

The Converts' Marriage Dissolution Act, 1866

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Act 21 of 1866

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The Converts' Marriage Dissolution Act, 1866(21 OF 1866)

7.

/410[2nd April, 1866]An Act to legalise, under certain circumstances, the dissolution of marriages of [* * *] [The word " Native" omitted by A.O. 1950.] Converts to Christianity.

*This Act has been declared to be in force in the whole of India except as regards the Scheduled Districts, by the Laws Local Extent Act (XV of 1874), Section 3.It has been declared in force in the Sonthal Parganas by the Sonthal Parganas Settlement Regulation (III of 1872), Beng. Code, Vol. I.It has been extended to the new Provinces and merged States by the Merged States (Laws) Act (LIX of 1949) and to the States of Tripura and Vindhya Pradesh by the Union Territories (Laws) Act (XXX of 1950).This Act has been extended to the Union territory of Dadra and Nagar Haveli by Regulation (VI of 1963) and to the Union territory of Pondicherry by the Pondicherry (Extension of Laws) Act (XXVI of 1968).This Act has not been extended to the State of Manipur-See Act (XXX of 1950), Section 3(2) and Schedule.

1. Short title .-This Act may be cited as The [* * *] Converts' Marriage Dissolution Act, 1866.

2. Commencement of Act .-[Repealed by the Repealing Act , 1874 (16 of 1874), section 1 and Schedule I.]

3. Interpretation-clause .-In this Act-

`Husband'.- " [* * *] husband" shall mean a married man domiciled in India, who shall have completed the age of sixteen years, and shall not be a Christian, a Muhammadan nor a Jew ; `Wife'.- " [* * *] [The word " Native" omitted by A.O. 1950.] wife" shall mean a married woman

domiciled in India, who shall have completed the age of thirteen years, and shall not be Christian, a Muhammadan nor a Jewess. 'Personal law'.- [Personal law] [Substituted by A.O. 1950.] shall mean any law, or custom having the force of law, of any persons domiciled in [India] [Substituted by A.O. 1950.] other than Christians, Muhammadans and Jews: 'Month' and 'year'.-"Month" and "year" shall respectively mean month and year according to the British calendar,[* * *] [The paragraph relating to " number" repealed by Act 10 of 1914, Section 3 and Schedule II and the definition of " High Court" repealed by A.O. 1937.]

4. When convert deserted by his wife may sue for conjugal society .-If a [* * *] husband changes his religion for Christianity, and if in consequence of such change his [* * *] [The word " Native" omitted by A.O. 1950.] wife, for the space of six continuous months, desert or repudiate him, he may sue her for conjugal society.

5. When convert deserted by her husband may sue .-If a [* * *] wife change her religion for Christianity, and if in consequence of such change her [* * *] [The word " Native" omitted by A.O. 1950.] husband, for the space of six continuous months, desert or repudiate her, she may sue him for conjugal society.

6. Court in which suit shall be brought .-If the respondent, at the time of commencement of such suit, reside within the local limits of the ordinary original civil jurisdiction of any of the High Courts of Judicature, the suit shall be commenced in such Court; otherwise it shall be commenced in the principal Civil Court of original jurisdiction of the district in which the defendant shall reside at the commencement of the suit.

7. Suit to be commenced by verified petition .-The suit shall be commenced by a petition in the form in the First Schedule to this Act, or as near thereto as the circumstances of the case will allow.

The statements made in the petition shall be verified by the petitioner in the manner required by law for the verification of plaints ; and the petition [* * *] may be amended by permission of the Court.

8. On service of petition, citation to respondent .-A copy of the petition shall be served upon the respondent, and the Court shall thereupon issue a citation under the seal of the Court and signed by the Judge.

9. Form of citation .-In ordinary cases the citation shall be in the form in the Second Schedule to this Act, or as near thereto as the circumstances of the case will allow.

But where the respondent is exempt by law from personal appearance in Court, or where the Judge shall so direct, the citation shall be in the form in the Third Schedule to this Act, or as near thereto as the circumstances of the case will allow.

10. Service of citation .-A copy of the citation sealed with the seal of the Court shall be served on the respondent; and the provisions of the Code of Civil Procedure, 1908 (5 of 1908) as to the service and endorsement of summonses shall apply, mutatis mutandis , to citations under this Act.

11. Penalty on respondent not obeying citation .-If the respondent shall not obey such citation, and comply with every other requirement made upon her or him under the provisions of this Act, she or he shall be liable to punishment under section 174 of the Indian Penal Code (45 of 1860).

12. Points to be proved on appearance of petitioner .-On the day fixed in the citation the petitioner shall appear in Court, and the following points shall be proved-

(1)the identity of the parties;(2)the marriage between the petitioner and the respondent;(3)that the male party to the suit has completed the age of sixteen years, and that the female party to the suit has completed the age of thirteen years;(4)the desertion or repudiation of the petitioner by the respondent;(5)that such desertion or repudiation was in consequence of the petitioner's change of religion;(6)and that such desertion or repudiation had continued for the six months immediately before the commencement of the suit.

13. First interrogation of respondent .-The respondent, if such points be proved to the satisfaction of the Judge, shall thereupon be asked whether she or he refuses to cohabit with the petitioner, and, if so, what is the ground of such refusal.

In ordinary cases such interrogation and every other interrogation prescribed by this Act shall be made by the Judge, but when the respondent is exempt by law from personal appearance in Court, or when the Judge shall, in his discretion, excuse the respondent from such appearance, the interrogations shall be made by Commissioners acting under such commission as hereinafter mentioned.

14. Interrogations by Judge may be public or private .-Every interrogation mentioned in this Act and made by the Judge may, at the discretion of the Judge, take place in open Court or in his private room.

If any such interrogation takes place in open Court, the Judge may, so long as it shall continue, exclude from the Court all such persons as he shall think fit to exclude.

15. Procedure when female respondent refuses to cohabit with petitioner-Adjournment for a year-Interview .-If the respondent be a female, and in answer to the interrogatories of the Judge or Commissioners, as the case may be, shall refuse to cohabit with the petitioner, the Judge, if upon consideration of the respondent's answers and of the facts which may have been proved by the petitioner he shall be of opinion that the ground for such refusal is the petitioner's change of religion, shall make an order adjourning the case for a year, and directing that, in the interim, the parties shall, at such place and time as he shall deem convenient, have an interview of such length as the Judge shall direct, and in the presence of such person or persons (who may be a female or females) as the Judge shall select, with the view of ascertaining whether or not the respondent freely and voluntarily persists in such refusal.

16. Procedure on expiration of adjournment-Interrogation of respondent .-At the expiration of such adjournment the petitioner shall again appear in Court and shall prove that the said desertion or repudiation had continued up to the time last hereinbefore referred to, and if the points mentioned in section 12 and this section of this Act shall be proved to the satisfaction of the Judge, and if the respondent on being interrogated by the Judge or Commissioners, as the case may be, again refuse to cohabit with the petitioner, the respondent shall be taken to have finally of deserted or repudiated the petitioner;

Decree .-and the Judge shall, by a decree under his hand and sealed with the seal of his Court, declare that the marriage between the parties is dissolved.

17. Decree in case of male respondent refusing to cohabit on grounds of petitioner's change of religion .-If the respondent be a male, and in answer to the interrogatories of the Judge or Commissioners, as the case may be, shall refuse to cohabit with the petitioner, the Judge, if upon consideration of the

respondent's answers and of the facts which may have been proved by the petitioner, he shall be of opinion that the ground for such refusal is the petitioner's change of religion, shall adjourn the case for a year.

At the expiration of such adjournment, the petitioner shall again appear in Court; and if the respondent on being interrogated by the Judge or Commissioners, as the case may be, again refuse to cohabit with the petitioner, the Judge shall thereupon pass such a decree as last aforesaid:Provido .-Provided that if the petitioner shall so desire (but not otherwise), the proceedings in the suit shall, mutatis mutandis , be the same as in the case of a female respondent.

18. Decree if respondent so refuse in case of unconsummated marriage, either party being impubes at time of marriage .-Notwithstanding anything hereinbefore contained, if it shall appear at any stage of the suit that both or either of the parties had not attained puberty at the date of their marriage, and that such marriage has not been consummated; and if, in answer to the interrogatories made pursuant to section 13 of this Act, the respondent shall refuse to cohabit with the petitioner, and allege as the ground for such refusal, that the petitioner has changed his or her religion, the Judge shall thereupon pass such a decree as last aforesaid.

19. Liberty to parties to marry again .-When any decree dissolving a marriage shall have been passed under the provisions of this Act, it shall be as lawful for the respective parties thereto to marry again as if the prior marriage had been dissolved by death, and the issue of any such re-marriage shall be legitimate, any [personal law] to the contrary notwithstanding:

Provided always that no minister of religion shall be compelled to solemnize the marriage of any person whose former marriage may have been dissolved under this Act, or shall be liable to any suit or penalty for refusing to solemnize the marriage of any such person.

20. Judge to order commission to issue for examination of exempted persons .-In suits instituted under this Act, the Judge shall order a commission to issue to such persons, whether males or females, or both, as he shall think fit, for the examination on interrogatories or otherwise of any persons so exempt as aforesaid.

The provisions of the Code of Civil Procedure, 1908 (5 of 1908) shall, so far as practicable, apply to commissions issued under this section.

21. Proof of marriage and desertion or repudiation of petitioner in consequence of conversion .-At any stage of a suit instituted under this Act, cohabitation as man and wife shall be sufficient presumptive evidence of the marriage of the parties, and proof of the respondent's refusal or voluntary neglect to cohabit with the petitioner, after his or her change of religion and after knowledge thereof by the respondent, shall be sufficient evidence of the respondent's desertion or repudiation of the petitioner, and shall also be sufficient evidence that such desertion or repudiation was in consequence of the petitioner's change of religion, unless some other sufficient cause for such desertion or repudiation be proved by the respondent.

22. Civil Procedure Code applied .-The provisions of the Code of Civil Procedure, 1908 (5 of 1908) as to the summoning and examination of witnesses shall apply in suits instituted under this Act.

23. Dismissal of suit if either party under age required by Act, or if parties cohabiting, or respondent willing to cohabit .-If at any stage of the suit it be proved that the male party to the suit is or was at the institution thereof under the age of sixteen years, or that the female party to the suit is or was at the same time under the age of thirteen years, or that the petitioner and the respondent are cohabiting as man and wife, or if the Court is satisfied by the evidence adduced that the respondent is ready and willing so to cohabit with the petitioner, the Court shall pass a decree dismissing the suit and stating the ground of such dismissal.

24. Revival of suit after such dismissal .-If at any time within twelve months after a decree dismissing the suit upon any of the grounds mentioned in the last preceding section, the respondent again desert or repudiate the petitioner upon the ground of his or her change of religion, the suit may be revived by summoning the respondent ; and, upon proof of the former decree and of such renewed repudiation or desertion, the suit shall re-commence at the stage at which it had arrived immediately before the passing of such decree; and after the proofs, interrogations, interview and adjournment which may then be requisite under the provisions hereinbefore contained, the Judge shall pass a decree of the nature mentioned in section 16 of this Act.

25. Petitioner's cruelty or adultery to bar suit .-If at any stage of the suit it be proved that the respondent has deserted or repudiated the petitioner solely or partly in consequence of the petitioner's cruelty or adultery, the Court shall pass a decree dismissing the suit and stating the ground of such dismissal.

A suit dismissed under this section shall not be revived.

26. Male petitioner's cohabitation with one of several wives to bar suit .-If the petitioner, being a male, has at the time of the institution of the suit two or more wives, he shall make them all respondents ; and if at any stage of the suit it be proved that he is cohabiting with one of such wives as man and wife, or that any one of such wives is ready and willing so to cohabit with him, the Court shall pass a decree dismissing the suit and stating the ground of such dismissal.

The provisions as to revival contained in section 24 of this Act shall apply, *mutatis mutandis* , to a suit dismissed under this section.

27. Dissolution of marriage not to affect status or right of children .-A dissolution of marriage under the provisions of this Act shall not operate to deprive the respondent's children (if any) by the petitioner of their status as legitimate children or of any right or interest which they would have had, according to the [personal law] applicable to them, by way of maintenance, inheritance or otherwise, in case the marriage had not been so dissolved as aforesaid.

28. Power to Court to award alimony .-If a suit be commenced under the provisions of this Act, and it appear to the Court that the wife has not sufficient separate property to enable her to maintain herself suitably to her station in life and to prosecute or defend the suit, the Court may, pending the suit, order the husband to furnish the wife with sufficient funds to enable her to prosecute or defend the suit, and also for her maintenance pending the suit.

If the suit be brought by a husband against a wife, the Court may by the decree order the husband to make such allowance to his wife for her maintenance during the remainder of her life as the Court shall think just, and having regard to the condition and station in life of the parties. Any allowance so ordered shall cease from the time of any subsequent marriage of the wife.

29. No appeal under Act; but Judge may state case raising question whether conversion has dissolved marriage .-No appeal shall lie against any order or decree made or passed by any Court in any suit instituted under this Act; but if, at any stage of the suit, the respondent shall allege by way of defence that the marriage between the parties has been dissolved by the conversion of the petitioner, and that consequently the petitioner is not a [* * *] husband or a [* * *] [The word " Native" omitted by A.O. 1950.] wife (as the case may be) within the meaning of this Act, the Judge, if he shall entertain any doubt as to the validity of such defence, shall, either of his own motion or on the application of the respondent, state the case and submit it with his own opinion thereon for the decision of the High Court.

30. Case to state necessary facts and documents, and suit to be stayed .-Every such case shall concisely set forth such facts and documents as may be necessary to enable the High Court to decide the questions raised thereby, and the suit shall be stayed until the judgment of such Court shall have been received as hereinafter provided.

31. Case to be decided by three Judges .-Every such case shall be decided by at least three Judges of the High Court, if such Court be the High Court at any of the presidency towns; and the petitioner and respondent may appear and be heard in the High Court in person or by advocate or vakil.

32. High Court may refer case to Judge for additions or alterations .-If the High Court shall not be satisfied that the statements contained in the case are sufficient to enable it to determine the questions raised thereby, the High Court may refer the case back to the Judge by whom it was stated, to make such additions thereto or alterations therein as the High Court may direct in that behalf.

33. High Court may decide question raised, and Judge shall dispose of case accordingly .-It shall be lawful for the High Court, upon the hearing of any such case, to decide the questions raised thereby, and to deliver its judgment thereon containing the grounds on which such decision is founded;

and it shall send to the Judge by whom the case was stated a copy of such judgment under the seal of the Court and the signature of the Registrar, and the Judge shall, on receiving the same, dispose of

the case conformably to such judgment.

34. Saving of Roman Catholic marriages .-Nothing contained in this Act [* * *] shall be taken to render invalid any marriage of a [* * *] [The word " Native" omitted by A.O. 1950.] convert to Roman Catholicism if celebrated in accordance with the rules, rites, ceremonies and customs of the Roman Catholic Church [* * *] [The words and figures " or in Acts Nos. XXV of 1864 and V of 1865" and the words " and no Clergyman of such Church shall be liable to any suit or penalty under the provisions of either of the two Acts last hereinbefore mentioned, for solemnising any such marriage" repealed by Act 16 of 1874, Section 1 and Schedule.].

35. [Extent of Act .This Act extends to [the whole of India [except the State of Jammu and Kashmir and the Union territory of Manipur].]

THE FIRST SCHEDULE(See section 7)FORM OF PETITIONStamp[* * *] [The words "Rs. two" printed below the word "Stamp" repealed by Act 12 of 1891, Section 2 and Sch. I.]To the Judge of the Civil Court ofThe.....day of20.....The petition of A.B. ofSheweth :-

1. That your petitioner was born on or about the..... day of..... 20.....

2. That your petitioner was on the.....day of.....in the year.....20..... lawfully married to C.D. at.....

3. That the said C. D. is now of the age of.....years or there, abouts.

4. That after his said marriage, your petitioner lived and cohabited with his said wife at aforesaid until the day of..... 20.....

5. That previous to the.....day of..... 20..... your petitioner changed his religion for Christianity, and that on such day he was baptised and became a member of the Church of

6.

That on the day of 18 [at least six months prior to the date of the petition], the said C.D. deserted your petitioner, and has not since resumed cohabitation with him.

7. That such desertion was in consequence of your petitioners said change of religion.

8. That there is no collusion nor connivance between your petitioner and the said C.D.

Your petitioner therefore prays that Your Honour will order the said C.D. to live and cohabit with your petitioner, or declare that your petitioners marriage is dissolved. A.B. Form of verification I, A.B., the petitioner named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

THE SECOND SCHEDULE (See section 9) **FORM OF CITATION IN ORDINARY CASE**

To C.D. of..... Whereas A.B. of claiming to have been lawfully married to you, the said C.D., has filed his [or her] petition against you in the Civil Court, of alleging that you, the said C. D., have deserted him [or her] for six months in consequence of his [or her] having changed his [or her] religion for Christianity and praying that, unless you consent to live and cohabit with him [or her], it may be declared that his [or her] marriage is dissolved. Now this is to command you that, at the expiration of days [at least one month] from the date of the service of this on you, you do appear in the said Court then and there to make answer to the said petition, a copy whereof, sealed with the seal of the said Court, is herewith served upon you. And take notice that in default of your so appearing, you will be liable to punishment under section 174 of the Indian Penal Code (45 of 1860). Dated the..... day of..... 20 (Signed) E.F., Judge of the Civil Court of..... (Indorsement to be made after service) This citation was duly served by G. H. on the within-named C.D. of..... at..... on the..... day of..... 20..... (Signed) G.H.

THE THIRD SCHEDULE **FORM OF CITATION IN CASE OR RESPONDENT EXEMPT FROM APPEARANCE IN COURT**

To C.D. of..... Whereas A. B. of....., claiming to have been lawfully married to you, the said C. D., has filed his [or her] petition against you in the Civil Court of....., alleging that you, the said C. D., have deserted him [or her] for six months in consequence of his [or her] having changed his [or her] religion for Christianity, and praying that, unless you consent to cohabit with him [or her], it may be declared that his [or her] marriage is dissolved: Now this is to command you that, at the expiration of days [at least one month] from the service of this on you, you do hold yourself in readiness to answer and do answer such interrogatories as may be put to you by Commissioners duly authorised in that behalf under a commission issued by this Court, in reference to the said petition, a copy whereof, sealed with the seal of the said Court, is herewith served upon you. And take notice that, in default of your so holding yourself in readiness and answering such interrogatories, you will be liable to punishment under section 174 of the Indian Penal Code. (45 of 1860) Dated the..... day of..... 20..... (Signed) E.F. Judge of the

Civil Court of.....(Indorsement to be made after service)This citation was duly served
by G.H. on the within-named C.D. of at on the
..... day of 20.....