

THE DIVORCE ACT, 1869

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THE DIVORCE ACT, 1869

ACT NO. 4 OF 1869¹

[26th February, 1869.]

An Act to amend the law relating to Divorce and Matrimonial Causes ^{2***}.

Preamble.—WHEREAS it is expedient to amend the law relating to the divorce of persons professing the Christian religion, and to confer upon certain Courts jurisdiction in matters matrimonial; it is hereby enacted as follows:—

I.—PRELIMINARY

1. Short title. Commencement of Act.—This Act may be called the ^{3***} Divorce Act, and shall come into operation on the first day of April, 1869.

2. Extent of Act.—⁴[This Act extends to ⁵[the whole of India ⁶[except the state of Jammu and Kashmir*]].]

Extent of power to grant relief generally.—⁷ [Nothing hereinafter contained shall authorise any Court to grant any relief under this Act except where the petitioner ⁸[or respondent] professes the Christian religion,

and to make decrees of dissolution.—or to make decrees of dissolution of marriage except where the parties to the marriage are domiciled in India at the time when the petition is presented,

or of nullity.—or to make decrees of nullity of marriage except where the marriage has been solemnized in India and the petitioner is resident in India at the time of presenting the petition,

or to grant any relief under this Act, other than a decree of dissolution of marriage or of nullity of marriage, except where the petitioner resides in India at the time of presenting the petition.]

3. Interpretation-clause.—In this Act, unless there be something repugnant in the subject or context,—

⁹[(1) “**High Court**”.—“High Court” means with reference to any area:—

(a) in a State, the High Court for that State;

¹⁰[(b) in Delhi, the High Court of Delhi;

(bb) in Himachal Pradesh, the High Court of Punjab and Haryana up to and inclusive of the 30th April, 1967 and the High Court of Delhi thereafter;]

(c) in Manipur and Tripura, the High Court of Assam;

(d) in the Andaman and Nicobar Islands, the High Court at Calcutta;

(e) in ¹¹[Lakshadweep], the High Court of Kerala;

¹²[(ee) in Chandigarh, the High Court of Punjab and Haryana;]

1. For Statement of Objects and Reasons, see Calcutta Gazette, 1863, p. 173; for Report of Select Committee, see Gazette of India, 1869, p. 192; for Proceedings in Council, see Calcutta Gazette, 1862, Supplement, p. 463, *ibid.*, 1863, Supplement, p. 43, and Gazette of India, 1869, Supplement, p. 291.

2. The words “in India” omitted by Act of 1951, s. 3 and the Schedule.

3. The word “Indian” omitted by Act 51 of 2001, s. 2 (w.e.f. 3-10-2001).

4. Subs. by A.O. 1948, for first paragraph

5. Subs. by A.O. 1950, for certain words.

6. Subs. by Act 3 of 1951, s. 3 and the Schedule, for “except Part B States”.

8. Subs. by Act 25 of 1926, s. 2, for paras. 2, 3 and 4.

9. Ins. by Act 30 of 1927, s. 2.

10. Subs. by Adaption of Laws (No. 2) 1956, for clause (1).

11. Subs. by the Himachal Pradesh (Adaptation of Laws on State and Concurrent Subjects) Order, 1968, for sub-clause (b) (w.e.f. 1-11-1966).

12. Subs. by the Laccadive, Minicoy and Amindivi Islands (Alteration of Name) Adaptation of Laws Order, 1974, for “the Laccadive, Minicoy and Amindivi Islands” (w.e.f. 1-11-1973).

13. Ins. by the Punjab Reorganisation (Chandigarh) (Adaptation of Laws on State and Concurrent Subjects) Order, 1968 (w.e.f. 1-11-1966).

*. *Vide* Notification No. S.O. 3912 (E), dated 30th October, 2019, this Act is made applicable to the Union territory of Jammu and Kashmir and the Union territory of Ladakh.

Power to transfer suits.—The High Court may also withdraw any such suit or proceeding, and transfer it for trial or disposal to the Court of any other such District Judge.

9. Reference to High Court.—When any question of law or usage having the force of law arises at any point in the proceedings previous to the hearing of any suit under this Act by a District Court or at any subsequent stage of such suit, or in the execution of the decree therein or order thereon,

the Court may, either of its own motion or on the application of any of the parties, draw up a statement of the case and refer it, with the Court's own opinion thereon, to the decision of the High Court.

If the question has arisen previous to or in the hearing, the District Court may either stay such proceedings, or proceed in the case pending such reference, and pass a decree contingent upon the opinion of the High Court upon it.

If a decree or order has been made, its execution shall be stayed until the receipt of the order of the High Court upon such reference.

III.—DISSOLUTION OF MARRIAGE

¹[**10. Grounds for dissolution of marriage.**—(*I*) Any marriage solemnized, whether before or after the commencement of the Indian Divorce (Amendment) Act, 2001 (51 of 2001), may, on a petition presented to the District Court either by the husband or the wife, be dissolved on the ground that since the solemnization of the marriage, the respondent—

(i) has committed adultery; or

(ii) has ceased to be Christian by conversion to another religion; or

(iii) has been incurably of unsound mind for a continuous period of not less than two years immediately preceding the presentation of the petition; or

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(v) has, for a period of not less than two years immediately preceding the presentation of the petition, been suffering from venereal disease in a communicable form; or

(vi) has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of the respondent if the respondent had been alive; or

(vii) has wilfully refused to consummate the marriage and the marriage has not therefore been consummated; or

(viii) has failed to comply with a decree for restitution of conjugal rights for a period of two years or upwards after the passing of the decree against the respondent; or

(ix) has deserted the petitioner for at least two years immediately preceding the presentation of the petition; or

(x) has treated the petitioner with such cruelty as to cause a reasonable apprehension in the mind of the petitioner that it would be harmful or injurious for the petitioner to live with the respondent.

1. Subs. by Act 51 of 2001, s. 5, for section 10 (w.e.f. 3-10-2001).

2. Clause (iv) omitted by Act 6 of 2019, s. 2 (w.e.f. 1-3-2019).

(2) A wife may also present a petition for the dissolution of her marriage on the ground that the husband has, since the solemnization of the marriage, been guilty of rape, sodomy or bestiality.]

¹[**10A. Dissolution of marriage by mutual consent.**—(1) Subject to the provisions of this Act and the rules made thereunder, a petition for dissolution of marriage may be presented to the District Court by both the parties to a marriage together, whether such marriage was solemnized before or after the commencement of the Indian Divorce (Amendment) Act, 2001 (51 of 2001), on the ground that they have been living separately for a period of two years or more, that they have not been able to live together and they have mutually agreed that the marriage should be dissolved.

(2) On the motion of both the parties made not earlier than six months after the date of presentation of the petition referred to in sub-section (1) and not later than eighteen months after the said date, if the petition is not withdrawn by both the parties in the mean time, the Court shall, on being satisfied, after hearing the parties and making such inquiry, as it thinks fit, that a marriage has been solemnized and that the averments in the petition are true, pass a decree declaring the marriage to be dissolved with effect from the date of decree.].

²[**11. Adulterer or adulteress to be co-respondent.**—On a petition for dissolution of marriage presented by a husband or wife on the ground of adultery, the petitioner shall make the alleged adulterer or adulteress a co-respondent, unless the petitioner is excused by the Court from so doing on any of the following grounds, namely:—

(a) that the wife, being the respondent is leading the life of a prostitute or the husband, being respondent is leading an immoral life and that the petitioner knows of no person with whom the adultery has been committed;

(b) that the name of the alleged adulterer or adulteress is unknown to the petitioner although the petitioner has made due efforts to discover it;

(c) that the alleged adulterer or adulteress is dead.].

12. Court to be satisfied of absence of collusion.—Upon any such petition for the dissolution of a marriage, the Court shall satisfy itself, so far as it reasonably can, not only as to the facts alleged, but also whether or not the petitioner has been in any manner accessory to, or conniving at, the going through of the said form of marriage, or the adultery, or has condoned the same, and shall also enquire into any countercharge which may be made against the petitioner.

13. Dismissal of petition.—In case the Court, on the evidence in relation to any such petition, is satisfied that the petitioner's case has not been proved, or is not satisfied that the alleged adultery has been committed,

or finds that the petitioner has, during the marriage, been accessory to, or conniving at, the going through of the said form of marriage, or the adultery of the other party to the marriage, or has condoned the adultery complained of,

or that the petition is presented or prosecuted in collusion with either of the respondents,

then and in any of the said cases the Court shall dismiss the petition.

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14. Power to court to pronounce decree for dissolving marriage.—In case the Court is satisfied on the evidence that the case of the petitioner has been proved,

and does not find that the petitioner has been in any manner accessory to, or conniving at, the going through of the said form of marriage, or the adultery of the other party to the marriage, or has condoned the adultery complained of,

or that the petition is presented or prosecuted in collusion with either of the respondents,

1. Ins. by Act 51 of 2001, s. 6. (w.e.f. 3-10-2001).

2. Subs. by s. 7, *ibid.*, for section 11 (w.e.f. 3-10-2001).

3. Last paragraph of section 13 omitted by s. 8, *ibid.* (w.e.f. 3-10-2001).

the Court shall pronounce a decree declaring such marriage to be dissolved ^{1***}:

Provided that the Court shall not be bound to pronounce such decree if it finds that the petitioner has, during the marriage, been guilty of adultery,

or if the petitioner has, in the opinion of the Court, been guilty of unreasonable delay in presenting or prosecuting such petition,

or of cruelty towards the other party to the marriage,

or of having deserted or wilfully separated himself or herself from the other party before the adultery complained of, and without reasonable excuse,

or of such wilful neglect or misconduct of or towards the other party as has conduced to the adultery.

Condonation. No adultery shall be deemed to have been condoned within the meaning of this Act unless where conjugal cohabitation has been resumed or continued.

15. Relief in case of opposition on certain grounds.—In any suit instituted for dissolution of marriage, if the respondent opposes the relief sought on the ground, in case of such a suit instituted by a husband, of his adultery, cruelty, or desertion ^{2***} or, in case of such a suit instituted by a wife, on the ground of ³[her adultery or cruelty or desertion], the Court may in such suit give to the respondent, on his or her application, the same relief to which he or she would have been entitled in case he or she had presented a petition seeking such relief, and the respondent shall be competent to give evidence of or relating to ⁴[such adultery, cruelty] or desertion.

16. Decrees for dissolution to be *nisi*.—Every decree for dissolution of marriage made by a High Court ^{5***} shall in the first instance, be a decree *nisi*, not to be made absolute till after the expiration of such time, not less than six months from the pronouncing thereof, as the High Court, by general or special order from time to time, directs.

Collusion. During that period any person shall be at liberty, in such manner as the High Court by general or special order from time to time directs, to show cause why the said decree should not be made absolute by reason of the same having been obtained by collusion or by reason of material facts not being brought before the Court.

On cause being so shown, the Court shall deal with the case by making the decree absolute, or by reversing the decree *nisi*, or by requiring further inquiry, or otherwise as justice may demand.

The High Court may order the cost of Counsel and witnesses and otherwise arising from such cause being shown, to be paid by the parties or such one or more of them as it thinks fit, including a wife if she have separate property.

Whenever a decree *nisi* has been made, and the petitioner fails, within a reasonable time, to move to have such decree made absolute, the High Court may dismiss the suit.

⁶[17. Power of High Court to remove certain suits.—During the progress of the suit in the Court of the District Judge, any person suspecting that any parties to the suit are or have been acting in collusion for the purpose of obtaining a divorce, shall be at liberty, in such manner as the High Court by general or special order from time to time directs, to apply to the High Court to remove the suit under section 8, and the Court shall thereupon, if it thinks fit, remove such suit and try and determine the same as a Court of original jurisdiction, and the provisions contained in section 16 shall apply to every suit so removed; or it may direct the District Judge to take such steps in respect of the alleged collusion as may be necessary, to enable him to make a decree in accordance with the justice of the case.]

1. The words “in the manner and subject to all the provisions and limitation in section 16 and 17 made declared” in paragraph 4 of section 14 omitted by Act 51 of 2001, s. 9 (w.e.f. 3-10-2001).

2. The words “without reasonable excuse,” omitted by s. 10, *ibid.*, (w.e.f. 3-10-2001).

3. Subs. by s. 10, *ibid.*, for “her adultery and cruelty” (w.e.f. 3-10-2001).

4. Subs. by s. 10, *ibid.*, for “such cruelty” (w.e.f. 3-10-2001).

5. The words “not being a confirmation of a decree of a District Court” omitted by s. 11, *ibid.*, (w.e.f. 3-10-2001).

6. Subs. by s. 12, *ibid.*, for section 17 (w.e.f. 3-10-2001).

17A. [*Appointment of officer to exercise duties of King's Proctor*].—[Omitted by the Indian Divorce (Amendment) Act, 2001 (51 of 2001), s. 13 (w.e.f. 3-10-2001).]

IV.—NULLITY OF MARRIAGE

18. Petition for decree of nullity.—Any husband or wife may present a petition to the District Court ^{1***}, praying that his or her marriage may be declared null and void.

19. Grounds of decree.—Such decree may be made on any of the following grounds: —

(1) that the respondent was impotent at the time of the marriage and at the time of the institution of the suit;

(2) that the parties are within the prohibited degree of consanguinity (whether natural or legal) or affinity;

(3) that either party was a lunatic or idiot at the time of the marriage;

(4) that the former husband or wife of either party was living at the time of the marriage, and the marriage with such former husband or wife was then in force.

Nothing in this section shall affect the ²[jurisdiction of the District Court] to make decrees of nullity of marriage on the ground that the consent of either party was obtained by force or fraud.

20. [*Confirmation of District Judge's decree*].—[Omitted by the Indian Divorce (Amendment) Act, 2001 (51 of 2001), s. 16 (w.e.f. 3-10-2001).]

21. Children of annulled marriage.—Where a marriage is annulled on the ground that a former husband or wife was living, and it is adjudged that the subsequent marriage was contracted in good faith and with the full belief of the parties that the former husband or wife was dead, or when a marriage is annulled on the ground of insanity, children begotten before the decree is made shall be specified in the decree, and shall be entitled to succeed, in the same manner as legitimate children, to the estate of the parent who at the time of the marriage was competent to contract.

V. —JUDICIAL SEPARATION

22. Bar to decree for divorce a mensa et toro; but judicial separation obtainable by husband or wife.—No decree shall hereafter be made for a divorce a mensa et toro, but the husband or wife may obtain a decree of judicial separation, on the ground of adultery, or cruelty, or desertion ^{3***} for two years or upwards, and such decree shall have the effect of a divorce a mensa et toro under the existing law, and such other legal effect as here in after mentioned.

23. Application for separation made by petition.—Application for judicial separation on any one of the grounds aforesaid, may be made by either husband or wife by petition to the District Court ^{4***}, and the Court, on being satisfied of the truth of the statements made in such petition, and that there is no legal ground why the application should not be granted, may decree judicial separation accordingly.

24. Separated wife deemed spinster with respect to after-acquired property.—In every case of a judicial separation under this Act, the wife shall from the date of the sentence, and whilst the separation continues, be considered as unmarried with respect to property of every description which she may acquire, or which may come to or devolve upon her.

Such property may be disposed of by her in all respects as an unmarried woman, and on her decease the same shall, in case she dies intestate, go as the same would have gone if her husband had been then dead:

Provided that, if any such wife again cohabits with her husband, all such property as she may be entitled to when such cohabitation takes place shall be held to her separate use, subject, however, to any agreement in writing made between herself and her husband whilst separate.

1. The words "or to the High Court" omitted by Act 51 of 2001, s. 14 (w.e.f. 3-10-2001).

2. Subs. by s. 15, *ibid.*, for "jurisdiction of the High Court" (w.e.f. 3-10-2001).

3. The words "without reasonable excuse" omitted by s. 17, *ibid.* (w.e.f. 3-10-2001).

4. The words "or to the High Court" omitted by Act 51 of 2001, s. 18 (w.e.f. 3-10-2001).

25. Separated wife deemed spinster for purposes of contract and suing.—In every case of a judicial separation under this Act, the wife shall, whilst so separated, be considered as an unmarried woman for the purposes of contract, and wrongs and injuries, and suing and being sued in any civil proceedings; and her husband shall not be liable in respect of any contract, act or costs entered into, done, omitted or incurred by her during the separation:

Provided that where, upon any such judicial separation, alimony has been decreed or ordered to be paid to the wife, and the same is not duly paid by the husband, he shall be liable for necessities supplied for her use:

Provided also that nothing shall prevent the wife from joining, at any time during such separation, in the exercise of any joint power given to herself and her husband.

Reversal of Decree of Separation

26. Decree of Separation obtained during absence of husband or wife may be reversed.—Any husband or wife, upon the application of whose wife or husband, as the case may be, a decree of judicial separation has been pronounced, may, at any time thereafter, present a petition to the Court by which the decree was pronounced, praying for a reversal of such decree, on the ground that it was obtained in his or her absence, and that there was reasonable excuse for the alleged desertion, where desertion was the ground of such decree.

The Court may, on being satisfied of the truth of the allegations of such petition reverse the decree accordingly; but such reversal shall not prejudice or affect the rights or remedies which any other person would have had, in case it had not been decreed, in respect of any debts, contracts, or acts of the wife incurred, entered into, or done between the times of the sentence of separation and of the reversal thereof.

VI.—PROTECTION-ORDERS

27. Deserted wife may apply to court for protection.—Any wife to whom section 4 of the Indian Succession Act, 1865 (10 of 1865)¹ does not apply, may, when deserted by her husband, present a petition to the District Court^{2***}, at any time after such desertion, for an order to protect any property which she may have acquired or may acquire, and any property of which she may have become possessed or may become possessed after such desertion, against her husband or his creditors, or any person claiming under him.

28. Court may grant protection-order.—The Court, if satisfied of the fact of such desertion, and that the same was without reasonable excuse, and that the wife is maintaining herself by her own industry or property, may make and give to the wife an order protecting her earnings and other property from her husband and all creditors and persons claiming under him. Every such order shall state the time at which the desertion commenced, and shall, as regards all persons dealing with the wife in reliance thereon, be conclusive as to such time.

29. Discharge or variation of orders.—The husband or any creditor of, or person claiming under him, may apply to the Court by which such order was made for the discharge or variation thereof, and the Court, if the desertion has ceased, or if for any other reason it thinks fit so to do, may discharge or vary the order accordingly.

30. Liability of husband seizing wife's property after notice of order.—If the husband, or any creditor of, or person claiming under, the husband, seizes or continues to hold any property of the wife after notice of any such order, he shall be liable, at the suit of the wife (which she is hereby empowered to bring), to return or deliver to her the specific property, and also to pay her a sum equal to double its value.

31. Wife's legal position during continuance of order.—So long as any such order of protection remains in force the wife shall be and be deemed to have been, during such desertion of her, in the

1. See now the Indian Succession Act, 1925 (39 of 1925).

2. The words "or the High Court" omitted by Act 51 of 2001, s. 18 (w.e.f. 3-10-2001).

like position in all respects, with regard to property and contracts and suing and being sued, as she would be under this Act if she obtained a decree of judicial separation.

VII.—RESTITUTION OF CONJUGAL RIGHTS

32. Petition for restitution of conjugal rights.—When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, either wife, or husband may apply, by petition to the District Court ^{1***} for restitution of conjugal rights, and the Court, on being satisfied of the truth of the statements made in such petition, and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.

33. Answer to petition.—Nothing shall be pleaded in answer to a petition for restitution of conjugal rights, which would not be ground for a suit for judicial separation or for a decree of nullity of marriage.

VIII.—DAMAGES AND COSTS

34. [*Husband may claim damages from adulterer*].—[*Omitted by the Indian Divorce (Amendment) Act, 2001 (51 of 2001), s. 19 (w.e.f. 3-10-2001)*].

35. [*Power to order adulterer to pay costs*].—[*Omitted by s. 20, ibid. (w.e.f. 3-10-2001)*].

IX.—ALIMONY

36. Alimony pendente lite.—In any suit under this Act, whether it be instituted by a husband or a wife, and whether or not she has obtained an order of protection ²[the wife may present a petition for expenses of the proceedings and alimony pending the suit.]

Such petition shall be served on the husband; and the Court, on being satisfied of the truth of the statements therein contained, may make such order on the husband ³[for payment to the wife of the expenses of the proceedings and alimony pending the suit] alimony pending the suit as it may deem just:

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⁵[Provided further that the petition for the expenses of the proceedings and alimony pending the suit, shall, as far as possible, be disposed of within sixty days of service of such petition on the husband.]

37. Power to order permanent alimony.—⁶[Where a decree of dissolution of the marriage or a decree of judicial separation is obtained by the wife, the District Court may order that the husband shall] to the satisfaction of the court, secure to the wife such gross sum of money, or such annual sum of money for any term not exceeding her own life, as, having regard to her fortune (if any), to the ability of the husband, and to the conduct of the parties, it thinks reasonable; and for that purpose may cause a proper instrument to be executed by all necessary parties.

Power to order monthly or weekly payments.—In every such case the Court may make an order on the husband for payment to the wife of such monthly or weekly sums for her maintenance and support as the Court may think reasonable:

Provided that if the husband afterwards from any cause becomes unable to make such payments, it shall be lawful for the Court to discharge or modify the order, or temporarily to suspend the same as to the whole or any part of the money so ordered to be paid, and again to revive the same order wholly or in part as to the court seems fit.

1. The words “or the High Court” omitted by Act 51 of 2001, s. 18 (w.e.f. 3-10-2001).

2. Subs. by Act 49 of 2001, s. 2, for “the wife may present a petition for alimony pending the suit” (w.e.f. 24-9-2001).

3. Subs. by s. 2, *ibid.*, for “for payment to the wife of alimony pending the suit” (w.e.f. 24-9-2001).

4. The proviso omitted by Act 51 of 2001, s. 21 (w.e.f. 3-10-2001).

5. Ins. by Act 49 of 2001, s. 2 (w.e.f. 24-9-2001).

6. Subs. by Act 51 of 2001, s. 22, for certain words (w.e.f. 3-10-2001).

38. Court may direct payment of alimony to wife or to her trustee.—In all cases in which the Court makes any decree or order for alimony, it may direct the same to be paid either to the wife herself, or to any trustee on her behalf to be approved by the court, and may impose any terms or restrictions which to the Court seem expedient, and may from time to time appoint a new trustee, if it appears to the Court expedient so to do.

X.—SETTLEMENTS

39. [*Power to order settlement of wife's property for benefit of husband and children*].—[Omitted by the Indian Divorce (Amendment) Act, 2001 (51 of 2001), s. 23 (w.e.f. 3-10-2001)].

40. Inquiry into existence of ante-nuptial or post-nuptial settlements.—¹[The District Court may, before passing a decree for dissolution of the marriage or a decree of nullity of marriage, inquire into]the existence of ante-nuptial or post-nuptial settlements made on the parties whose marriage is the subject of the decree, and may make such orders, with reference to the application of the whole or a portion of the property settled, whether for the benefit of the husband or the wife, or of the children (if any) of the marriage, or of both children and parents, as to the Court seems fit:

Provided that the Court shall not make any order for the benefit of the parents or either of them at the expense of the children.

XI.—CUSTODY OF CHILDREN

41. Power to make orders as to custody of children in suit for separation.—In any suit for obtaining a judicial separation the Court may from time to time, before making its decree, make such interim orders, and may make such provision in the decree, as it deems proper with respect to the custody, maintenance and education of the minor children, the marriage of whose parents is the subject of such suit, and may, if it thinks fit, direct proceedings to be taken for placing such children under the protection of the said Court:

²[Provided that the application with respect to the maintenance and education of the minor children pending the suit, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the respondent.]

42. Power to make such orders after decree.—The court, after a decree of judicial separation, may upon application (by petition) for this purpose make, from time to time, all such orders and provisions, with respect to the custody, maintenance and education of the minor children, the marriage of whose parents is the subject of the decree, or for placing such children under the protection of the said court, as might have been made by such decree or by interim orders in case the proceedings for obtaining such decree were still pending.

43. Power to make orders as to custody of children in suits for dissolution or nullity.—³[In any suit for obtaining a dissolution of marriage or a decree of nullity of marriage instituted in a District Court, the Court may from time to time before making its decree, make such interim orders as it may deem proper] with respect to the custody, maintenance and education of the minor children, the marriage of whose parents is the subject of the suit,

and may, if it thinks fit, direct proceedings to be taken for placing such children under the protection of the court.

44. Power to make such orders after decree or confirmation.—⁴[Where a decree of dissolution or nullity of marriage has been passed, the District Court may, upon application] by petition for the purpose, make from time to time all such orders and provisions, with respect to the custody, maintenance and education of the minor children, the marriage of whose parents was the subject of the decree, or for placing such children under the protection of the said court, as might have

1. Subs. by Act 51 of 2001, s. 24, for certain words (w.e.f. 3-10-2001).

2. Ins. by Act 49 of 2001, s. 3 (w.e.f. 24-9-2001).

3. Subs. by Act 51 of 2001, s. 25, for certain words (w.e.f. 3-10-2001).

4. Subs. by, s. 26, *ibid.*, for certain words (w.e.f. 3-10-2001).

been made by such decree absolute or decree (as the case may be), or by such interim orders as aforesaid.

XII.—PROCEDURE

45. Code of Civil Procedure to apply.—Subject to the provisions herein contained, all proceedings under this Act between party and party shall be regulated by the¹[Code of Civil Procedure, 1908 (5 of 1908)].

46. Forms of petitions and statements.—The forms set forth in the Schedule to this Act, with such variation as the circumstances of each case require, may be used for the respective purposes mentioned in such Schedule.

47. Petition to state absence of collusion.—Every petition under this Act for a decree of dissolution of marriage, or of nullity of marriage, or of judicial separation^{2***} shall^{3***} state that there is not any collusion or connivance between the petitioner and the other party to the marriage.

Statements to be verified.—The statements contained in every petition under this Act shall be verified by the petitioner or some other competent person in manner required by law for the verification of complaints, and may at the hearing be referred to as evidence.

48. Suits on behalf of lunatics.—When the husband or wife is a lunatic or idiot, any suit under this Act (other than a suit for restitution of conjugal rights) may be brought on his or her behalf by the committee or other person entitled to his or her custody.

49. Suits by minors.—Where the petitioner is a minor, he or she shall sue by his or her next friend to be approved by the Court; and no petition presented by a minor under this Act shall be filed until the next friend has undertaken in writing to be answerable for costs.

Such undertaking^{4***} shall be filed in Court, and the next friend shall thereupon be liable in the same manner and to the same extent as if he were a plaintiff in an ordinary suit.

50. Service of petition.—Every petition under this Act shall be served on the party to be affected thereby, either within or without⁵[India], in such manner as the High Court by general or special order from time to time directs.

Provided that the court may dispense with such service altogether in case it seems necessary or expedient so to do.

51. Mode of taking evidence.—The witnesses in all proceedings before the court, where their attendance can be had, shall be examined orally, and any party may offer himself or herself as a witness, and shall be examined, and may be cross-examined and re-examined, like any other witness:

Provided that the parties shall be at liberty to verify their respective cases in whole or in part by affidavit, but so that the deponent in every such affidavit shall, on the application of the opposite party, or by direction of the Court, be subject to be cross-examined by or on behalf of the opposite party orally, and after such cross-examination may be re-examined orally as aforesaid by or on behalf of the party by whom such affidavit was filed.

52. Competence of husband and wife to give evidence as to cruelty or desertion.—On any petition presented,⁶[by a husband or a wife, praying that his or her marriage may be dissolved by reason of his wife or her husband, as the case may be, having been guilty of adultery, cruelty or desertion], the husband and wife respectively shall be competent and compellable to give evidence of or relating to such cruelty or desertion.

1. Subs. by Act 51 of 2001, s. 27, for “Code of Civil Procedure” (w.e.f. 3-10-2001).

2. The Words “or of reversal of judicial separation, or for restitution of conjugal rights, or for damages, shall bear a stamp of five rupees, and” rep. by Act 7 of 1870, s. 2 and the Schedule III.

3. The words “in the first, second and third cases mentioned in this section,” rep. by Act 7 of 1870, s. 2 and the Schedule III.

4. The words “shall bear a stamp of eight annas and” rep. by Act 7 of 1870, s. 2 and the Schedule III.

5. Subs. by the A.O. 1950, for the Provinces, which had been substituted by the A.O. 1948, for “British India”.

6. Subs. by Act 51 of 2001, s. 28, for certain words (w.e.f. 3-10-2001).

decree or order been discontinued, be protected and indemnified as if, at the time of such payment, transfer or other act, such decree or order were valid and still subsisting without variation, and the separation had not ceased or been discontinued,

unless, at the time of the payment, transfer or other act, such persons had notice of the reversal, discharge or variation of the decree or order or of the cessation or discontinuance of the separation.

61. Bar of suit for criminal conversation.— After this Act comes into operation, no person competent to present a petition under sections 2 and 10 shall maintain a suit for criminal conversation with his wife.

62. Power to make rules.— The High Court shall make such rules under this Act as it may from time to time consider expedient, and may from time to time alter and add to the same:

Provided that such rules, alterations and additions are consistent with the provisions of this Act and the¹[Code of Civil Procedure, 1908 (5 of 1908)].

All such rules, alteration and additions shall be published in the Official Gazette.

1. Subs. by Act 51 of 2001, s. 31, for “Code of Civil Procedure” (w.e.f. 3-10-2001).

THE SCHEDULE

SCHEDULE OF FORMS

No. 1. —PETITION *by husband for a dissolution of marriage with damages against co-respondent, by reason of adultery.*

(See sections 10 and 34).

In the (High) Court of

To the Hon'ble Mr. Justice

[or To the Judge of]

The day of 186 .

The petition of A.B., of

SHEWETH,

1. That your petitioner was on the day of , one thousand eight hundred and , lawfully married to C.B., then C.D., spinster at . (a)

2. That from his said married, your petitioner lived and cohabited with his said wife at and at , in , and lastly at , in , and that your petitioner and his said wife have had issue of their said marriage, *five* children, of whom *two* sons only survive, aged respectively *twelve* and *fourteen* years.

3. That during the three years immediately preceding the day of one thousand eight hundred and , X.Y. was constantly with a few exceptions, residing in the house of your petitioner at aforesaid, and that on diverse occasions during the said period, the dates of which are unknown to your petitioner, the said C.B. in your petitioner's said house committed adultery with the said X.Y.

4. That no collusion or connivance exists between me and my said wife for the purpose of obtaining a dissolution of our said marriage or for any other purpose.

Your petitioner, therefore, prays that this (Hon'ble) Court will decree a dissolution of the said marriage, and that the said X.Y. do pay the sum of rupees 5,000 as damages by reason of his having committed adultery with your petitioner's said wife, such damages to be paid to your petitioner, or otherwise paid or applied as to this (Hon'ble) Court seems fit.

(Signed) A. B. (a)

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.

No. 2.—Respondent's statement in answer to No. 1

In the court of the day of ,

Between A.B., petitioner,
C.B., respondent, and
X.Y., co-respondent.

C.B., the respondent, by D.E. her attorney (*or vakil*), in answer to the petition of A.B. says that she denies that she has on diverse or any occasions committed adultery with X.Y., as alleged in the third paragraph of the said petition.

Wherefore the respondent prays that this (Hon'ble) Court will reject the said petition.

(Signed) C.B.

(a) If the marriage was solemnized out of India, the adultery must be shown to have been committed in India.

(b) The petition must be signed by the petitioner.

No. 3.—*Co-respondent's statement in answer to No. 1*

In the (High) Court of
The

day of

Between A.B., petitioner,
C.B., respondent, and
X.Y., co-respondent.

X.Y., the co-respondent, in answer to the petition filed in this cause, saith that he denies that he committed adultery with the said C.B., as alleged in the said petition.

Wherefore the said X.Y., prays that this (Hon'ble) Court will reject the prayer of the said petitioner and order him to pay the costs of and incident to the said petition.

(Signed) X.Y.

No. 4.—PETITION *for Decree of Nullity of Marriage*
(See section 18)

In the (High) Court of
To the Hon'ble Mr. Justice
Judge of

[or To the

].

The day of , 186 .
The Petition of A.B, falsely called A.D.,

SHEWETH,

1. That on the day of , one thousand eight hundred and , your petitioner, then a spinster, eighteen years of age, was married in fact, though not in law, to C.D., then a bachelor of about thirty years of age, at [*some place in India*].

2. That from the said day of , one thousand eight hundred and , until the month of , your petitioner lived and cohabited with the said C.D., at diverse places, and particularly at aforesaid.

3. That the said C.D. has never consummated the said pretended marriage by carnal copulation.

4. That at the time of the celebration of your petitioner's pretended marriage, the said C.D. was, by reason of the impotency or malformation, legally incompetent to enter into the contract of marriage.

5. That there is no collusion or connivance between her and the said C.D. with respect to the subject of this suit.

Your petitioner therefore prays that this (Hon'ble) Court will declare that the said marriage is null and void.

(Signed) A.B.

Form of Verification: See No. 1

No. 5.—PETITION *by wife for judicial separation on the ground of her husband's adultery*
(See section 22)

In the (High) Court of

To the Hon'ble Mr. Justice
[or

To the Judge of

].

The day of , 186.

The petition of C.B., of the wife of A.B.

SHEWETH,

1. That on the day of , one thousand eight hundred and sixty your petitioner, then C.D., was lawfully married to A.B., at the Church of , in the

2. That after her said marriage, your petitioner cohabited with the said A.B. at _____ and that your petitioner and her said husband have issue living of their said marriage, three children, to wit, etc., etc., (a).

3. That on diverse occasions in or about the months of *August, September* and *October*, one thousand eight hundred and *sixty* _____ the, said A.B., at aforesaid, committed adultery with *E.F.*, who was then living in the service of the said A.B., and your petitioner at their said residence _____ aforesaid.

4. That on diverse occasions in the months of *October, November* and *December*, one thousand eight hundred and *sixty* _____ the said A.B., at aforesaid, committed adultery with *G.H.*, who was then living in the service of the said A.B. and your petitioner at their said residence _____ aforesaid.

5. That no collusion or connivance exists between your petitioner and the said A.B., with respect to the subject of the present suit.

Your petitioner, therefore, prays that this (Hon'ble) Court will decree a judicial separation to your petitioner from her said husband by reason of his aforesaid adultery.

(Signed) C.B. (b)

Form of Verification : See No. 1

No. 6.—*Statement in answer to No. 5*

In the (High) Court of

B. against B.

The _____ day of

The respondent, A.B. by W.Y., his attorney [or vakil] saith, —

1. That he denies that he committed adultery with *E.F.* as in the third paragraph of the petition alleged.

2. That the petitioner condoned the said adultery with *E.F.*, if any.

3. That he denies that he committed adultery with *G.H.*, as in the fourth paragraph of the petition alleged.

4. That the petitioner condoned the said adultery with *G.H.*, if any.

Wherefore this respondent prays that this (Hon'ble) Court will reject the prayer of the said petition.

(Signed) A.B.

No. 7.—*Statement in reply to No. 6*

In the (High) Court of

B. against B.

The _____ day of

The petitioner, C.B., by her attorney [or vakil], says —

1. That she denies that she condoned the said adultery of the respondent with *E.F.* as in the second paragraph of the statement in answer alleged.

2. That even if she had condoned the said adultery, the same has been revived by the subsequent adultery of the respondent with *G.H.*, as set forth in the fourth paragraph of the petition.

(Signed) C.B

(a) State the respective ages of the children.

(b) The petition must be signed by the petitioner.

No. 10.—PETITION *for reversal of decree of separation*
(See section 24)

In the (High) Court of
Hon'ble Mr. Justice

To the
[or To the Judge of

].

The day of

186

The petition of A.B., of

SHEWETH,

1. That your petitioner was on the day of
lawfully married to

2. That on the day of this (Hon'ble)
Court at the petition of , pronounced a decree affecting the petitioner to the
effect following, to wit,—

[*Here set out the decree*]

3. That such decree was obtained in the absence of your petitioner, who was then residing at
[*State facts tending to show that the petitioner did not know of the proceedings; and further, that had
he known he might have offered a sufficient defence.*]

or

That there was reasonable ground for your petitioner leaving his said wife, for that his said wife

[*Here state any legal grounds justifying the petitioner's separation from his wife.*]

Your petitioner, therefore, prays that this (Hon'ble) Court will reverse the said decree.

(Signed) A.B.

Form of Verifications: See No. 1.

No. 11.—PETITION *for Protection-order*
(See section 27)

In the (High) Court of
Hon'ble Mr. Justice

To the
[or To the Judge of

].

The day of

186 .

The petition of C.B., of
A.B.

the wife of

SHEWETH,

That on the day of she was lawfully married to
A.B., at

That she lived and cohabited with the said A.B. for
years at , and also at , and hath
had children, issue of her said marriage, of whom are now living
with the applicant, and wholly dependent upon her earnings.

That on or about the said A.B., without any reasonable cause,
deserted the applicant, and hath ever since remined separate and apart from her.

That since the desertion of her said husband, the applicant hath maintained herself by her own
industry [or on her own property, *as the case may be*], and hath thereby and otherwise acquired
certain property consisting of [here state generally the nature of the property].

Wherefore she prays an order for the protection of her earnings and property acquired since the
said, day of, from the said A.B.,
and from all creditors and persons claiming under him.

(Signed) C.B.

No. 12.—PETITION *for Alimony pending the suit*
(See section 36)

In the (High) Court of

B. against *B.*

To, the Hon'ble Mr. Justice
].

[or To the Judge of

The

day of

186

.
The petition of *C.B.*, the lawful
wife of *A.B.*

SHEWETH,

1. That the said *A.B.* has for some years carried on the business of , at
, and from such business derives the net annual income of
from Rs. 4,000 to 5000.

2. That the said *A.B.* is possessed of plate, furniture, linen and other effects at his said house,
aforesaid, all of which he acquired in right of your petitioner as his wife, or
purchased with money he acquired through her, of the value of Rs. 10,000.

3. That the said *A.B.* is entitled, under the will of his father, subject to the life interest of his mother
therein to property of the value of Rs. 5,000 or some other considerable amount (a).

Your petitioner, therefore, prays that this (Hon'ble) Court will decree such sum or sums of money
by way of alimony, pending the suit, as to this (Hon'ble) Court may seem meet.

(Signed) *C.B.*

Form of Verification : See No. 1

No. 13.—*Statement in answer to No. 12*

In the (High) Court of

B., against *B.*

A.B., of , the above-named respondent, in
answer to the petition for alimony, pending the suit, of *C.B.*, says —

1. In answer to the first paragraph of the said petition, I say that I have for the last *three* years
carried, on the business of , at and
that, from such business, I have derived a net annual income of Rs. 900, but less than Rs. 1,000.

2. In answer to the second paragraph of the said petition, I say that I am possessed of plate,
furniture, linen and other chattels and effects at my said house
aforesaid, of the value of Rs. 7,000, but as I verily believe of no larger value. And I say that a portion
of the said plate, furniture and other chattels and effects of the value of Rs. 1,500 belonged to my said
wife before our marriage, but the remaining portions thereof I have since purchased with my own
monies. And I say that, save as hereinbefore set forth, I am not possessed of the plate and other effects
as alleged in the said paragraph in the said petition, and that I did not acquire the same as in the said
petition also mentioned.

3. I admit that I am entitled under the will of my father, subject to the life-interest of my mother
therein, to property of the value of Rs. 5,000, that is to say, I shall be entitled under my said father's
will, upon the death of my mother, to a legacy of Rs. 7,000, out of which I shall, have to pay to my
father's executors the sum of Rs. 2,000 the amount of a debt owing by me to his estate, and upon
which debt I am now paying interest at the rate of five per cent per annum.

4. And, in further answer to the said petition, I say that I have no income whatever except that
derived from my aforesaid business, that such income, since my said wife left me, which she did on
the day of last, has been considerably
diminished, and that such diminution is likely to continue. And I say that out of my said income, I
have to pay the annual sum of Rs. 100 for such interest as aforesaid to my late father's executors, and
also to support myself and my two oldest children.

(a) The Petitioner should state her husband's income as accurately as possible

5. And, in further answer to the said petition, I say that, when my wife left, my dwelling-house on the _____ day of _____ last, she took with her, and has ever since withheld and still withholds from me, plate, watches and other effects in the second paragraph of this my answer mentioned, of the value of, as I verily believe, Rs. 800 at the least; and I also say “that, within five days of her departure from my house as aforesaid, my said wife received bills due to me from certain lodgers of mine, amounting in the aggregate to Rs. _____ and that she has ever since withheld and still withholds from me the same sum.

(Signed) A.B.

No. 14.—UNDERTAKING *by minor's next friend to be answerable for respondent's costs*

(See section 49)

In the (High) Court of _____ I,
the undersigned A.B., of _____ being the next friend of C.D.
who is a minor, and who is desirous of filing a petition in this Court, under the Indian Divorce Act,
against D.D. of _____, hereby undertake to be responsible for the costs of
the said D.D. in such suit, and that, if the said C.D. fail to pay to the said D.D. when and in such
manner as the court shall order all such costs of such suit as the court shall direct him [or her] to pay
to the said D.D., will forthwith pay the same to the proper officer of this court.

Dated this. _____ day of _____ 186 .

(Signed) A.B.

THE HINDU MARRIAGE ACT, 1955

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2. Application of Act.
3. Definitions.
4. Overriding effect of Act.

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24. Maintenance *pendente lite* and expenses of proceedings.
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SAVINGS AND REPEALS

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29. Savings.
30. [*Repealed.*].

THE HINDU MARRIAGE ACT, 1955

ACT No. 25 OF 1955¹

[18th May, 1955.]

An act to amend and codify the law relating to marriage among Hindus.

BE it enacted by Parliament in the Sixth Year of the Republic of India as follows:—

PRELIMINARY

1. Short title and extent.—(1) This Act may be called the Hindu Marriage Act, 1955.

(2) It extends to the whole of India except the State of Jammu and Kashmir, and applies also to Hindus domiciled in the territories to which this Act extends who are outside the said territories.

2. Application of Act.—(1) This Act applies—

(a) to any person who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj,

(b) to any person who is a Buddhist, Jaina or Sikh by religion, and

(c) to any other person domiciled in the territories to which this Act extends who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

Explanation.—The following persons are Hindus, Buddhists, Jainas or Sikhs by religion, as the case may be:—

(a) any child, legitimate or illegitimate, both of whose parents are Hindus, Buddhists, Jainas or Sikhs by religion;

(b) any child, legitimate or illegitimate, one of whose parents is a Hindu, Buddhist, Jaina or Sikh by religion and who is brought up as a member of the tribe, community, group or family to which such parent belongs or belonged; and

(c) any person who is a convert or re-convert to the Hindu, Buddhist, Jaina or Sikh religion.

(2) Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled tribe within the meaning of clause (25) of article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs.

(3) The expression “Hindu” in any portion of this Act shall be construed as if it included a person who, though not a Hindu by religion, is, nevertheless, a person to whom this Act applies by virtue of the provisions contained in this section.

3. Definitions.—In this Act, unless the context otherwise requires,—

(a) the expressions “custom” and “usage” signify any rule which, having been continuously and uniformly observed for a long time, has obtained the force of law among Hindus in any local area, tribe, community, group or family:

Provided that the rule is certain and not unreasonable or opposed to public policy; and

Provided further that in the case of a rule applicable only to a family it has not been discontinued by the family;

(b) “district court” means, in any area for which there is a city civil court, that court, and in any other area the principal civil court of original jurisdiction, and includes any other civil court which

1. The Act has been extended to Dadra and Nagar Haveli (w.e.f. 1-7-1965) by Reg. 6 of 1963, s. 2 and Schedule I and to Pondicherry (w.e.f. 1-10-1963) with modifications by Reg. 7 of 1963, s. 3 and the Schedule I.

may be specified by the State Government, by notification in the Official Gazette, as having jurisdiction in respect of the matters dealt with in this Act;

(c) “full blood” and “half blood”—two persons are said to be related to each other by full blood when they are descended from a common ancestor by the same wife and by half blood when they are descended from a common ancestor but by different wives;

(d) “uterine blood”—two persons are said to be related to each other by uterine blood when they are descended from a common ancestress but by different husbands;

Explanation.—In clauses (c) and (d), “ancestor” includes the father and “ancestress” the mother;

(e) “prescribed” means prescribed by rules made under this Act;

(f) (i) “*sapinda* relationship” with reference to any person extends as far as the third generation (inclusive) in the line of ascent through the mother, and the fifth (inclusive) in the line of ascent through the father, the line being traced upwards in each case from the person concerned, who is to be counted as the first generation;

(ii) two persons are said to be “*sapindas*” of each other if one is a lineal ascendant of the other within the limits of *sapinda* relationship, or if they have a common lineal ascendant who is within the limits of *sapinda* relationship with reference to each of them;

(g) “degrees of prohibited relationship”—two persons are said to be within the “degrees of prohibited relationship”—

(i) if one is a lineal ascendant of the other; or

(ii) if one was the wife or husband of a lineal ascendant or descendant of the other; or

(iii) if one was the wife of the brother or of the father’s or mother’s brother or of the grandfather’s or grandmother’s brother of the other; or

(iv) if the two are brother and sister, uncle and niece, aunt and nephew, or children of brother and sister or of two brothers or of two sisters;

Explanation.—For the purposes of clauses (f) and (g), relationship includes—

(i) relationship by half or uterine blood as well as by full blood;

(ii) illegitimate blood relationship as well as legitimate;

(iii) relationship by adoption as well as by blood;

and all terms of relationship in those clauses shall be construed accordingly.

4. Overriding effect of Act.—Save as otherwise expressly provided in this Act,—

(a) any text rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;

(b) any other law in force immediately before the commencement of this Act shall cease to have effect in so far as it is inconsistent with any of the provisions contained in this Act.

HINDU MARRIAGES

5. Conditions for a Hindu marriage.—A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely:—

(i) neither party has a spouse living at the time of the marriage;

¹[(ii) at the time of the marriage, neither party—

(a) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or

1. Subs. by Act 68 of 1976, s. 2, for clause (ii) (w.e.f. 27-5-1976).

10. Judicial separation.—¹[(1) Either party to a marriage, whether solemnised before or after the commencement of this Act, may present a petition praying for a decree for judicial separation on any of the grounds specified in sub-section (1) of section 13, and in the case of a wife also on any of the grounds specified in sub-section (2) thereof, as grounds on which a petition for divorce might have been presented.]

(2) Where a decree for judicial separation has been passed, it shall no longer be obligatory for the petitioner to cohabit with the respondent, but the court may, on the application by petition of either party and on being satisfied of the truth of the statements made in such petition, rescind the decree if it considers it just and reasonable to do so.

NULLITY OF MARRIAGE AND DIVORCE

11. Void marriages.—Any marriage solemnised after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto ²[against the other party], be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of section 5.

12. Voidable marriages.—(1) Any marriage solemnised, whether before or after the commencement of this Act, shall be voidable and may be annulled by a decree of nullity on any of the following grounds, namely:—

³[(a) that the marriage has not been consummated owing to the impotence of the respondent; or]

(b) that the marriage is in contravention of the condition specified in clause (ii) of section 5; or

(c) that the consent of the petitioner, or where the consent of the guardian in marriage of the petitioner ⁴[was required under section 5 as it stood immediately before the commencement of the Child Marriage Restraint (Amendment) Act, 1978 (2 of 1978)], the consent of such guardian was obtained by force ⁵[or by fraud as to the nature of the ceremony or as to any material fact or circumstances concerning the respondent]; or

(d) that the respondent was at the time of the marriage pregnant by some person other than the petitioner.

(2) Notwithstanding anything contained in sub-section (1), no petition for annulling a marriage—

(a) on the ground specified in clause (c) of sub-section (1) shall be entertained if—

(i) the petition is presented more than one year after the force had ceased to operate or, as the case may be, the fraud had been discovered; or

(ii) the petitioner has, with his or her full consent, lived with the other party to the marriage as husband or wife after the force had ceased to operate or, as the case may be, the fraud had been discovered;

(b) on the ground specified in clause (d) of sub-section (1) shall be entertained unless the court is satisfied—

(i) that the petitioner was at the time of the marriage ignorant of the facts alleged;

(ii) that proceedings have been instituted in the case of a marriage solemnised before the commencement of this Act within one year of such commencement and in the case of marriages solemnised after such commencement within one year from the date of the marriage; and

(iii) that marital intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of the existence of ⁶[the said ground].

1. Subs. by Act 68 of 1976, s. 4, for sub-section (1) (w.e.f. 27-5-1976).

2. Ins. by s. 5, *ibid.* (w.e.f. 27-5-1976).

3. Subs. by s. 6, *ibid.*, for clause (a) (w.e.f. 27-5-1976).

4. Subs. by Act 2 of 1978, s. 6 and Schedule, for “is required under section 5” (w.e.f. 1-10-1978).

5. Subs. by Act 68 of 1976, s. 6, for “or fraud” (w.e.f. 27-5-1976).

6. Subs. by s. 6, *ibid.*, for “the grounds for a decree” (w.e.f. 27-5-1976).

13. Divorce.—(1) Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party—

¹[(i) has, after the solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse; or

(ia) has, after the solemnization of the marriage, treated the petitioner with cruelty; or

(ib) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or]

(ii) has ceased to be a Hindu by conversion to another religion; or

²[(iii) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

Explanation.—In this clause,—

(a) the expression “mental disorder” means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia;

(b) the expression “psychopathic disorder” means a persistent disorder or disability of mind (whether or not including sub—normality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the other party, and whether or not it requires or is susceptible to medical treatment; or]

³* * * * *

(v) has ³* * * been suffering from venereal disease in a communicable form; or

(vi) has renounced the world by entering any religious order; or

(vii) has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of it, had that party been alive; ⁴***

⁵* * * * *

⁶ [*Explanation.*—In this sub-section, the expression “desertion” means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the wilful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly.]

⁷[(1A) Either party to a marriage, whether solemnized before or after the commencement of this Act, may also present a petition for the dissolution of the marriage by a decree of divorce on the ground—

(i) that there has been no resumption of cohabitation as between the parties to the marriage for a period of ⁸[one year] or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties; or

(ii) that there has been no restitution of conjugal rights as between the parties to the marriage for a period of ⁸[one year] or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.]

1. Subs. by Act 68 of 1976, s. 7, for clause (i) (w.e.f. 27-5-1976).

2. Subs. by s. 7, *ibid.*, for clause (iii) (w.e.f. 27-5-1976).

3. Clause (iv) omitted by Act 6 of 2019, s. 5 (w.e.f. 1-3-2019).

4. The word “or” omitted by Act 44 of 1964, s. 2, *ibid.* (w.e.f. 20-12-1964).

5. Clauses (viii) and (ix) omitted by s. 2, *ibid.* (w.e.f. 20-12-1964).

6. Ins. by Act 68 of 1976, s. 7 (w.e.f. 27-5-1976).

7. Ins. by Act 44 of 1964, s. 2 (w.e.f. 20-12-1964).

8. Subs. by Act 68 of 1976, s. 7, for “two years” (w.e.f. 27-5-1976).

(2) A wife may also present a petition for the dissolution of her marriage by a decree of divorce on the ground,—

(i) in the case of any marriage solemnized before the commencement of this Act, that the husband had married again before such commencement or that any other wife of the husband married before such commencement was alive at the time of the solemnization of the marriage of the petitioner:

Provided that in either case the other wife is alive at the time of the presentation of the petition; or

(ii) that the husband has, since the solemnization of the marriage, been guilty of rape, sodomy or¹[bestiality; or]

²[(iii) that in a suit under section 18 of the Hindu Adoptions and Maintenance Act, 1956 (78 of 1956), or in a proceeding under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) (or under the corresponding section 488 of the Code of Criminal Procedure, 1898 (5 of 1898), a decree or order, as the case may be, has been passed against the husband awarding maintenance to the wife notwithstanding that she was living apart and that since the passing of such decree or order, cohabitation between the parties has not been resumed for one year or upwards;

(iv) that her marriage (whether consummated or not) was solemnized before she attained the age of fifteen years and she has repudiated the marriage after attaining that age but before attaining the age of eighteen years.

Explanation.—This clause applies whether the marriage was solemnized before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976).]

³[**13A. Alternate relief in divorce proceedings.**—In any proceeding under this Act, on a petition for dissolution of marriage by a decree of divorce, except in so far as the petition is founded on the grounds mentioned in clauses (ii), (vi) and (vii) of sub-section (1) of section 13, the court may, if it considers it just so to do having regard to the circumstances of the case, pass instead a decree for judicial separation.

13B. Divorce by mutual consent.—(1) Subject to the provisions of this Act a petition for dissolution of marriage by a decree of divorce may be presented to the district court by both the parties to a marriage together, whether such marriage was solemnized before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976), on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved.

(2) On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in sub-section (1) and not later than eighteen months after the said date, if the petition is not withdrawn in the meantime, the court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnized and that the averments in the petition are true, pass a decree of divorce declaring the marriage to be dissolved with effect from the date of the decree.]

14. No petition for divorce to be presented within one year of marriage.—(1) Notwithstanding anything contained in this Act, it shall not be competent for any court to entertain any petition for dissolution of a marriage by a decree of divorce, ⁴[unless at the date of the presentation of the petition one year has elapsed] since the date of the marriage:

Provided that the court may, upon application made to it in accordance with such rules as may be made by the High Court in that behalf, allow a petition to be presented ⁴[before one year has elapsed] since the date of the marriage on the ground that the case is one of exceptional hardship to the petitioner or of exceptional depravity on the part of the respondent, but if it appears to the court at the hearing of the petition that the petitioner obtained leave to present the petition by any misrepresentation or concealment of the nature of the case, the court may, if it pronounces a decree, do so subject to the condition that the

1. Subs. by Act 68 of 1976, s. 7, for “bestiality” (w.e.f. 27-5-1976).

2. Ins. by s. 7, *ibid.* (w.e.f. 27-5-1976).

3. Ins. by s. 8, *ibid.* (w.e.f. 27-5-1976).

4. Subs. by s. 9, *ibid.*, for certain words (w.e.f. 27-5-1976).

decree shall not have effect until after the ¹[expiry of one year] from the date of the marriage or may dismiss the petition without prejudice to any petition which may be brought after ²[expiration of the said one year] upon the same or substantially the same facts as those alleged in support of the petition so dismissed.

(2) In disposing of any application under this section for leave to present a petition for divorce before the ³[expiration of one year] from the date of the marriage, the court shall have regard to the interests of any children of the marriage and to the question whether there is a reasonable probability of a reconciliation between the parties before the expiration of the ⁴[said one year].

15. Divorced persons when may marry again.—When a marriage has been dissolved by a decree of divorce and either there is no right of appeal against the decree or, if there is such a right of appeal, the time for appealing has expired without an appeal having been presented, or an appeal has been presented but has been dismissed, it shall be lawful for either party to the marriage to marry again.

⁵* * * * *

⁶**[16. Legitimacy of children of void and voidable marriages.**—(1) Notwithstanding that a marriage marriage is null and void under section 11, any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate, whether such child is born before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976), and whether or not a decree of nullity is granted in respect of that marriage under this Act and whether or not the marriage is held to be void otherwise than on a petition under this Act.

(2) Where a decree of nullity is granted in respect of a voidable marriage under section 12, any child begotten or conceived before the decree is made, who would have been the legitimate child of the parties to the marriage if at the date of the decree it had been dissolved instead of being annulled, shall be deemed to be their legitimate child notwithstanding the decree of nullity.

(3) Nothing contained in sub-section (1) or sub-section (2) shall be construed as conferring upon any child of a marriage which is null and void or which is annulled by a decree of nullity under section 12, any rights in or to the property of any person, other than the parents, in any case where, but for the passing of this Act, such child would have been incapable of possessing or acquiring any such rights by reason of his not being the legitimate child of his parents.]

17. Punishment of bigamy.—Any marriage between two Hindus solemnized after the commencement of this Act is void if at the date of such marriage either party had a husband or wife living; and the provisions of sections 494 and 495 of the Indian Penal Code, 1860 (45 of 1860), shall apply accordingly.

18. Punishment for contravention of certain other conditions for a Hindu marriage.—Every person who procures a marriage of himself or herself to be solemnized under this Act in contravention of the conditions specified in clauses (iii), (iv), ⁷[and (v)] of section 5 shall be punishable—

⁸[(a) in the case of contravention of the condition specified in clause (iii) of section 5, with rigorous imprisonment which may extend to two years or with fine which may extend to one lakh rupees, or with both.]

(b) in the case of a contravention of the condition specified in clause (iv) or clause (v) of section 5, with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both; ⁹* * *

¹⁰* * * * *

1. Subs. by Act 68 of 1976, s. 9, for “expiry of three years” (w.e.f. 27-5-1976).
2. Subs. by s. 9, *ibid.*, for “expiration of the said one year” (w.e.f. 27-5-1976).
3. Subs. by s. 9, *ibid.*, for “expiry of three years” (w.e.f. 27-5-1976).
4. Subs. by s. 9, *ibid.*, for “said three years” (w.e.f. 27-5-1976).
5. Proviso omitted by s.10, *ibid.* (w.e.f. 27-5-1976).
6. Subs. by s. 11, *ibid.*, for s. 16 (w.e.f. 27-5-1976).
7. Subs. by Act 2 of 1978, s. 6 and Schedule, for “(v) and (vi)” (w.e.f. 1-10-1978).
8. Subs. by Act 6 of 2007, s. 20 (w.e.f. 30-10-2007).
9. The word “and” omitted by Act 2 of 1978, s. 6 and Schedule (w.e.f. 1-10-1978).
10. Clause (c) omitted by s. 6 and Schedule, *ibid.* (w.e.f. 1-10-1978).

JURISDICTION AND PROCEDURE

¹**[19. Court to which petition shall be presented.]**—Every petition under this Act shall be presented to the District Court within the local limits of whose ordinary original civil jurisdiction:—

- (i) the marriage was solemnized, or
- (ii) the respondent, at the time of the presentation of the petition, resides, or
- (iii) the parties to the marriage last resided together, or

²[(*iiia*) in case the wife is the petitioner, when she is residing on the date of presentation of the petition; or]

(iv) the petitioner is residing at the time of the presentation of the petition, in a case where the respondent is at that time, residing outside the territories to which this Act extends, or has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of him if he were alive.]

20. Contents and verification of petitions.—(1) Every petition presented under this Act shall state as distinctly as the nature of the case permits the facts on which the claim to relief is founded ³[and, except in a petition under section 11, shall also state] that there is no collusion between the petitioner and the other party to the marriage.

(2) The statements contained in every petition under this Act shall be verified by the petitioner or some other competent person in the manner required by law for the verification of plaints, and may, at the hearing, be referred to as evidence.

21. Application of Act 5 of 1908.—Subject to the other provisions contained in this Act and to such rules as the High Court may make in this behalf, all proceedings under this Act shall be regulated, as far as may be, by the Code of Civil Procedure, 1908.

⁴**[21A. Power to transfer petitions in certain cases.]**—(1) Where—

(a) a petition under this Act has been presented to a district court having jurisdiction by a party to a marriage praying for a decree for judicial separation under section 10 or for a decree of divorce under section 13, and

(b) another petition under this Act has been presented thereafter by the other party to the marriage praying for a decree for judicial separation under section 10 or for a decree of divorce under section 13 on any ground, whether in the same district court or in a different district court, in the same State or in a different State,

the petitions shall be dealt with as specified in sub-section (2).

(2) In a case where sub-section (1) applies,—

(a) if the petitions are presented to the same district court, both the petitions shall be tried and heard together by that district court;

(b) if the petitions are presented to different district courts, the petition presented later shall be transferred to the district court in which the earlier petition was presented and both the petitions shall be heard and disposed of together by the district court in which the earlier petition was presented.

(3) In a case where clause (b) of sub-section (2) applies, the court or the Government, as the case may be, competent under the Code of Civil Procedure, 1908 (5 of 1908), to transfer any suit or proceeding from the district court in which the later petition has been presented to the district court in which the earlier petition is pending, shall exercise its powers to transfer such later petition as if it had been empowered so to do under the said Code.

1. Subs. by Act 68 of 1976, s. 12, for s. 19 (w.e.f. 27-5-1976).

2. Ins. by Act 50 of 2003, s. 4 (w.e.f. 23-12-2003).

3. Subs. by Act 68 of 1976, s. 13, for “and shall also State” (w.e.f. 27-5-1976).

4. Ins. by s. 14, *ibid.* (w.e.f. 27-5-1976).

21B. Special provision relating to trial and disposal of petitions under the Act.—(1) The trial of a petition under this Act shall, so far as is practicable consistently with the interests of justice in respect of the trial, be continued from day to day until its conclusion unless the court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded.

(2) Every petition under this Act shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date of service of notice of the petition on the respondent.

(3) Every appeal under this Act shall be heard as expeditiously as possible, and endeavour shall be made to conclude the hearing within three months from the date of service of notice of appeal on the respondent.

21C. Documentary evidence.—Notwithstanding anything in any enactment to the contrary, no document shall be inadmissible in evidence in any proceeding at the trial of a petition under this Act on the ground that it is not duly stamped or registered.]

¹[**22. Proceedings to be in camera and may not be printed or published.**—(1) Every proceeding under this Act shall be conducted in camera and it shall not be lawful for any person to print or publish any matter in relation to any such proceeding except a judgment of the High Court or of the Supreme Court printed or published with the previous permission of the court.

(2) If any person prints or publishes any matter in contravention of the provisions contained in sub-section (1), he shall be punishable with fine which may extend to one thousand rupees.]

23. Decree in proceedings.—(1) In any proceeding under this Act, whether defended or not, if the court is satisfied that

(a) any of the grounds for granting relief exists and the petitioner ²[except in cases where the relief is sought by him on the ground specified in sub-clause (a), sub-clause (b) or sub-clause (c) of clause (ii) of section 5] is not in any way taking advantage of his or her own wrong or disability for the purpose of such relief, and

(b) where the ground of the petition is the ground specified ³* * * in clause (i) of sub-section (1) of section 13, the petitioner has not in any manner been accessory to or connived at or condoned the act or acts complained of, or where the ground of the petition is cruelty the petitioner has not in any manner condoned the cruelty, and

²[(bb) when a divorce is sought on the ground of mutual consent, such consent has not been obtained by force, fraud or undue influence, and]

(c) ⁴[the petition (not being a petition presented under section 11)] is not presented or prosecuted in collusion with the respondent, and

(d) there has not been any unnecessary or improper delay in instituting the proceeding, and

(e) there is no other legal ground why relief should not be granted, then, and in such a case, but not otherwise, the court shall decree such relief accordingly.

(2) Before proceeding to grant any relief under this Act, it shall be the duty of the court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about reconciliation between the parties:

⁵[Provided that nothing contained in this sub-section shall apply to any proceeding wherein relief is sought on any of the grounds specified in clause (ii), clause (iii), clause (iv), clause (v), clause (vi) or clause (vii) of sub-section (1) of section 13.]

1. Subs. by Act 68 of 1976, s. 15, for s. 22 (w.e.f. 27-5-1976).

2. Ins. by s. 16, *ibid.* (w.e.f. 27-5-1976).

3. The words, bracket, letter of figure “in clause (f) of sub-section (1) of section 10 or” omitted by s. 16, *ibid.* (w.e.f. 27-5-1976).

4. Subs. by s. 16, *ibid.*, for “the petition” (w.e.f. 27-5-1976).

5. Added by s. 16, *ibid.* (w.e.f. 27-5-1976).

²[(3) For the purpose of aiding the court in bringing about such reconciliation, the court may, if the parties so desire or if the court thinks it just and proper so to do, adjourn the proceedings for a reasonable period not exceeding fifteen days and refer the matter to any person named by the parties in this behalf or to any person nominated by the court if the parties fail to name any person, with directions to report to the court as to whether reconciliation can be and has been, effected and the court shall in disposing of the proceeding have due regard to the report.

(4) In every case where a marriage is dissolved by a decree of divorce, the court passing the decree shall give a copy thereof free of cost to each of the parties.]

¹[**23A. Relief for respondent in divorce and other proceedings.**—In any proceeding for divorce or judicial separation or restitution of conjugal rights, the respondent may not only oppose the relief sought on the ground of petitioner’s adultery, cruelty or desertion, but also make a counter-claim for any relief under this Act on that ground; and if the petitioner’s adultery, cruelty or desertion is proved, the court may give to the respondent any relief under this Act to which he or she would have been entitled if he or she had presented a petition seeking such relief on that ground.]

24. Maintenance *pendente lite* and expenses of proceedings.—Where in any proceeding under this Act it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner’s own income and the income of the respondent, it may seem to the court to be reasonable.

²[Provided that the application for the payment of the expenses of the proceeding and such monthly sum during the proceeding, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the wife or the husband, as the case may be.]

25. Permanent alimony and maintenance.—(1) Any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall ³* * * pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent’s own income and other property, if any, the income and other property of the applicant ⁴[the conduct of the parties and other circumstances of the case], it may seem to the court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent.

(2) If the court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may, at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just.

(3) If the court is satisfied that the party in whose favour an order has been made under this section has re-married or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock, ⁵[it may at the instance of the other party vary, modify or rescind any such order in such manner as the court may deem just].

26. Custody of children.—In any proceeding under this Act, the court may, from time to time, pass such interim orders and make such provisions in the decree as it may deem just and proper with respect to the custody, maintenance and education of minor children, consistently with their wishes, wherever possible, and may, after the decree, upon application by petition for the purpose, make from time to time, all such orders and provisions with respect to the custody, maintenance and education of such children as might have been made by such decree or interim orders in case the proceeding for obtaining such decree were still pending, and the court may also from time to time revoke, suspend or vary any such orders and provisions previously made:

1. Ins by Act 68 of 1976, s. 17, (w.e.f. 27-5-1976).

2. Ins. by Act 49 of 2001, s. 8 (w.e.f. 24-9-2001).

3. The words “while the applicant remains unmarried” omitted by Act 68 of 1976, s. 18 (w.e.f. 27-5-1976).

4. Subs. by s. 18, *ibid.*, for certain words. (w.e.f. 27-5-1976).

5. Subs. by s. 18, *ibid.*, for “it shall rescind the order” (w.e.f. 27-5-1976).

¹[Provided that the application with respect to the maintenance and education of the minor children, pending the proceeding for obtaining such decree, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the respondent.]

27. Disposal of property.—In any proceeding under this Act, the court may make such provisions in the decree as it deems just and proper with respect to any property presented, at or about the time of marriage, which may belong jointly to both the husband and the wife.

²**[28. Appeals from decrees and orders.]**—(1) All decrees made by the court in any proceeding under this Act shall, subject to the provisions of sub-section (3), be appealable as decrees of the court made in the exercise of its original civil jurisdiction, and every such appeal shall lie to the court to which appeals ordinarily lie from the decisions of the court given in the exercise of its original civil jurisdiction.

(2) Orders made by the court in any proceeding under this Act under section 25 or section 26 shall, subject to the provisions of sub-section (3), be appealable if they are not interim orders, and every such appeal shall lie to the court to which appeals ordinarily lie from the decisions of the court given in exercise of its original civil jurisdiction.

(3) There shall be no appeal under this section on the subject of costs only.

(4) Every appeal under this section shall be preferred within a ³[period of ninety days] from the date of the decree or order.

28A. Enforcement of decrees and orders.—All decrees and orders made by the court in any proceeding under this Act shall be enforced in the like manner as the decrees and orders of the court made in the exercise of its original civil jurisdiction for the time being in forced.]

SAVINGS AND REPEALS

29. Savings.—(1) A marriage solemnized between Hindus before the commencement of this Act, which is otherwise valid, shall not be deemed to be invalid or ever to have been invalid by reason only of the fact that the parties thereto belonged to the same *gotra or pravara* or belonged to different religions, castes or sub-divisions of the same caste.

(2) Nothing contained in this Act shall be deemed to affect any right recognised by custom or conferred by any special enactment to obtain the dissolution of a Hindu marriage, whether solemnized before or after the commencement of this Act.

(3) Nothing contained in this Act shall affect any proceeding under any law for the time being in force for declaring any marriage to be *null and void* or for annulling or dissolving any marriage or for judicial separation pending at the commencement of this Act, and any such proceeding may be continued and determined as if this Act had not been passed.

(4) Nothing contained in this Act shall be deemed to affect the provisions contained in the Special Marriage Act, 1954, (43 of 1954) with respect to marriages between Hindus solemnized under that Act, whether before or after the commencement of this Act.

30. [Repeals].—*Rep. by the Repealing and Amending Act, 1960 (58 of 1960), s. 2 and the First Schedule (w.e.f. 26-12-1960).*

1. Ins. by Act 49 of 2001, s. 9 (w.e.f. 24-9-2001).

2. Subs. by Act 68 of 1976, s. 19 (w.e.f. 27-5-1976).

3. Subs. by Act 50 of 2003, s. 5, for “period of thirty days” (w.e.f. 23-12-2003).