail, this public exposure can subject couples to social stigmatization, coercion, and even threats to their safety. This violation of privacy can discourage couples from opting for a marriage under this act, thereby defeating its purpose.

Lack of enforcement mechanisms: The Special Marriage Act, of 1954 lacks strong enforcement mechanisms to protect couples who choose to marry outside their religious or caste boundaries. The act fails to address the issue of harassment, threats, or physical harm faced by such couples due to societal resistance or familial objections. The absence of stringent provisions to penalize those who obstruct or harm individuals exercising their rights under this act is a significant loophole that compromises the act's effectiveness.

Inadequate protection against coercion: While the act includes provisions for objections and provides an opportunity for individuals to raise concerns during the notice period, it does not adequately address the issue of coercion or undue influence. The act lacks specific provisions to protect individuals from pressure, threats, or emotional blackmail by their families or communities, which can negatively impact their ability to exercise their right to marry freely. This inconsistency leaves individuals vulnerable to unwanted interference and compromises the act's goal of facilitating autonomous decision-making.

Non-uniform application: Another loophole in the Special Marriage Act, of 1954 is the non-uniform application across different states of India. The act falls under the concurrent jurisdiction of both the central and state governments, leading to variations in its implementation. Some states may have additional requirements, such as additional documentation, witnesses, or bureaucratic procedures, causing inconsistency and confusion among couples, while some states have varying notice periods. Though the act lays down a 30-day timeframe, varying states have implemented different notice periods. Carrying his lack of uniformity undermines the act's purpose of providing a standardized legal framework for interfaith and inter-caste marriages.

Limited outreach and awareness: The act suffers from a significant loophole in terms of limited outreach and awareness among the public. Many individuals are not aware of the existence of the Special Marriage Act, its provisions, and the benefits it offers. This lack of awareness can deter couples from availing themselves of the act's provisions, forcing them to resort to more traditional and potentially restrictive marriage ceremonies. The government should undertake proactive measures to increase awareness and educate the public about the act to ensure its proper utilization.

Ambiguity in definition: One of the inconsistencies in the act lies in the ambiguity of certain definitions. The act fails to provide clear and precise definitions for crucial terms such as "special marriage" and "interfaith marriage." This lack of clarity can lead to confusion and inconsistent interpretations among courts and authorities, which further leads to different interpretative definitions by the courts in different cases, making it difficult for individuals to understand and exercise their rights under the act.

Limited provisions for same-sex marriages: Though the SMA has been implemented to secure the right of every citizen to marry whomever they want beyond faith, caste, or creed, the issue of Same-Sex marriage remains unresolved. The Special Marriage Act, of 1954 does not explicitly recognize or provide provisions for same-sex marriages. This inconsistency creates a significant gap in the act's scope, as it fails to reflect evolving societal norms and legal advancements. Inconsistent treatment of different forms of marriages undermines the principles of equality and inclusivity that the act intends to uphold.

Lack of clarity on the dissolution of marriages: Another inconsistency in the act is the lack of clarity on the dissolution of marriages registered under its provisions. The act does not provide a clear procedure for divorce or separation for couples who marry under its framework. This ambiguity can result in confusion and legal challenges when couples seek to dissolve their marriages, leading to inconsistent practices across different jurisdictions.

Limited recognition of foreign marriages: The act provides limited recognition to marriages solemnized outside India, creating inconsistencies in how foreign marriages are treated under Indian law. The act sets strict conditions and requires couples to fulfill certain criteria to have their foreign marriages recognized. This limited recognition can create hurdles and inconsistencies for couples who have valid marriages from foreign jurisdictions but face challenges in obtaining legal recognition in India.

CONCLUSION

To address these issues, efforts should be made to streamline and standardize the implementation of the act, ensuring a more consistent and accessible process for couples choosing to marry outside their religious or caste boundaries. By rectifying these inconsistencies, the act can better fulfill its purpose of promoting social integration and providing a legal framework for interfaith and inter-caste marriages in the country.

