

Special Marriage Act (SMA)

Issues with the Act

- Publication of confidential details through a public notice is "infringement of the rights of autonomy, equality, dignity and the right to marry".
- It make inter-caste and inter-religious couples vulnerable to honour killings and violence.
- It is believed that this legislation encouraged marriages based on lust, which inevitably lead to immorality
- It permit any dissenters to give up their profession of faith altogether to marry whomever they chose under the protection of this act.
- Issue of conversion on the name of marriages is harming social fabric of society and creating law and order issues for states.
- Some antisocial elements are using marriage for fraudulent conversions, which encourage vigilantism and moral policing
- Lack of awareness among the people and poor implementation by police personnel and state administration.
- There is no provision of punishment in the act, if either party is already married and suppressed such information
- At least one party should reside for 30 days in that particular marriage registrar's district where the application is to be made, make the couple prone to faces social stigma, family coercion and harassment

Why in news?

- In a significant ruling, the Allahabad High Court decreed that conversion just for the purpose of marriage is "unacceptable"
- After Uttar Pradesh, Haryana want to bring legislation to combat the trend of Hindu women being drawn into relationships with Muslim men and forced to convert.
- Supreme Court asked government to respond on a plea that publication of personal details of a couple who want to wed under the Special Marriage Act is a violation of their privacy.

Purpose of SMA

- It was formulated to provide a secular form of marriage.
- It was enacted in 1954 to facilitate the marriage of couples professing different faiths and preferring a civil wedding.
- It was 'one of the earliest endeavours towards Uniform Civil Code
- It provides registration of certain marriages and procedure for divorce

Key provisions of SMA

- All marriages done under the SMA require publication of the names of the couple for inviting objections from the public for 30 days.
- Marriages solemnized under Special Marriage Act are not governed by personal laws.
- It is applicable to the entire territory of India and extends to intending spouses who are both Indian nationals living abroad
- Marriage performed under this Act is a civil contract and there need be no rites or ceremonial requirements
- Each party involved should have no other subsisting valid marriage i.e. marriage should be monogamous for both parties
- The groom must be at least 21 years old; the bride must be at least 18 years old
- The parties should not fall within the degree of prohibited relationship
- Succession to the property of person married under this Act are governed by Indian Succession Act.
- It is appropriate to all residents of India regardless of their religion applicable at Court marriage.

Way Forward

- There is need to relook at this law as it addresses the issue of inter-cast and inter-religious marriages but does not mention punishment for forced conversion.
- Marriage, religious conversion and personal matters (marriage, succession, divorce, adoption) are different issues thus should be dealt separately.
- There is a high time to bring and implement the uniform civil code
- Awareness, wider consultation, policy review, law dealing with fraudulent conversions is need of the hour
- Special cells, helpdesk should be in place to protect the interfaith couple from family coercion, right wing groups or communal propagandist.

Conclusion

Kerala Registration department, discontinuance of practice of uploading marriage notices on its websites is step in a right direction to assures safety and privacy of couples marrying across religions. .