

# Prior Notice Under Special Marriages Act

January 25, 2021

As per several newspaper reports anti-conversion ordinances in Uttar Pradesh and Madhya Pradesh have licensed reckless state intrusions on inter-personal relationships in the name of countering “love jihad”. Some provisions of the Special Marriages Act gave the social prejudice of legal bureaucracy disproportionate powers to police young couples. The implication of the Allahabad HC judgement becomes significant for every UPSC aspirant.

**In news:** Allahabad HC Says 30-Day Prior Notice in Special Marriage Act No Longer Mandatory

**Placing it in syllabus:** Indian Polity

**Dimensions**

- Prior Notice under the Special Marriages Act
- Procedure of Marriage under the Act
- Problems due to the notice period
- Allahabad HC Ruling and its importance

## Content

### Prior Notice under the Special Marriages Act

- The **Special Marriage Act, 1954** deals with inter-caste and inter-faith marriages.
- In India, all marriages can be registered either under their respective **personal laws (Hindu Marriage Act, 1955/Muslim Marriage Act, 1954)** or under the Special Marriage Act, 1954.
- A marriage under the Special Marriage Act enables people from two distinct religious backgrounds to unite in the marriage bond.

- The Special Marriage Act does not demand rites or ceremonies. Rather it is **a civil contract**.
- Both the parties signing the contract have to file a **notice of intended marriage to the Marriage Registrar of the district**.
- The provisions of the act made it **mandatory** for couples to publish a **30-day public notice** of their intent to marry
- Under **section 5** of the act, a couple must give 30 days notice to the district marriage officer indicating their intent to marry.
- Under **section 6**, a notice giving **details of the couple is made public to invite/entertain objections** to the marriage under **section 7** of the act.

### **Procedure of Marriage under the Act:**

- Unlike personal laws, the Special Marriage Act's applicability extends **to all Indian citizens regardless of their religion**.
- Even if both the concerned parties belong to the same religion, they may choose to register the marriage under this Act.
- Under this Act, the fundamental requirement for a valid marriage is the **consent of both parties** to the marriage.
- If both parties to the marriage are willing to marry each other, that's enough; caste, religion, race, etc. can't act as a barrier to their union here.
- For this special form of marriage, the conditions that must be followed are not very different from the requirements of other normal marriages that happen within the caste.

### **These are the conditions to qualify for a marriage under this Act:**

- Both the intending parties must be **Indian citizens**.

- The **bridegroom must be at least 21**, and at the time of the marriage, the **bride must be at least 18 years of age**. This is the minimum age limit respectively for a boy/girl to marry.
- At the time of their marriage, both **parties must be monogamous**; i.e., they must be unmarried and at that time **should not have any living spouse**.
- In order to be able to decide for themselves, the **parties should be mentally fit**, i.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 be subjected to prohibited relationships that otherwise act as a ground for dissolving their marriage.

***Procedure for the marriage under the act is as follows:***

- **Eligibility Check:** All the given eligibility criteria should meet before applying for the Special Marriage Act
- **Reach out to the concerned Marriage Officer:** The parties must file with the district's Marriage Registrar a notice stating their intention to marry each other. At least one of the parties to the marriage must have lived for at least 30 days prior to the date on which such notice is filed.
- **Public Notice and Objections:** Once such an application has been received by the marriage officer, duly signed by both parties, the officer shall then issue a 30-day public notice to raise objections to the intended marriage if any. The objections generally relate to non-compliance with the conditions referred to in Section 4 of the Act.
- **Solemnization and registration:** If the conditions are duly met and no such objections are raised, a marriage certificate should be entered in the Marriage Certificate Book. Here, both the intending parties and the 3 witnesses are required to sign.

## Problems due to Prior Notice:

- Marriages in India are mostly conducted according to strict **endogamy and communitarian identities**.
- In theory, a **secular state** had envisioned the **Special Marriage Act, 1954**, as a means to clear a **space for Indian citizens to marry outside the boundaries of religious and caste** identity.
- Thus, it provided support for **refashioning of identity** in a society.
- Publishing a **30-day public notice** of their intent to marry often **exposes couple to vigilante and familial violence**
- As a result, **many preferred to convert and marry under personal laws**, rather than expose themselves to harassment.
- The judgment assumes significance in the backdrop of **Uttar Pradesh bringing the Prohibition of Unlawful Religious Conversion Ordinance, 2020** that criminalises forced religious conversions. It makes religious conversion for marriage a crime.
- It has a more strict version of public notice provision. It demands a **60-day notice** to the district magistrate and a police inquiry to ascertain the real intention behind conversion.
- A little more than a month since it was first implemented, the **law has multiple times been used to harass consenting adult couples** looking to enter into interfaith marriages, with disastrous consequences.
- In such cases, **vigilante groups who are opposed to interfaith marriages were alerted by such notices** that were made mandatory by the Special Marriage Act.
- The public notice ended up giving vigilante groups, families hostile to interfaith and inter-caste unions, and the social prejudice of legal bureaucracy **disproportionate powers to police young couples**.
- The **Law Commission of India report in 2012** had

recommended the abolition of public notice Under the act to keep a check on the high-handed and unwarranted interference by caste assemblies in sagotra, inter-caste. or inter-religious marriages.

## **Allahabad HC Ruling and its importance:**

The **single-judge bench of Allahabad High Court** was considering a **habeas corpus plea** by an interfaith couple where the woman was being stopped from marrying her partner by her family.

### ***The ruling of the court has held that:***

- It is **not mandatory to publish a public notice** of intended marriage under Section 6 and inviting/entertaining objections under Section 7 of the Special Marriage Act.
- **Making such a notice public can be done only if the couple permit** the marriage officer to do so **in writing**.

### ***The court observed that making such publication mandatory would invade:***

- The **fundamental rights** of liberty and privacy of the person involved
- The **freedom to choose for marriage** without interference from state and non-state actors.

### ***Importance of this ruling can be summarized as follows:***

- Even today, inter-faith unions make up a minuscule minority of marriages.
- The HC judgment reaffirms the **first principles that accord constitutional protection** to this minority
- It pushes back against societal and state meddling in personal affairs.
- The Allahabad High Court judgment is a reminder and a warning that the **constitution remains the bulwark against an overreaching state**.

**Mould your thought:** Allahabad HC ruling on Special Marriage Act rings a welcome note of constitutional caution against reckless state intrusion on personal life. Elaborate.

***Approach to the answer:***

- Introduction
- Write briefly about recent ordinances in UP and Madhya Pradesh relating to inter-faith Marriages
- Write about how these ordinances intrude on personal life
- Discuss briefly about the public notice clause of the act is misused
- Discuss the implication of High Court ruling
- Conclusion