

CENTRE'S RESPONSE AWAITED ON LAW ON INTER-FAITH MARRIAGES

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Ongoing battle: The petition was heard by the Supreme Court once in September 2020 and a notice was issued.

The law that governs inter-faith marriages in the country, the Special Marriage Act (SMA), 1954, is being challenged for endangering the lives of young couples who seek refuge under it. More than a year after a writ petition was moved before the Supreme Court, seeking striking down of several of its provisions, the Union government is yet to submit its response.

"The court has admitted our petition and it was heard once on September 16, 2020. A notice was issued to the Centre and we are awaiting its counter-affidavit," says advocate Kaleeswaram Raj.

Twenty-seven-year old Aafreen Ansari* was under tremendous pressure from her family to get married. But she was already in love with a Hindu boy and the idea of an inter-faith marriage was vehemently opposed by her parents. So, without any further delay, she and Mohan Sharma*, decided to have a court marriage under the SMA around August 2020.

"We needed to marry urgently. Our circumstances didn't allow us to wait any longer. My parents were already suspicious and I was worried that they would restrict my movement," says Ms. Aafreen.

She and Mr. Sharma went online and submitted their application. When they reached the Sub-Divisional Magistrate's (SDM) office for the verification of their documents, the staff dissuaded them in multiple ways.

"They were rude, and they deleted our application on flimsy grounds, which delayed the whole process for us. They threatened to stop our marriage over a spelling error. And then they told us we were required to wait for 30 days and issue a notice inviting objections to our marriage from the public and that this notice would be stuck on the court premises," recounts Ms. Aafreen.

Section 5 of the SMA requires a person marrying under this law to give a notice of intended marriage, and Section 6(2) says it should be affixed at a conspicuous place at the office of the marriage officer. Section 7(1) allows any person to object to the marriage within 30 days of the publication of the notice, failing which a marriage can be solemnised under Section 7(2).

Such was the terror of being discovered, that the couple approached the Delhi High Court a few days later, challenging Sections 6 and 7 of the Act. The couple are now married, but the court is yet to give its decision.

The law doesn't require a notice to be sent to the families, but there are often instances where marriage officers and State governments go over and beyond the law to scuttle these marriages.

Some State governments can also be overzealous in implementing the law.

Haryana, for instance, created a checklist for marriages under the SMA, with 16 criteria that

require a couple to publish a notice inviting objections in a newspaper and that such notices be sent to their parents. But even without such over-reach, several provisions in the law put the lives of these couples in danger.

“Some States require couples to also seek a no-objection certificate from their parents. The Maharashtra (Department of Registration and Stamps) publicly shares the details of these couples on its website, from where communal elements can access them,” explains Asif Iqbal, founding member of NGO Dhanak, which helps inter-faith, inter-caste, same sex and trans couples.

All eyes are now on the Supreme Court, where a petition in the *Nandini Praveen vs. Union of India* in September 2021 has sought that these and a few other provisions be struck down as they violate the right to privacy, and the right to marry.

Until the top court decides, couples will be forced to knock on the door of courts to seek protection from a law that was framed with the intent to safeguard their interests.

(* names changed to protect the identity of the subjects)

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