Challenging the Special Marriage Act, 1954

What is the issue?

The Supreme Court dismissed a writ petition challenging provisions of the Special Marriage Act requiring couples to give a notice declaring their intent to marry 30 days before their marriage.

What does the petition seek?

- The writ petition has said that the provisions of Special Marriage Act contravene **Article 14** as well as **Article 15** as these requirements are absent in personal laws such as Hindu Marriage Act, 1955 and customary laws in Islam.
- The writ petition has called it as violative of the right to privacy guaranteed under **Article 21** of the Constitution as they require a notice of 30 days before the date of marriage inviting objections from the public.
- The petition specifically challenged
    - Sections 6(2), 6(3) -Notice of intended marriage
    - Section 7 -Objection to marriage
    - Section 8 -Procedure on receipt of objection
    - Section 9 -To the extent to which it deals with inquiry under Section 8 of SMA
    - Section 10 -Procedure on receipt of objection by Marriage Officer
- The petition sought to commiserate the marriage laws to one that is more in tune with just decisional autonomy of two individuals and less to do with social sanction of their marriage.
- According to the petitioner, there is no legitimate state interest that is being protected by the publication of personal and intimate details of parties who are getting married.

Why has the court dismissed the petition?

- The bench rejected the writ petition on the grounds that the petitioner was no longer an aggrieved party as she had already solemnised her marriage under SMA.
- The court further observed that if a personal cause is raised then it ceases to be a PIL.
- Another writ petition in ***Nandini Praveen vs Union of India & Others*** filed on similar grounds was admitted by the Supreme Court in 2020 and the government's reply to is awaited.

What provisions have been challenged?

- **Section 5 of the SMA**- It requires couples getting married under it to give a notice to the Marriage Officer 30 days before the date of marriage.
- **Section 6**- It requires such a notice to be then entered into the Marriage Notice Book maintained by the Marriage Officer.
- These notices have to be affixed at a conspicuous place in the office of the Marriage

Officer so that anyone can raise an objection to the marriage.
- **Section 7-** It provides the process for making an objection.
- **Section 8**- It specifies the inquiry procedure to be followed after an objection has been submitted.

How do these provisions make couples vulnerable?

- The public notices have been used by anti-social elements to harass couples getting married.
- For persons who often marry without their parent's consent this can be life-threatening.
- There have been instances, where marriage officers have gone over and beyond the law and sent such notices to the parents of the couple.
- In certain States, couples have to seek a no-objection certificate from their parents.
- The Maharashtra and Kerala government publicly shares the details of couples marrying under SMA on its website.
- The Haryana government has laid down 16 pre-requisites which ask couples to issue a notice in a newspaper and that such notices be sent to their parents.
- The behaviour of the staff at the SDM's office is often complained for deletion or delay and dissuasion of couples from marrying under SMA.
- With as many as 11 States passing anti-conversion (or so called love-jihad) laws, parents and the State are now armed to punish and harass such couples.

References

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