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PRACTICE NOTE — FAMILY LAW (CIVIL MARRIAGE)

The Special Marriage Act, 1954 — Key Points

Civil form of marriage available to parties of any religion, or of different religions/castes, without renouncing personal religion — solemnisation, registration and matrimonial reliefs

APPLIES TO

Any two persons in India, irrespective of religion (S.1); marriages abroad — Foreign Marriage Act, 1969

IN FORCE FROM

1 January 1955

MINIMUM AGE

Male 21 yrs / Female 18 yrs (S.4(c))

NOTICE & PUBLICATION

30-day notice (S.5); publication now discretionary per several High Courts

JURISDICTION

District Court (S.31)

APPEAL PERIOD

90 days from the decree/order (S.39)

CONDITIONS FOR A VALID MARRIAGE — S.4

SECTION 4 — CONDITIONS

- **Monogamy:** neither party has a spouse living at the time of marriage.
- **Valid consent:** not incapable of consent due to unsoundness of mind; not suffering from mental disorder unfit for marriage and procreation of children; not subject to recurrent insanity.
- **Age:** male has completed 21 years, female 18 years.
- **Prohibited relationship:** parties are not within the degrees of prohibited relationship, unless the custom governing at least one party permits marriage between them.

WHO CAN MARRY UNDER THIS ACT

- Any two persons in India, of the **same or different religions or castes** — no need to renounce or convert one's personal religion.
- Commonly used for interfaith, inter-caste, or civil (non-ceremonial) marriages, and to register marriages already solemnised in another form.
- S.4(c) refers to "male" and "female" — the Supreme Court in *Supriyo v. Union of India* (2023) declined (3:2) to read this as permitting same-sex marriage; Parliament alone can extend the Act.

NOTICE, OBJECTION & SOLEMNISATION — S.5 TO S.13

NOTICE & PUBLICATION — S.5–S.10

- Written notice given to the Marriage Officer of the district where at least one party has resided for 30+ days immediately before the notice.
- Entered in the Marriage Notice Book; under the text of S.6–S.7 it is published for 30 days, inviting objections on S.4 grounds.
- **Now discretionary in several States:** following *Safiya Sultana v. State of U.P.* (Allahabad HC, 2021) and similar rulings elsewhere, publication/objection is undertaken only if the parties themselves request it in writing — done to protect the privacy of interfaith/inter-caste couples. Practice varies by State/HC; verify current position in the filing jurisdiction.

DECLARATION & SOLEMNISATION — S.11–S.13

- Parties and three witnesses sign a declaration in the prescribed form before the Marriage Officer.
- Marriage may be solemnised in any form the parties choose, in the Marriage Officer's presence.
- The Marriage Certificate, entered in the Marriage Certificate Book and signed by parties, witnesses and the Officer, is **conclusive evidence** of solemnisation.

PROCESS CHART — CONTESTED MATRIMONIAL PROCEEDINGS

1

Ground Accrues (Cause of Action)

A statutory ground under S.27 for divorce, or a S.22/S.23 ground for restitution/judicial separation, comes into existence — e.g. adultery, cruelty, desertion for 2+ years, unsoundness of mind, or non-compliance with an earlier decree.

2

Petition & Jurisdiction

S.31

Petition filed before the District Court within whose jurisdiction the marriage was solemnised, the respondent resides, the parties last resided together, or the petitioner resides (if respondent is outside India or not heard of as alive for 7+ years).

3

Interim Relief — Alimony Pendente Lite

S.36; ~60 days

Wife without independent income sufficient for support may apply for litigation expenses and weekly/monthly interim maintenance; the application is, as far as possible, disposed of within 60 days of service of notice on the husband.

4

Duty to Attempt Reconciliation

S.34

Before granting relief, the court must satisfy itself of the grounds pleaded and, except where the ground makes reconciliation unrealistic, make an effort at reconciliation — may adjourn and refer parties to a third party/institution.

5

Trial — Written Statement & Evidence

Respondent files written statement; issues framed; evidence led by both sides following the CPC, subject to the Act's own procedural provisions.

6

Decree & Ancillary Reliefs

S.37–S.38

Court passes a decree of divorce, judicial separation, restitution, or nullity, as prayed and proved. Permanent alimony (S.37) and custody/maintenance/education of children (S.38) are typically decided together with the main decree.

7

Appeal

S.39; 90 days

Appeal against a decree/order lies within 90 days to the court to which appeals ordinarily lie from the district court's original civil decisions; orders under S.37/S.38 (other than interim orders) are also appealable.

Fast Track — Divorce by Mutual Consent (S.28)

Where parties have lived separately for 1 year or more and mutually agree the marriage should be dissolved, a joint petition may be filed. As under the HMA's S.13B, the court is to be satisfied the consent was not obtained by force, fraud or undue influence, and, on being satisfied, passes a decree of divorce declaring the marriage dissolved — practice on the cooling-off/second-motion period generally mirrors the approach taken under the HMA.

GROUND FOR DIVORCE, RESTITUTION & JUDICIAL SEPARATION — S.27

GROUND	AVAILABLE TO	SECTION
Voluntary sexual intercourse outside marriage (adultery)	Either spouse	S.27(1)(a)
Desertion for a continuous period of 2+ years	Either spouse	S.27(1)(b)
Undergoing a sentence of imprisonment for 7+ years for an offence under the BNS/former IPC	Either spouse	S.27(1)(c)
Cruelty	Either spouse	S.27(1)(d)
Incurable unsoundness of mind / persistent mental disorder	Either spouse	S.27(1)(e)
Venereal disease in a communicable form	Either spouse	S.27(1)(f)
Virulent and incurable leprosy (omitted by 2019 amendment, aligned with HMA)	— repealed —	formerly S.27(1)(g)
Not heard of as alive for 7+ years	Either spouse	S.27(1)(h)
No resumption of cohabitation for 1+ year after judicial separation decree, or no restitution of conjugal rights for 1+ year after that decree	Either spouse	S.27(1A)
Husband guilty of rape, sodomy or bestiality since the marriage	Wife only	S.27(1A)(b)

Restitution of conjugal rights (S.22) and judicial separation (S.23) are available on the same S.27 grounds; "irretrievable breakdown" is not an independent statutory ground.

VOID & VOIDABLE MARRIAGES — S.24 & S.25

VOID MARRIAGES — S.24

- Void **ab initio** if it contravenes any condition in S.4 — bigamy, invalid consent (unsoundness of mind/mental disorder), under-age, or prohibited relationship.
- Either party may petition for a decree of nullity — but the marriage is void even without such a decree; no limitation period applies.

VOIDABLE MARRIAGES — S.25

- Valid until annulled by decree of nullity, on grounds: marriage not consummated owing to **wilful refusal** of the respondent; consent obtained by coercion or fraud; respondent pregnant by a person other than the petitioner at the time of marriage.
- Petition on the ground of coercion/fraud must be filed within 1 year of it ceasing/discovery; on pre-marriage pregnancy, within 1 year of marriage, without marital intercourse continuing with knowledge.

ANCILLARY RELIEFS — S.36 TO S.38

Alimony Pendente Lite (S.36)

Interim litigation expenses and weekly/monthly maintenance for the wife during pendency; to be disposed of, as far as possible, within 60 days of notice on the husband.

Permanent Alimony (S.37)

Gross sum or periodical payment, secured or unsecured, having regard to the parties' income and conduct; may be varied on a material change of circumstances or on the recipient's remarriage.

Custody of Children (S.38)

Interim orders and decree provisions for custody, maintenance and education of minor children, consistent with their wishes wherever possible; variable even after the decree; disposed of, as far as possible, within 60 days.

LEGITIMACY, EFFECT OF MARRIAGE & REGISTRATION — S.26, S.19, S.15–S.18

LEGITIMACY OF CHILDREN — S.26

- Children of a marriage later declared void or annulled as voidable are deemed **legitimate**, whether the decree is before or after the child's birth.
- Such children have rights only in the property of their parents, not of any other relation — this section protects only the children's status, not the marriage.

EFFECT ON JOINT FAMILY & SUCCESSION — S.19, S.21/S.21A

- **S.19:** A Hindu, Buddhist, Sikh or Jain who marries under this Act is deemed to effect his/her severance from any Hindu Undivided Family of which he/she was a member.
- **S.21:** Succession to the property of parties married under the Act is generally governed by the Indian Succession Act, 1925, not by personal law.
- **S.21A:** Exception — where both parties are Hindu, Buddhist, Sikh or Jain, S.19 and S.21 do not apply and succession continues to be governed by the Hindu Succession Act, 1956.

REGISTERING AN EXISTING MARRIAGE — S.15–S.18

- A marriage already solemnised under any other form/personal law may be registered under this Act if it satisfies the S.4 conditions and the parties have lived together as husband and wife since the marriage.
- Registration does not create a new marriage — it records and formalises an existing one, giving it the incidents (succession, etc.) of a marriage under this Act, subject to S.21A.

PRACTICE NOTES

- **Notice publication:** confirm the current position of the jurisdictional High Court/District Court on whether S.6 publication is mandatory or on-request before advising interfaith/inter-caste clients.
- **Succession planning:** advise Hindu/Buddhist/Sikh/Jain clients marrying under this Act that S.21A preserves Hindu Succession Act rights — but flag S.21 consequences where only one party is Hindu.
- **Same-sex marriage:** not recognised under S.4(c) post-*Supriyo* (2023) — advise clients accordingly and monitor legislative developments.

QUICK REFERENCE

Notice & Objection Window

30-day notice period (S.5); objection window of 30 days from publication where publication is undertaken (S.7) — track both timelines carefully in the filing register.

Refusal by Marriage Officer — Appeal (S.8–S.9)

If the Marriage Officer refuses solemnisation upholding an objection, the aggrieved party may appeal to the district court within 30 days of the refusal.

For internal practice reference only — this note highlights select, frequently used provisions and does not cover every section or proviso. Cross-check exact section text, applicable State rules, and the latest High Court/Supreme Court rulings (especially on notice publication practice) before relying in proceedings. Prepared 24 July 2026.

Primary sources: Special Marriage Act, 1954 (indiacode.nic.in); *Safiya Sultana v. State of U.P.*, 2021 (Allahabad HC); *Supriyo v. Union of India*, (2023) SC (marriage equality); Foreign Marriage Act, 1969 (for marriages solemnised abroad).