

THE SPECIAL MARRIAGE ACT, 1954: A CRITIQUE

-Thriveni Kathi¹ and Prof. Dr. Mohan Rao Bolla,²

Marriage is the sacred union, legally permissible, of two healthy bodies of opposite sexes. It has to be mental, psychological and physical Union. When two souls thus unite, a new soul comes into existence. That is how, the life goes on and on and on this planet. Justice S. Saghir Ahmad³

Introduction

India is a country with divergent cultural gaiety and religious affinity of people living together exhibiting 'unity in diversity'. Institution of marriage and value oriented family system are signifying features of Indian culture. The Supreme Court stated that every young man or a woman, has a right to marry cannot be accepted in the absolute terms. Having regard to the age and the biological needs, a person may have a right to marry.⁴ Arranged marriage, (that to,) or intra caste marriage is the generally accepted norm in the Indian society. 'Love marriage,' 'inter caste'⁵ or 'inter religious,' marriage or 'registered' / 'Court marriage' is generally is a rarity.⁶ Parents customarily select bride or groom to their children in the same caste or religion. The society eschews those who marry out of their caste or community. Honor killings⁷ have been reported every year in India.⁸ Interestingly, from the statistics of the United Nations, one in five cases of honour killing internationally every year are of India.⁹ On the other hand, there are some NGOs helping the performance of love marriages and extending protection for such love marriages.¹⁰

¹ III B.A. LLB Sec-'A, Alliance School of Law, Alliance University, Bengaluru.

² Prof. Dr. Mohan R Bolla, Professor of Law. Alliance University, Bengaluru.

³ S. Saghir Ahmad J. SC., *Mr. 'X' vs Hospital 'Z'* (1998) 8 SCC 296

⁴ *Ibid.*

⁵ Dr. Paras Diwan in his 2nd Edition of "Law of Marriage and Divorce" stated at page 75 that in inter-caste and inter-sect marriages in anuloma form a male of superior caste marries a female of inferior caste; and in pratiloma marriage a male of inferior caste marries a female of superior caste. During British Raj, pratiloma marriage came to be considered as invalid and obsolete but anuloma marriage was held valid. Customary inter-caste marriages were held valid. They were performed under Special Marriages Act, 1872 as quoted in *Mrs. Valsammappaul Etc v. Cochin University And Ors. Etc AIR 1996 SC 1011*

⁶ See 'Just 5% of Indian marriages are inter-caste: survey' the Hindu, November 13, 2014 available at <http://www.thehindu.com/data/just-5-per-cent-of-indian-marriages-are-intercaste/article6591502.ece>

⁷ Markandey Katju J., SC., in *Arumugham Servai v. State of Tamil Nadu* AIR 2011 SC 1859 has criticized the Khap panchayats (known as katta panchayats in Tamil Nadu) decreeing 'honour killings' and other atrocities against girls and boys for inter caste marriages. The Apex Court observed: "We sometimes hear of 'honour' killings of such persons who undergo inter-caste or inter-religious marriage of their own free will. There is nothing honourable in such killings, and in fact they are nothing but barbaric and shameful acts of murder committed by brutal, feudal minded persons who deserve harsh punishment. Only in this way can we stamp out such acts of barbarism".

⁸ Read Nupur Basu, 'Honour killings: India's crying shame,' available at <http://www.aljazeera.com/indepth/opinion/2013/11/honour-killings-india-crying-shame-20131127105910392176.html>

⁹ *Ibid.*

¹⁰ A Delhi-based NGO Love Commandos have come to the rescue of many such couples. See 'Here comes Love Commandos: NGO provides couples with shelter,' available at <http://www.hindustantimes.com/india/here-comes-love-commandos-ngo-provides-couples-with-shelter-help/story-iaMhJS6S5JphoDavQMnDfP.html> and www.bbc.com/news/magazine-1828099

There is indeed a call for a law to provide a legal shelter for the interests of such people.¹¹ Usha M, Apte stated that inter-caste marriages were prevalent even in the period of Rig Veda.¹² The Hindu Marriage Act, 1956 and the Special Marriages Act, 1954 (the S M Act 1954) made the marriage between persons belonging to different castes and religions as valid marriage.¹³ Thus, it may be stated that 'inter-caste' and 'inter-religious' marriages are legally permitted in India and can be performed under the S M Act 1954.¹⁴

In this article the authors aim to provide a general perspective and a critique on the Special Marriages highlighting the problems with judicial perspective on various issues under the S M Act. An attempt is also made to bring about the need to settle some controversial issues.

The Special Marriage Act, 1954

The Special Marriage Act, 1954 [The S M Act, 1954], is a special legislation to provide for a special form of marriage by registration. The marriage is special because one need not convert or renounce the religion. Unlike the traditional arranged marriages which include two families belonging to same caste or same community, the Act aims at *inter alia* providing for legalizing inter-religious or inter-caste marriages.¹⁵ The Certificate of registration under the Act has been considered as a general proof of marriage.¹⁶ The Act as stated in the preamble provides a special form of marriage in certain cases, for the registration of such and certain other marriages and for divorce.¹⁷

The major objectives which may be culled out from the Preamble of the Act are :

- (i) a special form of marriage in certain occasions,
- (ii) for registration of certain marriages,
- (iii) for divorce.

Some Special Marriages under the Secular Law

The S M Act is a secular law which enables any person living in India to get married under that Act, irrespective of the religion he follows.¹⁸ A study conducted in Bengaluru revealed that in building secular bonds, there's a massive spurt in marriages registered under the Special

¹¹ Ibid.

¹² Usha M, Apte in her book "The Sacrament of Marriage in Hindu Society from Vedic period to Dharmasastras" (1978 Ed.) page 13 as quoted by K. Ramaswamy J., SC., in *Mrs. Valsamma Paul v. Cochin University and Ors*, AIR 1996 SC 1011

¹³ *Mrs. Valsamma Paul v. Cochin University and Ors*, AIR 1996 SC 1011

¹⁴ Section 4 of the Special Marriage Act, permits a marriage between two persons of different faiths. Therefore, a Hindu can marry a Christian under the Special Marriage Act- see *Robin v. Jasbir Kaur* judgment delivered by Punjab & Haryana High Court on 3 June, 2016, available at http://phhc.gov.in/download_file.php?auth=Li9wZGYvZm8vQ1JNLU1fMjU3ODBFmJAxNV8wM18wNI8yMDE2X0ZJTkFMX09SREVSLEnBkZg== and <https://indiankanoon.org/doc/27367589/>

¹⁵ The caste system is a curse on the nation and the sooner it is destroyed the better. In fact, it is dividing the nation at a time when we have to be united to face the challenges before the nation unitedly. Hence, inter-caste marriages are in fact in the national interest as they will result in destroying the caste system.- Markandeya Katju, J., SC., *Lata Singh v. State of UP* AIR 2006 SC 2522

¹⁶ See *Smt. Seema v. Ashwani Kumar* AIR 2006 S.C 1158 and *Bhabani Prasad Jena Etc. v. Convenor Secretary, Orissa State Commission For women & Anr* AIR 2010 SC 2851.

¹⁷ *Rajesh Burmann v. Mitul Chatterjee* AIR 2009 SC 651

¹⁸ *M/S Shabnam Hashmi v. Union of India & Ors*, (2014) 4 SCC 1

Marriages Act, 1954 in the past couple of years. It was found that there has been rise in inter-caste and inter-religion marriages as the Act provides for secular marriages, unlike the laws dictated by religion. As per the data obtained from the department of stamps and registrations 2,624 marriages were registered in 2013-14 under the Act and the number jumped to 10,655 in the subsequent year. In 2015-16, up to January, the number had touched 8,391 i.e., 306% increase from 2013-14 to 2014-15. It has been reported that nowadays, many marriages are inter-religious and inter-caste, and mostly beyond the purview of religion-based marriage laws. The S M Act provides an opportunity to marry as per the Constitution. There are an increasing number of people belonging to different religions marrying under the S M Act.¹⁹ But all marriages registered under the S M Act are not necessarily inter-caste and inter-religious. Rohan Menezes and his wife Tania, both Christians by birth, opted to register their marriage under the S M Act.²⁰

There have been instances of adults belonging to two different religions marrying with the consent of their families, as per the rituals of either one religion or both. But if they want to register their marriage, it can only be done under the S M Act. While special marriages are gaining attraction, there are people those who prefer to stick to a particular religious marriage law, notwithstanding differences like region or caste. Amartya Pal, a Bengali Hindu who wanted to marry Mona Sarode from Pune, opted for a simple registered marriage under the Hindu Marriage Act 1955, instead of worrying about the different rituals of their home states and other complications.²¹

Application of the Act

The S M Act applies to every state of India except Jammu and Kashmir.²² Besides Indians this Act also extends to the Indian nationals living in foreign countries.²³ Under this Act the basic requirement for a valid marriage is consent of the parties and doesn't require any kind of customs, rituals or ceremonies to be performed as marriage is considered as a civil contract under this Act. Any kind of caste, community or religious differences cannot terminate their union. Parties intending to marry irrespective of the faith they follow may be a Hindu, Sikh, Jew, Muslim, Christian, Buddhist, Jain or Parsi can perform their marriage under this Act. Thus, the S M Act 1954 applies to all persons of all religions. This legislation permits parties from all religions, caste or community to marry. In case if the parties go for divorce, it should be governed by the S M Act 1954. The Act in contrast to other personal marriage laws, allows marriage without converting to the partner's religion. The Act provides for solemnization of special marriages, registration thereof, consequences of marriage under the Act, restitution of conjugal rights,²⁴ judicial separation and

¹⁹ 'It's a boost for secular, simple marriages,' Times of India. Bangalore, June, 20, 2016

²⁰ Ibid.

²¹ Ibid.

²² Special Marriage Act, 1954, Chapter I, Section 1 (2) – "It extends to the whole of India except the State of Jammu and Kashmir, and applies also to citizens of India domiciled in the territories to which this Act extends who are [in the State of Jammu and Kashmir]."

²³ See also Dr. Divya Chansoriya, 'Law Of Special Marriage Act "1954" In India,' available at ijiern.co.in/index.php/IJIERM/article/view/137/145

²⁴ Section 22 of the Special Marriage Act, 1954, see Delhi High Court *Dalip Kumar Atal vs State (Nct Of Delhi) & Anr* decided by Delhi High Court on 4 August, 2016 available at <https://indiankanoon.org/doc/93757959/in> the instant case, there has been withdrawal of petitions under Section 22 and the FIR lodged against the appellant under

nullity of marriage and divorce. It also provides for jurisdiction of Courts and procedure to be followed.

In *Robin v. Jasbir Kaur*,²⁵ the husband is a Christian whereas the wife is a Sikh and the marriage between them took place as per Hindu rites. The question was whether the marriage is valid for the purposes of granting maintenance under Section 125 Cr.P.C. It was held that a Hindu can marry a Christian under the S M Act. Accordingly, such a marriage cannot be held to be void on the ground that it was not performed according to the provisions of Section 6 the Indian Christian Marriage Act, 1872. The High Court ruled that it cannot be held that the marriage between the husband and the wife, who are Hindu and Christian respectively, is not valid for purposes of granting the relief u/s 125 Cr.P.C.²⁶ The Court took a lenient view in order to enforce the welfare provision under Section 125 Cr.P.C.

Duties of the Marriage Officer

The Marriage Officer on receipt of the application filed under Section 15 of the Act, has to give a public notice in such manner as may be prescribed under the rules. The Marriage Officer is duty bound to give 30 days for filing objections. The Marriage Officer has to hear the objections received within the time stipulated and only if all the conditions mentioned in Section 15 are satisfied, he shall enter the Certificate of Marriage in the Marriage Certificate Book, in the form specified in the fifth Schedule. Certificate of Marriage has to be signed by the parties to the marriage and three witnesses. The Marriage Officer while taking a decision under Section 16 read with Rule 7 and 6(b) is exercising a quasi judicial function. Rule obliges the Marriage Officer to record in his own handwriting the evidence and his decision on the objection and the reasons therefor. On being satisfied that all the conditions mentioned in Section 15 are fulfilled he shall enter a Certificate of Marriage in the Form specified in the Fifth Schedule to the Act and such form shall be signed by the parties to the marriage and three witnesses. The manner in which the Marriage Officer, husband and wife and three witnesses have to sign the certificate of marriage and the mode in which declaration has to be made by the parties have been dealt with in the statutory form, prescribed in the fifth schedule to the Act. A declaration, that a ceremony of marriage has been performed between the parties and that they have been living together as husband and wife since the time of marriage and that in accordance with their desire to have their marriage registered under the Act, on a particular date, has to be made jointly by the husband and wife in the presence of the Marriage Officer and three witnesses. Requirements in our view are statutory in nature and mandatory in character. Neither the Marriage Officer nor the parties can deviate from the procedure statutorily laid down.

Recognizing the recent trends, the Courts in India opined that there is no impediment for marriage between an Indian bride groom and a foreign national (bride). In *Krishnadas v. State of*

Sections 498A, 498-A/406/34 IPC and Section 4 of Dowry Prohibition Act were permitted by the Court pursuant to a compromise.

²⁵ *Robin v Jasbir Kaur* decided by Punjab & Haryana High court on 3rd June, 2016 available at <https://indiankanoon.org/doc/27367589/>

²⁶ Ibid.

Kerala²⁷ the petitioner, a citizen of India, intended to marry a foreign national. Though he has approached the Marriage Officer concerned under the S M Act with notice of the intended marriage, the Marriage Officer refused to accept the notice. The High Court of Kerala has directed the Marriage Officer to take notice of the marriage under the S M Act, 1954.

Conditions of Eligibility for Special Marriage

The S M Act lays down some conditions on the parties to be eligible for the marriage.²⁸ Section 4 of the Act provides for the conditions relating to solemnization of special 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 (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

Compulsory Registration

The Supreme Court of India in **Smt. Seema v. Ashwani Kumar**²⁹ has observed that marriages of all persons who are citizens of India belonging to various religions should be made compulsorily registrable³⁰ in their respective States, where the marriage is solemnized. Accordingly, the Supreme Court has directed the States and the Central Government to take the following steps viz., (i) The procedure for registration should be notified by respective States within three months from today. This can be done by amending the existing Rules, if any, or by framing new Rules. However, objections from members of the public shall be invited before bringing the said Rules into force. In this connection, due publicity shall be given by the States and the matter shall be kept open for objections for a period of one month from the date of advertisement inviting objections. On the expiry of the said period, the States shall issue appropriate notification bringing the Rules into force. (ii) The officer appointed under the said Rules of the States shall be duly authorized to register the marriages. The age, marital status (unmarried, divorcee) shall be clearly stated. The consequence of

²⁷ *Krishnadas v. State of Kerala* WP(C).No. 23081 of 2016 (I) Kerala High Court available at <https://indiankanoon.org/doc/27570184/>

²⁸ See Section 4 of The Special Marriage Act, 1954.

²⁹ Arijit Pasayat, J., in *Smt. Seema v. Ashwani Kumar* AIR 2006 S C 1158. The Court also has noted that the Convention on the Elimination of All Forms of Discrimination Against Women (in short 'CEDAW') was adopted in 1979 by the United Nations General Assembly. India was a signatory to the Convention on 30th July, 1980 and ratified on 9th July, 1993 with two Declaratory Statements and one Reservation. Article 16(2) of the Convention says "though India agreed on principle that compulsory registration of marriages is highly desirable, it was said as follows: "It is not practical in a vast country like India with its variety of customs, religions and level of literacy' and has expressed reservation to this very clause to make registration of marriage compulsory".

³⁰ The Convention on the Elimination of All Forms of Discrimination Against Women (in short 'CEDAW') was adopted in 1979 by the United Nations General Assembly. India was a signatory to the Convention on 30th July, 1980 and ratified on 9th July, 1993 with two Declaratory Statements and one Reservation. Article 16(2) of the Convention says "though India agreed on principle that compulsory registration of marriages is highly desirable, it was said as follows:

"It is not practical in a vast country like India with its variety of customs, religions and level of literacy' and has expressed reservation to this very clause to make registration of marriage compulsory"

non-registration of marriages or for filing false declaration shall also be provided for in the said Rules. Needless to add that, the object of the said Rules shall be to carry out the directions of this Court. (iii) As and when the Central Government enacts a comprehensive statute, the same shall be placed before this Court for scrutiny. (iv) Learned counsel for various States and Union Territories shall ensure that the directions given herein are carried out immediately.

Thus, the Apex Court has highlighted the necessity of registering all marriages of Indian citizens belonging to various religions in their respective States immediately after the solemnization of the marriage. Pursuant to the above direction all the State governments have amended the Rules providing for the compulsory registration of the marriage (though not compulsory after the ceremonial marriage as per their custom irrespective of the religion, caste etc.,)

Prohibited Relationship

The proviso to Section 4 of the Act deals with the prohibited degrees of relationship. It reads: Provided that where a custom governing at least one of the parties permits of a marriage between them, such marriage may be solemnized, notwithstanding that they are within the degrees of prohibited relationship; and 4(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. Therefore, it was held that there is no bar to an inter-caste marriage under the Hindu Marriage Act or any other law.³¹ The boy and girl to the marriage should not fall under any prohibited relationship.³² In respect of prohibited degrees the scenario becomes completely different with respect to the S M Act, 1954. The Act placed all first cousins either of paternal and maternal or of parallel and cross in the category of prohibited marital relationship. The Act does not place any second cousin in its two lists of prohibited degrees. It gives relaxation for this provided that custom governing one of the parties permits. But whereas under Muslim personal Law all first cousins both on the paternal and maternal sides are outside the purview of prohibited degrees in marriage and marriage between the first cousins is allowed. Also under Christian law marriage with a cousin may be permitted by a special dispensation by the Church. Thus, it ends up in a confusion that if the expression “custom” as defined in the S M Act, 1954 would include also personal law of the parties or not? Even if the answer is yes, the condition of recognition by the State Government through a gazette notification should be satisfied.³³ The Act ignores discrimination prevailing among different Indian Communities. One such instance is under Hindu Marriage Act, 1955 due to restriction known as *Sapinda* relationship³⁴-marriage with second cousins is not allowed. But, the S M Act, 1954 does not place any second cousin in its two lists of prohibited degrees in marriage. So, if a Hindu, Sikh, Buddhist or Jain wants to marry a second cousin he can do so under the SM Act, though the personal law does not permit. Also, if a Muslim wants to marry a first cousin he cannot do so under the S M Act, 1954 though the Muslim personal law permits such a marriage.³⁵ The

³¹ Markandeya Katju, J.,SC., *Lata Singh v. State of UP* AIR 2006 SC 2522

³² Section 4(d) of the Special Marriage Act,1954

³³ Laws of Civil Marriages in India – A Proposal to Resolve Certain Conflicts, Report 212, October 2008, Chapter IV -Prohibited degrees.

³⁴ See Section 5(V) of Hindu marriage act , 1955. “Saha pinda bandhavya nishedhaha”

³⁵ Laws of Civil Marriages in India – A Proposal to Resolve Certain Conflicts, Report 212, October 2008, Chapter IV -Prohibited degrees

couple should have attained a minimum age of 21 years and 18 years respectively.³⁶ The parties for the special marriage should be of sound mind capable of giving a valid consent. The marriage between the couple should be monogamous at the time of the marriage i.e., they should be either unmarried or divorced or should not have a spouse living at the time of the marriage.

Jurisdiction of Courts and Transfer of Cases

In *Vinisha Jitesh Tolani @ Manmeet Laghmani vs. Jitesh Kishore Tolani*,³⁷ the Rokka ceremony³⁸ was performed at London and the marriage was fixed in New Delhi. However, on the insistence of the respondent the marriage was performed before the Registrar and the same was registered in Goa. Thereafter, the petitioner along with the respondent shifted to a flat in Vasco-da-Gama, Goa. Several incidents occurred thereafter which caused petitioner to commute between the U K and India till finally she took up accommodation in New Delhi. Surprisingly, she had found that the marriage was treated a nullity without her notice through ex parte proceedings by a court in Goa. Hence, the petitioner sought for transfer of the Matrimonial Petition pending before the Civil Judge, at Vasco-da-Gama, Goa, to a Court of competent jurisdiction in Delhi.

The Supreme Court ruled that notwithstanding the fact that the marriage between the parties had been conducted in Goa, the same having been conducted under their personal laws and under Hindu rites and traditions, it was satisfied that the claim of the petitioner was justified and the transfer petition was allowed. The Apex Court has rendered justice to the wife holding that though the marriage was registered in Goa, prior ceremonies and performance of marriage as per the Hindu rites cannot be ignored. Judicial bias is towards the wife and the Court in the jurisdiction of wife's residence shall be the Court to decide the marital disputes.

*Vandana Sharma v. Rakesh Kumar Sharma*³⁹ was another case involving transfer petition filed by the wife – Vandana. She sought the transfer of the case filed by her husband pending in the Court of Additional District Judge, Tis Hazari Courts, Delhi to the Court of District Judge, Panchkula (Haryana). Admittedly, the wife/petitioner is having two minor daughters staying with her. The younger daughter is only 7 months' old and it would be very difficult for Vandana to attend the Court at Delhi from her residence at Panchkula (Haryana) in the absence of any male member to accompany her from Panchkula to Delhi. The Apex Court has directed the Additional District Judge, Tis Hazari Courts, Delhi, to transmit the records of the case within one month from the date of supply of a copy of the order.

In *Sapna Agarwal v. Om Prakash Jalan*,⁴⁰ also an application for transfer of Civil Proceeding filed under Section 27(a), (b) and (d) of the Special Marriage Act, 1954. The Apex Court had

³⁶ There has been criticism about the age discrimination and the girls of teen age are being victimized due to the same. There shall be change of law in the age especially the age of female shall also be equated to male so that girls get maturity in understanding better at that age which would also avoid them innocently falling prey due to the teen age innocence influenced by some immature unstable actions.

³⁷ AIR 2010 SC 1915

³⁸ A pre marriage ceremony among Sikh community in Punjab.

³⁹ 2008 (11) SCC 768

⁴⁰ 2008 (17) SCC 602

allowed the application for transfer and directed transfer of the case to the Family Court at Jaipur, Rajasthan. Age and other dependant status of wife are relevant factors to transfer matrimonial proceedings at her instance. Thus, the Apex Court has rendered justice in favour of the women by allowing the transfer petitions to the jurisdiction of the court at or near the place of residence of the wives.

Divorce and Fraud

In *Smt. Rachna Chohan vs State of Madhya Pradesh*⁴¹ Rahul Chohan @ Mujahid Khan filed an application before the Family Court under Section 13 of S M Act and sought relief of divorce submitting forged affidavit alleged to have been signed by the petitioner. The Petitioner filed a complaint before the Family Court and lodged complaint before the Superintendent of Police, Gwalior and Police station, Thatipur. The grievance of the petitioner is that despite her complaints no FIR has been registered. Hence, she sought relief through the High Court under Section 482 Cr.PC that the respondents be directed to register crime The High Court held that if cognizable offence is made out on the report of the petitioner, action be initiated pursuant to directions given by the Hon'ble Supreme Court in the case of *Lalita Kumari v. Govt. of UP*⁴²

Mutual Consent for Divorce

In *Reynold Rajamani & Anr v. Union of India*,⁴³ the appellants, were husband and wife belonging to the Roman Catholic Community. They were married under section 27 of the Indian Christian Marriage Act 1872. They filed a joint petition under Section 28 of the S M Act for a decree of divorce by mutual consent in the District Court. The trial court dismissed the petition on the ground that section 28 of the Special Marriage Act could not be availed of; Followed by and the High Court. On appeal before the Supreme Court they applied for permission to amend the joint petition to enable them to rely upon s. 7 of the Indian Divorce Act, 1869 read with s. 1 (2) (d) of the Matrimonial Causes Act, 1973 of England. The amendment was allowed and the appellants filed an amended joint petition in the trial court. But the Trial Court and the High Court have dismissed the petitions. In appeal the Supreme Court held that assuming that the marriage in this case could have been registered under the S M Act, 1954, inasmuch as it was solemnised in 1967 it was open to the parties to avail of that Act instead of having resort to the Indian Christian Marriage Act, 1872. In the circumstances, the Supreme Court ruled that it was not open to the appellants to complain of the disadvantage now suffered by them. *It may be noted that obviously, the couple could not get divorce even by mutual consent due to technicalities. It is obvious that they could not continue to lead a marital life living together. It may be realized that the decision of the court cannot obviously make them live together. The Apex Court could have used its inherent power, to allow the parties to get separated setting right the discrepancy among the marriage laws. The Love and affection between the couple is important regardless of the faith they believe in. The government has tried to its utmost level in making sure that the couple as wished would be safe under the shelter of the Special marriage Act and it would protect their legal interests.*

⁴¹ *Smt. Rachna Chohan vs State of Madhya Pradesh* available at mphc.gov.in/upload/gwalior/.../MCRC_7900_2015_FinalOrder_12-Aug-2015.pdf

⁴² AIR 2014 SC 187

⁴³ AIR 1982 SC 1261

In *Jaya Lakshmi Coelho v. Oswald Joseph Coelho*⁴⁴ Jayalakshmi and Joseph got married as per the S M Act, 1954. After the birth of a female child differences have arisen culminating into filing an application for dissolution of their marriage entering into an agreement. They had settled other issues amicably relating to their properties and custody of the child etc. in the agreement. The joint petition for divorce by mutual consent was filed in the Family Court under Section 28 of the S M Act, 1954. The Family Court granted the decree of divorce. But, the husband filed a petition for the transfer of a flat as part their agreement for the divorce by mutual consent as the Divorce order was silent about the transfer of the flat. The Family Court, passed an order amending the decree inserted 11 clauses of the agreement in the modified order invoking its power under Section 152 CPC. The wife has opposed for the same and ultimately the matter came up before the Supreme Court. The Apex Court held:

*“.....in regard to the transfer of the flat, which seems to be the bone of contention, on payment of Rs.1,70,000/- by the husband-respondent to the wife.Undisputedly the amount has not been paid to the wife. The payment was ever offered or in time, if at all, is a disputed question between the parties which need not be gone into in these proceedings. **The main part of the agreement related to divorce by mutual consent as it had become impossible for the couple to live together.** This fact alone finds mention in the decree passed by the family court dated 7.3.1992. All that we mean to indicate is that there may be other possible reasons for the family court for not incorporating the terms and conditions of the agreement in the decree, or the reason as indicated by the husband-respondent in Paragraph 3 of his application for modification of the decree itself. In the above background and looking to the prayers made by the respondent-husband for granting mandatory injunction in our view the application for rectification of decree was totally misconceived and was only liable to be dismissed...”*

It is obviously important to note that the courts are not expected to proceed to issue orders amending the earlier orders invoking the power under Section 152 CPC which is only meant to rectify clerical errors.

Alimony and Medical Expenses

In *Rajesh Burmann v. Mitul Chatterjee*,⁴⁵ the respondent-wife has filed a suit for dissolution of marriage and for a decree of divorce under Section 27 of the S M Act, in the Court of District Judge, Aliore, West Bengal. The trial Court directed the husband to pay an amount of Rs.3,06,181/- for medical expenses of the wife as the wife had undergone two surgical operations. The appellant-husband moved the High Court of Calcutta. The High Court observed that the trial Judge did not commit any error of law or of jurisdiction in ordering the husband to pay to the wife medical reimbursement. Hence, the appeal to Supreme Court by the husband. The wife contended that she was pushed by her husband from the stair case. His intention was to cause such injuries which may result in her death. Fortunately, however, she survived. The Apex court categorically maintained that reading the scheme of the Act, it is clear that a wife is entitled to 'maintenance and support'. The Apex Court further clarified that apart from the provisions of Hindu Marriage Act, 1955 or Hindu Adoptions and Maintenance Act, 1956, the two expressions,

⁴⁴ Brijesh Kumar, J. SC., *Jaya Lakshmi Coelho v. Oswald Joseph Coelho* (2001) 4 SCC 181

⁴⁵ C.K. Thakker, J., SC., *Rajesh Burmann v. Mitul Chatterjee*, 2008 (14) SCALE 372

`maintenance' and `support' in the Act of 1954 (S M Act sections 36 and 37) are comprehensive and of wide amplitude and they would take within their sweep medical expenses. The Apex Court held that the wife was entitled to medical expenses granted in her favour by the Courts below.

The Karnataka High Court in *Mr Michael Gerard Ferris v. Mrs Svetlana Alexandrovna*,⁴⁶ has considered enhancement of maintenance under the S M Act and has dismissed the petition made for reduction of maintenance amount granted by the lower Court. It was the case of the petitioner that she needs additional amount towards medical expenses and educational expenses of the child. She is not employed and that she does not have any other source of income. Admittedly, the husband is specialized in Commercial law and International Finance. He was being highly qualified, employed and resident of UAE, the Family Court has concluded enhancement of maintenance amount from Rs.30,000/ to Rs.50,000/- The Karnataka High Court has approved the Family Court's decision.

Thirty days Notice and Scope for harassment

Section 5 of the S M Act, 1954 provides for a 30 days notice of intended marriage. There is an opinion that the notice period may either be reduced or waived contemplating discretion to be exercised by the Courts. Though this period is for checking the bigamy of either of the parties it would leave a space for the community or caste people to harass the couple. Undoubtedly, these days' the couple would go for a special form of marriage under this Act under two circumstances. It may either the parents are against their love and or they are of different religion or caste. At this point this period of thirty days gives a chance for the parents or the community or religion people to harass the couple.⁴⁷ This Act came into force, at a time where it was expected to stand as a legal protector of interests of the couple who are getting married under this Act but this period specified under this section made them find their own enemy to surrender them. if any boy or girl who is a major trying to undergo inter-caste or inter-religious marriage with a woman or man who is a major, the parents and other relatives try in all respects to eschew that and the couple are generally harassed or subjected to threats and mostly with acts of violence often ending their lives. The time gap of 30 days in this section may in a way vitiate the purpose for which it was laid down in reality might spoil the very situation of conducting the marriage and might land the couple in trouble.

In *Pranav Kumar Mishra & Anr. v. Govt. of Nct. of Delhi & Anr*,⁴⁸ the first and the second petitioners are citizens of India. They are permanent residents of Delhi. The both being of marriageable age as required under the provisions of the S M Act intend to be married

⁴⁶ See *Mr Michael Gerard Ferris v. Mrs Svetlana Alexandrovna*, case decided by Justice S.Abdul Nazeer, Karnataka High Court on 14 July, 2016, available at judgmenthck.kar.nic.in/judgments/.../1/CRLRP411-13-27-05-2013.pdf

⁴⁷Asad Ali, 'The battle for Love and the Special Marriage Act,' Hindustan Times. "This is only to ensure a window of natural justice," says Shukla. He adds, "If either party concerned is already married and trying to suppress such information, then any third-party has that time to raise an objection to the marriage. If any objection at all is raised to the marriage within that period, the marriage officer will consider all aspects of the case before allowing the marriage to be solemnised." For details- <http://www.hindustantimes.com/brunch/the-battle-for-love-and-the-special-marriage-act/story-28uQ3vGKkH0UrVAaKaHCrI.html>.

⁴⁸ In the High Court of Delhi, WP(C) No.748 of 2009, available at <https://indiankanoon.org/doc/26886784/>

approached office of the Registrar of Marriages and obtained the necessary forms. They were informed of the procedure whereby a copy of the "Notice of Intended Marriage" (as required under section 5 of the Act) would be displayed on the Notice Board of the Registrar's office for information to the public at large and for inviting objections. They were also told that another copy of the "Notice of Intended Marriage" (as required under section 5 of the Act) would be sent at the respective addresses of the parties and a notice may also be sent through the S.H.O. of the police station of the concerned jurisdiction for the purpose of verification of the residential address. The petitioners challenge the procedure adopted as being arbitrary and illegal. Justice S. Ravindra Bhat 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 at the other party due to parental interference."It becomes clear on a textual reading of the relevant provisions of the Act and the information procured from the website of the Govt. of Delhi that no requirement of posting of notice to applicants" addresses or service through the SHO, or visit by him is prescribed in either the Act or the website.

The law only requires notice to be published by affixing a copy thereof to some conspicuous place in the office of the Marriage Officer. But, the Marriage office copy of the "Notice of Intended Marriage" would be sent at the respective addresses of the parties and a notice may also be sent through the S.H.O. of the police station of the concerned jurisdiction for the purpose of verification of the residential address. The Court opined that the petitioner's concerns and apprehensions were justified. It was ruled that absent any legal compulsion - as is the position - for sending notices to residential addresses in case of solemnization of the marriage, in terms of Sections 4 and 5, their dispatch can well amount to breach of the right to privacy, which every individual is entitled to.⁴⁹

In *Vinod Kumar v. State of Kerala*,⁵⁰ the prosecutrix was twenty years old and was studying in College for a Degree. She had appeared in and successfully wrote her last examination on 19.4.2000, the fateful day. Thereafter, when she did not return home from college, her father conducted a search which proved to be futile. Accordingly, on the next day, 20th April, 2000, he lodged the First Information Report. It was later come to light that the episode began as a telephonic friendship strengthened into close acquaintance between the Appellant and the prosecutrix, which later blossomed into love, eventually leading them to elope. Concealing the fact that he was already married, the appellant married the prosecutrix under the S M Act. And after spending some days and having physical relationship, she had allegedly come to know that the appellant was a married person and she was deceived, she had filed complaint and proceedings were initiated against the appellant under Section 376 IPC and there were concurrent convictions by the lower courts. Strangely, the Supreme Court concluded that the prosecutrix was aware that the Appellant was already married but, possibly because a

⁴⁹ *Govind v. State of MP*, (1975) 2 SCC 148, and *R. Rajgopal v. State of T.N.* (1994) 6 SCC 632, *District Registrar and Collector v. Canara Bank* (2005) 1 SCC 496.

⁵⁰ (2014) 5 SCC 678

polygamous relationship was not anathema to her because of the faith which she adheres to, the prosecutrix was willing to start a home with the Appellant. In these premises, it cannot be concluded beyond reasonable doubt that the Appellant is culpable for the offence of rape.

With due respects, it should be noted that the District Court has rightly convicted the appellant and the Superior Courts should have applied diligent restraint to interfere. The key issue ignored by the Court was whether there was full disclosure of facts on the part of the appellant and the role of the Marriage Officer. Had there been full disclosure of facts, there could be no registration of the marriage with the prosecutrix under, the S M Act 1954 as the Act requires that only unmarried persons/divorcees can get married. The Supreme Court could have condemned the improper action of the Marriage Officer who had registered the marriage without verification of the mandatory and the protective provisions. This by itself, is a sufficient evidence to presume that the accused appellant was concealing the factum of his first marriage. The Apex Court could have tried to understand the victimization of the prosecutrix. At least, the Courts should have referred and invoked section 106 of the Indian Evidence Act, which requires shifting of the burden of proof to the accused. Keeping in view of the objectives of the protective verification procedures laid down under sections 15 -18 of the Special Marriage Act, and the Rules of the States thereof, the Apex Court must have assumed lack of consent on the part of the prosecutrix as there was non- disclosure of the factum of the first marriage by the accused. The conviction of the appellant could have been upheld for the offence of rape as a measure to deter such deceptive actions of men who would play with and doom the lives of innocent women.

However, it may be noted that the non-compliance with the conditions specified in Clause (a) to (r) of Section 15 would render the registration of the marriage ineffective, so also the deemed solemnization of the marriage under Section 18 of the Act. Consequences of failure to comply with the prescribed procedure are provided in the statute itself. Therefore, there can be no manner of doubt, that such statutory requirements are to be considered mandatory. It is a trite law that a command to do a thing in a particular manner would imply a prohibition to do it in any other manner. When the legislature bestows statutory power on a public authority to do a thing in a particular way, the manner of doing the thing is mandatory or jurisdictional.⁵¹

Announcement of Marriage

According to Section 6 of S.M Act, 1954 it is the duty of the Marriage Officer to display a copy of the announcement of the marriage in the office at some discernible place. Also, if either of the parties is not a permanent resident of the district in which they move the court for marriage, the marriage officer of the concerned court has to inform the court in the district in which the party is a permanent resident so that later on the announcement of intended marriage would be displayed at a perceptible place in that office. These prerequisites make it very easy for parents, caste or community people to spot the couple and harass them.

Objection to Marriage

⁵¹ *Deepak Krishna And Anr. v. District Registrar And Ors AIR 2007 Ker 257*

Section 7 of the S M Act, 1954 provides for Objection to marriage— It says that the marriage is solemnized only after a period of one month provided that no objection is raised. According to this section it is very easy to raise objections for special marriages. On an objection to the marriage the marriage officer goes into an inquiry into the matter with the postponement of the solemnization of the marriage. If this objection is upheld either part can appeal to the district court. From the date of the notification of marriage in the court, this drawn-out procedure takes more than three months within which the marriage has to be solemnized. Failing so, the marriage officer should not solemnize the marriage until the parties have to come up with a fresh application to the marriage as described in section 14 of S.M Act.

Three Witnesses

Section 11 of the S M Act, 1954 says that three witnesses are required for the solemnization of marriage, this makes things more complicated, where getting three witnesses would be difficult to the couple as they are getting married against the wish of their parents and people would not come forward to be a witness, also it gives a chance to trace the identity of the couple. Yet, it may be noted that a plea of hardship or inconvenience can a Court interpret a statutory provision in a manner inconsistent with its expressed language.

The Apex Court in *Easland Combines, Coimbatore v. Collector of Central Excise, Coimbatore*⁵² held that merely because a law causes hardship it cannot be interpreted in a manner so as to defeat its object. Courts are not concerned with the legislative policy and with its results, whether injurious or otherwise by giving effect to the language used. The Supreme Court in *Morvi Mercantile Bank Ltd. v. Union of India*⁵³ held that a plea of inconveniences and hardship is a dangerous one and is only admissible in construction where the meaning of the statute is obscure. It is trite law, that where the meaning of the statute is clear and explicit, but if any hardship or inconvenience is felt, it is for the Parliament to take appropriate steps to amend the law and not for the Courts to legislate under the guise of interpretation.

Severance from Undivided Family

Section 19 of the S M Act, 1954 provides 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 Jain religions shall be deemed to effect his severance from such family. *Mrs.Goolrokh M. Gupta v. Mr.Burjor Pardiwala and &Ors*⁵⁴ case raises an interesting question now taken to the Supreme Court.⁵⁵ A Parsi man's children will always be Parsi whoever he weds. But if a Parsi woman marries out, her sons and daughters are not deemed Parsi. Goolrukh Gupta is one of those women. In 1991 she married a Hindu. Until 2003 nobody

⁵² 2003 (1) SCALE 123

⁵³ AIR 1965 SC 1954

⁵⁴2012(2) GCD 1463 (Gujarat)

⁵⁵ S.LP No. 18889 / 2012 , see also Supreme Court to Review Gujarat High Court's controversial decision: Goolrukh Gupta Case,' available at http://parsikhabar.net/issues/supreme-court-to-review-gujarat-high-courts-controversial-decision-goolrukh-gupta-case/6799/#.V76GXBLtZ_1 “Deemed conversion” of woman's religion upon marriage; Supreme Court approached against Gujarat High Court's controversial decision' available at <http://barandbench.com/deemed-conversion-womans-religion-upon-marriage-supreme-court-approached-against/>

stopped her from attending a fire temple or the Towers of Silence - the place Parsis consign their dead - in the town of Valsad in Gujarat where her parents live. Now, she says, the local Parsi panchayat, an administrative body, has decided women like her are not welcome at those holy places. Her biggest fear is that she will not be allowed to attend the last rites when her elderly parents die. – The Gujarat High Court had observed that principal object is to replace co-parcenary rights and other rights concerning the Hindu Undivided Family by a position under which the person marrying will become a divided co-parcener. The Report further refers to the debates in the Joint Committee and notes that section 19 was retained in order to simplify the law of succession as follows: “The Joint Committee gave anxious consideration to this clause as that had been made the subject of attack in many of the opinions received on the ground that it penalises marriages under this law. After careful consideration the Joint Committee have decided to retain this clause in its original form particularly because it has the desirable effect of simplifying the law of succession.”⁵⁶

In *Commr. of Wealth Tax, Madras & Ors v. Late R. Sridharan*,⁵⁷ the Supreme Court observed that Section 21 of the S M Act provides that succession to the property of a person married under the S M Act, 1954 and the property of the issue of such marriage shall be governed by the provisions of the Indian Succession Act 1925. In other words, the section guarantees *inter alia* to the issue of the person married under the S M Act a collateral statutory right of succession to the estate of the latter in case he dies intestate. It does not in any way impair or alter the joint family structure between an assessee and his son. Nor does it effect, as observed by the High Court, the discretion vested in a Hindu assessee to treat his properties as joint family properties by taking into his fold his Hindu sons so as to constitute joint family properties. The S M Act, 1954 does not come up with a situation where a person is severed from his/ her religion as a result of marriage under the Act. It is concerned with succession alone and has no connection with the religious identity of the marrying person. It does not imply that the person marrying under S M Act is obliged to sever his or her personal relations with the natal family.⁵⁸

Though the Act removes most of the inconsistencies under the Special Marriage Act, 1872 Act, some of the provisions of the Act shatter the legal shelter provided for securing the interest of the couples who undergo inter-caste or inter-religious marriage. The status and community of the parties prevails over the love and affection between them in the society even now. The S M Act, provides a chance for the harassment of the couple in different ways as it reflects through some of its provisions in the S M Act, 1954.

In *Smt. Seema v. Ashwani Kumar*,⁵⁹ directions were given to the States and the Union Territories in the matter of framing necessary statutes regarding compulsory registration of marriages. By order the following directions were given:

⁵⁶Impleadment Application *Goolrukh Gupta, Mrs.Goolrokh M. Gupta v. Mr. Burjor Pardiwala and Ors*, 2012(2) GCD 1463 (Gujarat)

⁵⁷ (1976) Supp SCR 478

⁵⁸ Asad Ali, ‘The battle for Love and the Special Marriage Act,’ Hindustan Times available at <http://www.hindustantimes.com/brunch/the-battle-for-love-and-the-special-marriage-act/story-28uQ3vGKkH0UrVAaKaHCrI.html>

⁵⁹2006 (2) SCC 578

“(i) The procedure for registration should be notified by respective States within three months from today. This can be done by amending the existing rules, if any, or by framing new rules. However, objections from members of the public shall be invited before bringing the said rules into force. In this connection, due publicity shall be given by the States and the matter shall be kept open for objections for a period of one month from the date of advertisement inviting objections. On the expiry of the said period, the States shall issue appropriate notification bringing the rules into force.

(iii) As and when the Central Government enacts a comprehensive statute, the same shall be placed before this Court for scrutiny.

(iv) Learned counsel for various States and Union Territories shall ensure that the directions given herein are carried out immediately.”

Particular reference was made to the earlier observations to the effect that marriages of all persons who are citizens of India belonging to various religions should be compulsorily registered in the respective States and Union Territories where the marriages have been solemnized. Different States and Union Territories have placed on record details of the compliance made. When the matter was taken upon on 28.4.2008, it was stated that four States namely: Madhya Pradesh, Gujarat, Kerala and Haryana have already final rules. So far as the remaining states are concerned they are in the process of finalizing the rules.

Powerless State Commission for Women

In *Bhabani Prasad Jena Etc. v. Convenor Secretary, Orissa State Commission For women & Anr*,⁶⁰ Bhabani Prasad Jena and Suvashree Nayak got married. The certificate of marriage was issued under Section 13 of the Act. Suvashree filed a complaint before Orissa (State) Commission for Women alleging that she was married to the appellant and due to torture meted out to her by the appellant and his family members and other issues, they have separated; she has no source of income and she was pregnant. The State Commission had passed several directions requiring Bhabani Prasad to pay for the maintenance, delivery charges and compensation of 50% of the Gross salary besides ordering for DNA test. The appellant challenged the order before the High Court of Orissa. A letter praying for justice was sent by Suvasree to the Chief Justice of Orissa High Court. The High Court has directed the Chief District Medical Officer, Bhubaneswer to admit the respondent wife in the Capital Hospital at the cost of the State. Later, The High Court directed that DNA of the child as well as the appellant shall be conducted. Hence, the husband appealed before the Supreme Court. Justice R.M. Lodha,⁶¹ lamented that the State Commission has no power or authority to adjudicate or determine the rights of the parties. The Court categorically maintained that the State Commission is not a tribunal discharging the functions of a judicial character or a court. The expression, 'have all the powers of a Civil Court' in Section 10(3) is qualified by the following words, 'in respect of the following matters'. That is to say, the State Commission has powers of Civil Court trying a suit for the matters specified in clauses (a) to (f) thereof and not for other purposes.⁶² The Court clarified that the Legislature has

⁶⁰ AIR 2010 SC 2851

⁶¹ R.M. Lodha, J. S C *Bhabani Prasad Jena Etc. v. Convenor Secretary, Orissa State Commission For women & Anr* AIR 2010 SC 2851

⁶²Section 10 (3)- The Commission shall, while investigating any matter referred to in Clause (a) or Clause (d) of Sub- section(1), have all the powers of a Civil Court trying a suit and, in particular, in respect of the following matters, namely : (a) summoning and enforcing the attendance of any person from any part of India and

not gone so far as to give jurisdiction to the State Commission to make an order such as the one that has been made. Therefore, the order of the Commission so also the order of the High Court was set aside by the Supreme Court.

It may be pointed out that keeping in view of the object sought to be achieved and the provision conferring the powers of the Court on the State Commission, could have been held a quasi judicial authority. The relevant provision could have been interpreted widely, to confer the powers to issue the directions to render justice to the deserving women. The expression used in the relevant provision was that the commission shall “have all the powers of a Civil Court trying a suit and, in particular, in respect of the following matters...” The expression ‘in particular’ would not restrict but widen the meaning of the expressly provided purposes. Keeping in view of the objects sought to be achieved by the creation of the Commission, the powers of the Commission could have been widely interpreted in the interest of justice. The Court itself laid down that the commission was expected to take up the matter with the concerned authorities for remedial measures; help women in distress as a friend, philosopher and guide in enforcement of their legal rights. Taking up the matter to the concerned authorities for the enforcement of the legal rights of the women can be understood equivalent to moving Public Interest Litigation akin to the Legal Aid Committee. Thus taken the view, the Apex Court could have used its inherent powers to render justice and settle the matter.

Suggestive Changes

The following are some of the suggestive changes for the effective enforcement of the S M Act. It has been suggested that-

- Repeal of Section 7- The procedure should be made easy to the couple to approach any court in the country to facilitate for a simple and easy-going marriage. The couple being asked to approach only the court in their place creates an image of restriction on their part and delaying the marriage, the circumstances in which the couple are in every time doesn't give them the possibility to approach the court they are required to approach. So there is a need to repeal Section 7 of the S M Act, 1954.
- Very light Punishment- The punishment for false objection is very light. According to the Act if “the objection made to an intended marriage is not reasonable and has not been made in good faith he (the marriage officer) may impose on the person objecting costs by way of compensation not exceeding one thousand rupees and award the whole or any part thereof to the parties to the intended marriage.⁶³ This makes it crucial to modify the aspect of the Act. There has to be some check for such unreasonable objections. In such cases imprisonment for a minimum period of five years and a varied amount of fine based on the economic status of the objecting party should be inserted in that provision. It would be beneficial to the couple if that amount is given to them. This kind of changes would make the parents or the

examining him on oath; (b) requiring the discovery and production of any document; (c) receiving evidence on affidavits; (d)requisitioning any public record or copy thereof from any Court or office; (e) issuing commissions for the examination of witness and documents; and (f) any other matter which may be prescribed."

⁶³ Section 9(2) Special Marriage Act, 1954

community and caste people a bit scared if they have the thought of harassing the couple in any way.

- Gazette notification –The requirement of a gazette notification for recognition of custom relating to prohibited degrees in marriage found in the Section 4 (Explanation) of the Special Marriage Act, 1954 should be deleted. This would in a way makes the Special Marriage Act less contradictory to the other personal laws and their faiths.
- The State Commission for Women – It is desirable that there being conferment of powers of the Court on the State Commission to a certain extent it should have been held a quasi judicial authority to enable it to function effectively.

Conclusion

The Supreme Court ruled in *Lata Singh's* case,⁶⁴ that ours is a free and democratic country, and once person becomes a major, he or she can marry whom so ever he or she likes. The maximum that relatives can do if they disagree with the inter-caste marriage of their children is to cut off all bonds with them. But they cannot give threats or commit or instigate Acts violence and cannot harass the person who undergoes such inter caste or inter religious marriage.⁶⁵ The Court issued orders for the copies of the judgment to be sent to all the State High Courts and chief secretaries, home secretaries and Director Generals of Police in all States and Union Territories for circulation. The Bench consisting of Justices Ashok Bhan and Markandeya Katju also directed the police throughout the country to extend protection to inter caste or inter religious couples against harassment besides initiating Action against those who resort to violence. Years have passed on since the judgment was delivered and yet the curse still happens to exist.

In *Smruti Pahariya v. Sanjay Pahariya*⁶⁶ it was observed that the Family Courts Act, was enacted for adopting a human approach to the settlement of family disputes and achieving socially desirable results. The need for such a law was felt as early as in 1974 and Chief Justice P.B. Gajendragadhkar, as the Chairman of Law Commission, in the 59th report on Hindu Marriage Act, 1955 and S M Act, 1954, opined:-“In our Report on the Code of Civil Procedure, we have had occasion to emphasis that in dealing with disputes concerning the family, the court ought to adopt a human approach – an approach radically different from that adopted in ordinary civil proceedings, and that the court should make reasonable efforts at settlement before commencement of the trial. In our view, it is essential that such an approach should be adopted in dealing with matrimonial disputes. We would suggest that in due course, States should think of establishing family courts, with presiding officers who will be well qualified in law, no doubt, but who will be trained to deal with such dispute in a human way, and to such courts all disputes concerning the family should be referred.”

Registration of marriage is done more because of necessity that arises after marriage, for suppose if you want your name changed in PAN Card, Bank Account and with Employer, you need to show marriage certificate. That is the precise reason why there is rise in marriage registered

⁶⁴ *Lata Singh v. State of UP*, AIR 2006 SC 2522

⁶⁵ *Ibid.*

⁶⁶ AIR 2009 SC 2840

under special marriage Act. It cannot be conveniently said that rise is because of inter caste and inter religion marriages. In spite of all these attempts there still exists curse on the part of the couples. Necessary steps need to be taken to avoid this, may be not completely the inconsistencies be removed there is not Act that is perfect, as these issues create a taboo to a maximum extent the inconsistencies need to be curbed.
