

1. Hindu Widows Re Marriage Act, 1856

2. Child Marriage Restraint Act. 1929

THE CHILD MARRIAGE RESTRIANT ACT, 1929

CONTENTS

Section	Page
1. Short title, extent and commencement	2
2. Definitions	2
3. Punishment for male adult below twenty-one years of age marrying a child	3
4. Punishment for male adult above twenty-one years of age marrying a child	3
5. Punishment for solemnizing a child marriage	3
6. Punishment for parent or guardian concerned in a child marriage.	4
7. Offences to be cognizable for certain purposes	5
8. Jurisdiction under this Act	5
9. Mode of taking cognizance of offences	5
10. Preliminary inquiries into offences	5
11. Power to take security from complainant [Repealed]	6
12. Power to issue injunction prohibiting marriage in contravention of this Act.	6

THE CHILD MARRIAGE RESTRAINT ACT, 1929¹

[1st October, 1929]

An Act to restrain the solemnization of child marriages

Whereas it is expedient to restrain the solemnization of child marriages; It is hereby enacted as follows:

Comments

Preamble-Use of.- It is true that the preamble and the aims and objects cannot be used for interpreting the statute. The preamble as well as the aims and objects of the Act can be used for limited purpose of ascertaining the conditions prevailing at the time of legislation and for finding out the purpose of the enactment by furnishing valuable historical material.²

Object and reasons of the Act.- The objects and reasons of the Act are to be taken into consideration in interpreting the provisions of the Statute and not the debates in Parliament on the Bill.³

Intention of Legislature.- In *Prithvi Pal Singh Bedi v. Union of India*,⁴ it was held that literal meaning of the statute must be adhered to when there is no absurdity in ascertaining the legislative intendment and for that purpose the broad feature of the Act can be looked into.⁵

Principle of “noscitur a sociis”-Application of.- Where two constructions are possible, that which would be more conducive to reason and justice is to be preferred by applying the principle of *noscitur a sociis*.⁶

Punctuation marks-Effects.- It is well known that punctuation marks by themselves do not control the meaning of a statute when its meaning is otherwise obvious.⁷

Words, clear, intelligible and unambiguous-Must be given effect to.- If the language of the statute is clear and intelligible and does not admit of two

¹ Published in the Gazette of India, 1927 Pt. V, p. 28.

² Nagpur Hotel Owners Association v. Corporation of the City of Nagpur, A.I.R. 1979 Bom. 190 at p. 196; Baboolal v. Director of Municipal Administration, A.I.R. 1974 Bom. 219 relied on.

³ Chern Taong Shang v. Commander S. D. Baijal, 1988(1) Crimes 524 at p. 529 (S.C.); see also Kameshwar Singh Srivastava v. IVth Additional District Judge, Lucknow, A.I.R. 1987 S.C. 138 at p. 141.

⁴ A.I.R. 1982 S.C. 1413.

⁵ Jumman v. State of Uttar Pradesh, 1988 Cr. L.J. 199 at p. 203 (All.).

⁶ Sipra Dey, Smt. V. Ajit Kumar Dey, A.I.R. 1988 Cal. 28 at p. 33.

⁷ Dadaji alias Dina v. Sukhdeobabu, A.I.R. 1980 S.C. 150 at p. 156.

meanings, effect must be given to the words used and thus the intention of the Legislature must be carried out.¹

Mandatory rule and directory rule-Difference.-The difference between a mandatory rule and a directory rule is that while the former must be strictly observed, in the case of the latter, substantial compliance may be sufficient to achieve the object regarding which the rule is enacted. Certain broad propositions which can be deduced from several decisions of courts regarding the rules of construction that should be followed in determining whether a provision of law is directory or mandatory may be summarized thus: The fact that the statute uses the word "shall" while laying down a duty is not conclusive on the question whether it is a mandatory or directory provision. In order to find out the true character of the legislation the Court has to ascertain the object which the provision of law in question is to sub serve and its design and the context in which it is enacted. If the object of law is to be defeated by non-compliance with it, it has to be regarded as mandatory. But where a provision of law relates to the performance of any public duty and the invalidation of any act done in disregard of that provision causes serious prejudice to those for whose benefit it is enacted and at the same time who have no control over the performance of the duty, such provision should be treated as a directory one. Where, however, a provision of law prescribes that a certain act has to be done in a particular manner by a person in order to acquire a right and it is coupled with another provision which confers an immunity on another when such act is not done in that manner, the former has to be regarded as a mandatory one. A procedural rule ordinarily should not be construed as mandatory if the defect in the act done in pursuance of it can be cured by permitting appropriate rectification to be carried out at a subsequent stage unless by according such permission to rectify the error later on, another rule would be contravened. Whenever a statute prescribes that a particular act is to be done in a particular manner and also lays down that a failure to comply with the said requirement leads to a specific consequences, it would be difficult to hold that the requirement is not mandatory and the specified consequence should not follow.²

Interpretation must further and not frustrate the object of a statute.- Interpretation of a statute, contextual or otherwise must further and not frustrate the object of the statute.³

1. Short title, extent and commencement.-(1) This Act may be called the Child Marriage Restraint Act, 1929.

(2) It extends to the whole of India ¹[except the State of Jammu and Kashmir] and it applies as also to all citizens of India without and beyond India:

¹ Chandrabhan Chunnial Gous v. Dr. Sharwan Kumar Kunnolal Gour, A.I.R. 1980 Bom. 49 at p. 51.

² Sharif-ud-din v. Abdul Gani Lone, A.I.R. 1980 S.C. 303 at pp. 305-06; *see also* State of Jammu and Kashmir v. Abdul Gani, A.I.R. 1979 J. & K. 17 at p. 20 (F.B.); Messrs. Choudhary v. Frick-India Ltd., A.I.R. 1979 Delhi 97 at p. 99.

³ Muddada Chavanna v. Karnam Narayana, A.I.R. 1979 S.C.1320 at p. 1323.

²[Provided that nothing contained in this Act shall apply to the Renoncants of the Union territory of Pondicherry.]

(3) It shall come into force on the 1st day of April, 1930.

2. Definitions.-In this Act, unless there is anything repugnant in the subject or context,-

³[(a) “child” means a person who, if a male, has not completed twenty-one years of age, and if a female, has not completed eighteen years of age;]

(b) “child marriage” means a marriage to which either of the contracting parties is a child;

(c) “contracting party” to a marriage means either of the parties whose marriage is or is about to be thereby solemnized; and

(d) “minor” means a person of either sex who is under eighteen years of age.

3. Punishment for male adult below twenty-one years of age marrying a child.-Whoever, being a male above eighteen years of age and below twenty-one, contracts a child marriage shall be punishable with simple imprisonment which may extend to fifteen days, or with fine which may extend to one thousand rupees, or with both.

Comment

Penal provisions-Interpretation.-The provision authorizing confiscation is a drastic one. In regard to such a provision it is well accepted that court should place construction which is in favour of the subject. Where the conjunction used is “or” unless there are compelling reasons to read “or” as “and” it is well settled that any word should be given its natural meaning. If it was intended that both the conditions must be satisfied there was no difficulty for the Legislature to use the expression “and” instead of “or”.⁴

4. Punishment for male adult above twenty-one years of age marrying a child.-Whoever, being a male above twenty-one years of age, contracts a child marriage shall be punishable with simple imprisonment which may extend to three months and shall also be liable to fine.

Comment

Whoever-Meaning of.-According to the Shorter Oxford English Dictionary, Vol. 2, p. 2543, “whoever” means “any one who, any who”. The meaning given in Webster Comprehensive Dictionary, International Ed., Vol.2 at p. 1437 is “any one without exception any person who”.⁵

¹ Subs. By Act 3 of 1951, Schedule.

² Ins. By Act 26 of 1968, Schedule.

³ Subs. By Act 2 of 1978, Sec. 2 (w.e.f. 2nd October, 1978).

⁴ Somiseti Ramanath v. District Supply Officer, Chittoor, A.I.R. 1979 A.P. 9 at p. 20: see also Kamla Kant Singh v. Chairman/Managing Director, Bennetta Colman and Co. Ltd., 1988(1) Crimes 106 at p. 109 (All.).

⁵ Rai Bahadur Seth Shreeram Durgaprasad, Messrs. V. Director of Enforcement, A.I.R. 1987 S.C. 1364 at p. 1369.

5. Punishment for solemnizing a child marriage.-Whoever performs, conducts or directs any child marriage shall be punishable with simple imprisonment which may extend to three months and also be liable to fine, unless he proves that he had reason to believe that the marriage was not a child marriage.

Comment

If marriage of Hindu male below eighteen years of age or female below fifteen years of age is invalid or illegal.-The marriage of Hindu male below eighteen years of age with a Hindu girl of fifteen years of age is not invalidated or rendered illegal by the force of the Child Marriage Restraint Act of 1929. It will remain a valid marriage binding under the Hindu Law if otherwise performed under any recognized form of Hindu La. It would be seen that the Child Marriage Restraint Act only restrains a marriage of minors and that is its

Objective, but does not prohibit marriage rendering it illegal or invalid. It punishes those persons who arrange that marriage and actively participate in celebrating it. The minor spouses who get married are not punished under the Act. Once it be held that the marriage itself is not illegal or invalid under the Child Marriage Restraint Act, 1929, then a debt incurred by the major members of the family for marrying a minor member of the family will not be for an illegal purpose as the marriage is legal and the debt is incurred for the marriage. It may be that the debt is incurred for the marriage. It may be that the consequence under the law would be that the major members be punished for their act in making arrangements for celebration of the marriage.¹

“May” and “shall”.-The word “may” implies what is optional, but it should in some context in which it appears, mean “must”. There is an element of compulsion. It is power coupled with a duty. In Maxwell on Interpretation of Statutes, 11th Ed., p. 31, the principle is stated thus: “Statutes which authorize persons to do acts for the benefit of others, or, as is sometimes said, for the public good or the advancement of justice, have often given rise to controversy when conferring the authority in terms simply enabling and not mandatory. In enacting that they ‘may’ or ‘shall’ ‘if they think fit’, or ‘shall have power’ or that ‘it shall be lawful’ for them to do such acts, a statute appears to use the language of mere permission but it has been so often decided as to have become an axiom that in such cases such expressions may have to say the least a compulsory force, and so would seem to be modified by judicial exposition.” The word “may” even if it was prima facie enabling, the Legislature may use it in the sense or “must” or “shall”.²

6. Punishment for parent or guardian concerned in a child marriage.

- (1) Where a minor contracts a child marriage, any person having charge of the minor, whether as parent or guardian or in any other capacity, lawful or solemnized, or negligently fails to prevent it from being solemnized, shall be punishable with

¹ Parasram v. Smt. Naraini Devi, A.I.R. 1972 All. 357 at p. 359.

² Delhi Administration v. I.K.Nangia, A.I.R. 1979 S.C. 1977 at p. 1980; Sohan Lal v. Hodal Singh, A.I.R. 1979 All. 230 at p. 232.

simple imprisonment which may extend to three months and shall also be liable to fine:

Provided that no woman shall be punishable with imprisonment.

(2) For the purposes of this section, it shall be presumed, unless and until the contrary is proved, that where a minor has contracted a child marriage, the person having charge of such minor has negligently failed to prevent the marriage from being solemnized.

STATE AMENDMENT

Gujarat. –After Sec. 6 of the principal Act the following section shall be inserted namely:

7. Offences to be cognizable. –Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (V of 1898), now new Code of 1973 (2 of 1974), an offence punishable under this Act shall be deemed to be a cognizable offence within the meaning of the Code.¹

Comment

Family. –The word “family” has to be given not a restricted but a wider meaning so as to include not only the head of the family but all members or descendants from the common ancestors who are actually living with the same head. The term “family” must always be liberally and broadly construed so as to include near relations of the head of the family.²

³[7. **Offences to be cognizable for certain purposes.** –The Code of Criminal Procedure, 1973 (2 of 1974), shall apply to offences under this Act as if they were cognizable offences-

- (a) for the purpose of investigation of such offences; and
- (b) for the purpose of matters other than (i) matters referred to in Sec. 42 of that Code, and (ii) the arrest of a person without a warrant or without an order of a Magistrate.]

8. **Jurisdiction under this Act.** –Notwithstanding anything contained in Sec. 190 of the ⁴[Code of Criminal Procedure, 1973 (2 of 1974)], no court other than that of a ³[Metropolitan Magistrate or a Judicial Magistrate of the first class] shall take cognizance of, or try, any offence under this Act.

Comment

Offences under the Act cannot be tried by any Court other than the Courts referred therein. –There is an express prohibition under Sec. 8 of the Child Court other than the Courts referred to therein. Even any other Court cannot take cognizance of such offences. In view of this express prohibition in the special law which has an overriding effect, it is evident that even though the committing Magistrate has committed the accused to stand their trial, for offences under the Penal Code, which are triable by the Sessions Court, will not have jurisdiction to try

¹ Ins. By Gujarat Act 11 of 1964, Sec. 2.

² Baldev Sahai Bangia v. R.C. Bhasin, A.I.R. 1982 S.C. 1091 at pp. 1093-94.

³ Ins. By Act 2 of 1978, Sec. 3 (w.e.f. 2nd October, 1978).

⁴ Subs. By Sec. 4, *ibid*.

these offences under the Act. The reason underlying it is that there is an express prohibition in special law which has got overriding effect over the provisions of general law.¹

9. Mode of taking cognizance of offences. –No Court shall take cognizance of any offence under this Act after the expiry of one year from the date on which the offence is alleged to have been committed.

10. Preliminary inquiries into offences. –Any Court, on receipt of a complaint of an offence of which it is authorized to take cognizance, shall, unless it dismisses the complaint under Sec. 203 of the ²[Code of Criminal Procedure, 1973 (2 of 1974)], either itself make an inquiry under Sec. 202 of that Code or direct a Magistrate subordinate to it to make such inquiry.

Comment

Power vested in Magistrate to postpone issue of process. –Any Magistrate on receipt of a complaint of an offence of which he is authorized to take cognizance may do one of the two things. (1) He may for reasons to be recorded in writing, if he thinks fit, postpone the Issue of process for compelling the attendance of the person complained against. The content of the power vested in the Magistrate to postpone the issue of process for compelling the attendance of the person complained against, would also cover the power of issuing process for compelling the attendance of the person complained against. (2) After doing one of these two things, the Magistrate may either enquire into the case himself or he can direct any Magistrate subordinate to him to make an enquiry only for the limited purpose of ascertaining the truth or falsehood of the complaint.³

STATE AMENDMENT

Gujarat. –Section 10 is deleted.⁴

11. Power to take security from complainant. – [*Repealed by the Child Marriage Restraint (Amendment) Act, 1949 (41 of 1949), Sec. 7*].

⁵**[12. Power to issue injunction prohibiting marriage in contravention of this Act.** – (1) Notwithstanding anything to the contrary contained in this Act, the Court may, if satisfied, from information laid before it through a complaint or otherwise that a child marriage in contravention of this Act has been arranged or is about to be solemnized, issue an injunction against any of the persons mentioned in Secs. 3, 4, 5 and 6 of this Act prohibiting such marriage.

¹ State of Gujarat v. Fulsinh Bhimsing, A.I.R. 1971 Guj. 1 at p. 6.

² Subs. By Act 2 of 1978, Sec. 5 (w.e.f. 2nd October, 1978).

³ Jagadeesa Thevar V. Rajabakita Theval, 1971 Cr. L.J. 1350 at p. 1351 (Mad.).

⁴ Deleted by Gujarat Act 11 of 1964, Sec. 3.

⁵ Ins. By Act 19 of 1938, Sec. 6.

(2) No injunction under sub-section (1) shall be issued against any person unless the Court has previously given notice to such person, and has afforded him an opportunity to show cause against the issue of the injunction.

(3) The Court may either on its own motion or on the application of any person aggrieved, rescind or alter any order made under sub-section (1).

(4) Where such an application is received, the Court shall afford the applicant an early opportunity of appearing before it either in person or by pleader; and if the Court rejects the application wholly or in part, it shall record in writing its reasons, for so doing.

(5) Whoever knowing that an injunction has been issued against him under sub-section (1) of this section disobeys such injunction shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both:

Provided that no woman shall be punishable with imprisonment.]

STATE AMENDMENT

Gujarat. –After Sec. 12 of the principal Act the following sections shall be added, namely:

“13. *Child Marriage Prevention Officer.* – (1) The State Government may, by notification in the official Gazette, appoint for the whole State or for such part thereof as may be specified in that notification, an officer to be known as Child Marriage Prevention Officer.

(2) It shall be the duty of the Child Marriage Prevention Officer –

- (i) to prevent marriages being performed in contravention of the provisions of this Act by taking such action under this Act as he deems fit;
- (ii) to collect evidence for the effective prosecutions of persons contravening provisions of this Act; and
- (iii) to discharge such other functions as may be assigned to him by the State Government.

(3) The State Government may, by notification in the official Gazette, invest the Child Marriage Prevention Officer with such powers of a police officer as may be specified in the notification and the Child Marriage Prevention Officer shall exercise his powers subject to such limitation and conditions as may be specified in the notification.

(4) The State Government may associate with each Child Marriage Prevention Officer a non-official advisory body consisting of not more than five social welfare workers, of whom at least two shall be women workers known in the

area within the jurisdiction of the officer for the purposes of advising and assisting him in the performance of his functions under this Act.

(5) The terms and conditions of appointment of persons on the advisory body shall be such as may be prescribed by rules.

13-A. *Officer appointed under the Act to be public servant.* –The Child Marriage Prevention Officer appointed under Sec. 13 shall be deemed to be a public servant within the meaning of Sec. 21 of the Indian Penal Code (XLV of 1860).¹

13-B. *Protection of action taken in good faith.* –No suit, prosecution or other legal proceedings shall lie against the Child Marriage Prevention Officer appointed under this Act in respect of anything in good faith done or intended to be done in pursuance of this Act or of any rules or orders made thereunder.²

14. Power to make rules. – (1) The State Government may, by notification in the official Gazette, make rules, for the purposes of carrying out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing provision, such rules may provide for all matters expressly required or allowed by this Act to be prescribed by rules.

(3) The power to make rules conferred by this section is subject to the condition of the rules made after previous publication.

(4) All rules made under this section shall be laid for not less than thirty days before the State Legislature as soon as possible after they are made, and shall be subject to rescission by the State Legislature or to such modifications as the State Legislature may make during the session in which they are so laid or the session immediately following.

(5) Any rescission or modification so made by the State Legislature shall be published in the official Gazette and shall thereupon take effect.”³

¹ Ins. By Gujarat Act 11 of 1964, Sec. 4.

² Ins. By Gujarat Act of 1973, Sec. 2.

³ Ins. By Gujarat Act 11 of 1964, Sec. 4.

Other Measures to Prevent Child Marriages:

Apart from the implementation of the Child Marriage Restraint Act, the Department has taken the following measures to prevent Child Marriages: -

- All the Programme Officers (ICDS) in the districts have been given instructions to keep a watch on child marriages and report such cases to District Administration and appropriate authorities for taking action as per Child Marriage Restraint Act.
- Director Panchayats, State Women Commission all the Deputy Commissioners and Superintendents of Police and Programme Officers have been circulated instructions received from National Commission for women to launch Bal Vivah Virodh Abhiyan.
- Department has also requested Dowry Prohibition Officers to keep vigil on Akha Teej & during marriage season to prevent child marriage.
- Department has also instructed Programme Officers / Child Development Project Officers to be vigilant regarding child marriages during marriage season.
- Instructions issued to all the Programme Officers to bring provisions of the Child Marriage Restraint Act to the notice of all Sarpanches as well as Pandits, Granthis and Molvees who get the marriages solemnized through a letter to them. The format of letter to be sent by all Child Development Project Officers to above mentioned persons periodically given in annexure.
- Directions given by the Hon'ble Supreme Court in Writ Petition Civil No. 212 of 2003 conveyed to all Superintendents of Police in the State, Secretary Home Department, director General Health Department, Director Primary / Higher Education, Director Panchayat and Secretary, Revenue Department, Haryana to monitor the implementation of the Child Marriage Restraint Act, 1929 and to give wide publicity to the provisions of the Act to educate the public about it so that the menace of early child marriage which violates the provisions of the said act is fully taken care of.

- NGOs are being involved by organizing vocational / cultural activities for children through Education Department.
- Awareness against child marriages is being created through Public Relations Department, Haryana and Haryana State Social Welfare Advisory Board.

3. Special Marriage Act, 1954

THE SPECIAL MARRIAGE ACT, 1954

ARRANGEMENT OF SECTIONS

CHAPTER I

PRELIMINARY

SECTIONS

1. Short title, extent and commencement.
2. Definitions.
3. Marriage Officers.

CHAPTER II

SOLEMNIZATION OF SPECIAL MARRIAGES

4. Conditions relating to solemnization of special marriages.
5. Notice of intended marriage.
6. Marriage Notice Book and publication.
7. Objection to marriage.
8. Procedure on receipt of objection.
9. Powers of Marriage Officers in respect of inquiries.
10. Procedure on receipt of objection by Marriage Officer abroad.
11. Declaration by parties and witnesses.
12. Place and form of solemnization.
13. Certificate of marriage.
14. New notice when marriage not solemnized within three months.

CHAPTER III

REGISTRATION OF MARRIAGES CELEBRATED IN OTHER FORMS

15. Registration of marriages celebrated in other forms.
16. Procedure for registration.
17. Appeals from orders under section 16.
18. Effect of registration of marriage under this Chapter.

CHAPTER IV

CONSEQUENCES OF MARRIAGE UNDER THIS ACT

19. Effect of marriage on member of undivided family.
20. Rights and disabilities not affected by Act.
21. Succession to property of parties married under Act.
- 21A. Special provision in certain cases.

CHAPTER V

RESTITUTION OF CONJUGAL RIGHTS AND JUDICIAL SEPARATION

SECTIONS

- 22. Restitution of conjugal rights.
- 23. Judicial separation.

CHAPTER VI

NULLITY OF MARRIAGE AND DIVORCE

- 24. Void marriages.
- 25. Voidable marriages.
- 26. Legitimacy of children of void and voidable marriages.
- 27. Divorce.
- 27A. Alternative relief in divorce proceedings.
- 28. Divorce by mutual consent.
- 29. Restriction on petitions for divorce during first one year after marriage.
- 30. Remarriage of divorced persons.

CHAPTER VII

JURISDICTION AND PROCEDURE

- 31. Court to which petition should be made.
- 32. Contents and verification of petitions.
- 33. Proceedings to be *in camera* and may not be printed or published.
- 34. Duty of court in passing decrees.
- 35. Relief for respondent in divorce and other proceedings.
- 36. Alimony *pendente lite*.
- 37. Permanent alimony and maintenance.
- 38. Custody of children.
- 39. Appeals from decrees and orders.
- 39A. Enforcement of decrees and orders.
- 40. Application of Act 5 of 1908.
- 40A. Power to transfer petitions in certain cases.
- 40B. Special provisions relating to trial and disposal of petitions under the Act.
- 40C. Documentary evidence.
- 41. Power of High Court to make rules regulating procedure.

CHAPTER VIII

MISCELLANEOUS

- 42. Saving.
- 43. Penalty on married person marrying again under this Act.
- 44. Punishment of bigamy.

SECTIONS

- 45. Penalty for signing false declaration or certificate.
- 46. Penalty for wrongful action of Marriage Officer.
- 47. Marriage Certificate Book to be open to inspection.
- 48. Transmission of copies of entries in marriage records.
- 49. Correction of errors.
- 50. Power to make rules.
- 51. Repeals and savings.

THE FIRST SCHEDULE.

THE SECOND SCHEDULE.

THE THIRD SCHEDULE.

THE FOURTH SCHEDULE.

THE FIFTH SCHEDULE.

THE SPECIAL MARRIAGE ACT, 1954

ACT NO. 43 OF 1954¹

[9th October, 1954.]

An Act to provide a special form of marriage in certain cases, for the registration of such and certain other marriages and for divorce.

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

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called the Special Marriage Act, 1954.

(2) It extends to the whole of India ^{2***}, and applies also to citizens of India domiciled in the territories to which this Act extends who are ³[in the State of Jammu and Kashmir].

(3) It shall come into force on such date⁴ as the Central Government may, by notification in the Official Gazette, appoint.

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

^{5*} * * * *

(b) “degrees of prohibited relationship”—a man and any of the persons mentioned in Part I of the First Schedule and a woman and any of the persons mentioned in Part II of the said Schedule are within the degrees of prohibited relationship.

Explanation I.—Relationship includes,—

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

(b) illegitimate blood relationship as well as legitimate;

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

and all terms of relationship in this Act shall be construed accordingly.

Explanation II.—“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.

Explanation III.—“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 IV.—In *Explanations II* and *III*, “ancestor” includes the father and “ancestress” the mother;

^{6*} * * * *

(d) “district” in relation to a Marriage Officer, means the area for which he is appointed as such under sub-section (1) or sub-section (2) of section 3;

⁷[(e) “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 by Reg. 6 of 1963, s. 2 and Schedule I and to Pondicherry by Reg. 7 of 1963, Section 3 and Schedule I (w.e.f. 1-10-1963).

2. The words “except the State of Jammu and Kashmir” omitted by Act 34 of 2019, s. 95 and the Fifth Schedule (w.e.f. 31-10-2019).

3. Subs. by Act 33 of 1969, s. 29, for “outside the said territories” (w.e.f. 31-8-1969).

4. 1st January, 1955, *vide* notification No. S.R.O. 3606, dated 17th December, 1954, published in the Gazette of India, Extraordinary, Part II, Section 3.

5. Omitted by Act 33 of 1969, s. 29.

6. Omitted by s. 29, *ibid*.

7. Subs. by Act 68 of 1976, s. 20, for clause (e) (w.e.f. 27-5-1976).

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;]

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

¹[(g) “State Government”, in relation to a Union territory, means the administrator thereof.]

3. Marriage Officers.—(1) For the purposes of this Act, the State Government may, by, notification in the Official Gazette, appoint one or more Marriage Officers for the whole or any part of the State.

²[(2) For the purposes of this Act, in its application to citizens of India domiciled in the territories to which this Act extends who are in the State of Jammu and Kashmir, the Central Government may, by notification in the Official Gazette, specify such officers of the Central Government as it may think fit to be the Marriage Officers for the State or any part thereof.]

CHAPTER II

SOLEMNIZATION OF SPECIAL MARRIAGES

4. Conditions relating to solemnization of special marriages.—Notwithstanding anything contained in any other law for the time being in force relating to the solemnization of marriages, a marriage between any two persons may be solemnized under this Act, if at the time of the marriage the following conditions are fulfilled, namely:—

(a) neither party has a spouse living;

³[(b) neither party—

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

(ii) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or

(iii) has been subject to recurrent attacks of insanity ⁴* * *;]

(c) the male has completed the age of twenty-one years and the female the age of eighteen years;

⁵[(d) the parties are not within the degrees of prohibited relationship:

Provided that where a custom governing at least one of the parties permits of a marriage between them, such marriage may be solemnized, notwithstanding that they are within the degrees of prohibited relationship; and]

⁶[(e) where the marriage is solemnized in the State of Jammu and Kashmir, both parties are citizens of India domiciled in the territories to which this Act extends].

⁷[*Explanation.*—In this section, “custom”, in relation to a person belonging to any tribe, community, group or family, means any rule which the State Government may, by notification in the Official Gazette, specify in this behalf as applicable to members of that tribe, community, group or family:

Provided that no such notification shall be issued in relation to the members of any tribe, community, group or family, unless the State Government is satisfied—

(i) that such rule has been continuously and uniformly observed for a long time among those members;

(ii) that such rule is certain and not unreasonable or opposed to public policy; and

1. Subs. by the A.O. (No. 3) Order, 1956 for clause (g).

2. Subs. by Act 33 of 1969, s. 29, for sub-section (2) (w.e.f. 31-8-1969).

3. Subs. by Act 68 of 1976, s. 21, for clause (b) (w.e.f. 27-5-1976).

4. The words “or epilepsy” omitted by Act 39 of 1999, s. 4 (w.e.f. 29-12-1999).

5. Subs. by Act 32 of 1963, s. 2, for clause (d) (w.e.f. 22-9-1963).

6. Subs. by Act 33 of 1969, s. 29, for clause (e) (w.e.f. 31-8-1969).

7. Ins. by Act 32 of 1963, s. 2 (w.e.f. 22-9-1963).

(iii) that such rule, if applicable only to a family, has not been discontinued by the family.]

5. Notice of intended marriage.—When a marriage is intended to be solemnized under this Act, the parties to the marriage shall give notice thereof in writing in the form specified in the Second Schedule to the Marriage Officer of the district in which at least one of the parties to the marriage has resided for a period of not less than thirty days immediately preceding the date on which such notice is given.

6. Marriage Notice Book and publication.—(1) The Marriage Officer shall keep all notices given under section 5 with the records of his office and shall also forthwith enter a true copy of every such notice in a book prescribed for that purpose, to be called the Marriage Notice Book, and such book shall be open for inspection at all reasonable times, without fee, by any person desirous of inspecting the same.

(2) The Marriage Officer shall cause every such notice to be published by affixing a copy thereof to some conspicuous place in his office.

(3) Where either of the parties to an intended marriage is not permanently residing within the local limits of the district of the Marriage Officer to whom the notice has been given under section 5, the Marriage Officer shall also cause a copy of such notice to be transmitted to the Marriage Officer of the district within whose limits such party is permanently residing, and that Marriage Officer shall thereupon cause a copy thereof to be affixed to some conspicuous place in his office.

7. Objection to marriage.—(1) Any person may, before the expiration of thirty days from the date on which any such notice has been published under sub-section (2) of section 6, object to the marriage on the ground that it would contravene one or more of the conditions specified in section 4.

(2) After the expiration of thirty days from the date on which notice of an intended marriage has been published under sub-section (2) of section 6, the marriage may be solemnized, unless it has been previously objected to under sub-section (1).

(3) The nature of the objection shall be recorded in writing by the Marriage Officer in the Marriage Notice Book, be read over and explained if necessary, to the person making the objection and shall be signed by him or on his behalf.

8. Procedure on receipt of objection.—(1) If an objection is made under section 7 to an intended marriage, the Marriage Officer shall not solemnize the marriage until he has inquired into the matter of the objection and is satisfied that it ought not to prevent the solemnization of the marriage or the objection is withdrawn by the person making it; but the Marriage Officer shall not take more than thirty days from the date of the objection for the purpose of inquiring into the matter of the objection and arriving at a decision.

(2) If the Marriage Officer upholds the objection and refuses to solemnize the marriage, either party to the intended marriage may, within a period of thirty days from the date of such refusal, prefer an appeal to the district court within the local limits of whose jurisdiction the Marriage Officer has his office, and the decision of the district court on such appeal shall be final, and the Marriage Officer shall act in conformity with the decision of the court.

9. Powers of Marriage Officers in respect of inquiries.—(1) For the purpose of any inquiry under section 8, the Marriage Officer shall have all the powers vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of witnesses and examining them on oath;
- (b) discovery and inspection;
- (c) compelling the production of documents;
- (d) reception of evidence of affidavits; and
- (e) issuing commissions for the examination of witnesses;

and any proceeding before the Marriage Officer shall be deemed to be a judicial proceeding within the meaning of section 193 of the Indian Penal Code (45 of 1860).

Explanation.—For the purpose of enforcing the attendance of any person to give evidence, the local limits of the jurisdiction of the Marriage Officer shall be the local limits of his district.

(2) If it appears to the Marriage Officer that the objection made to an intended marriage is not reasonable and has not been made in good faith he may impose on the person objecting costs by way of compensation not exceeding one thousand rupees and award the whole or any part thereof, to the parties to the intended marriage, and any order for costs so made may be executed in the same manner as a decree passed by the district court within the local limits of whose jurisdiction the Marriage Officer has his office.

10. Procedure on receipt of objection by Marriage Officer abroad.—Where an objection is made under section 7 to a Marriage Officer ¹[in the State of Jammu and Kashmir in respect of an intended marriage in the State], and the Marriage Officer, after making such inquiry into the matter as he thinks fit, entertains a doubt in respect thereof, he shall not solemnize the marriage but shall transmit the record with such statement respecting the matter as he thinks fit to the Central Government, and the Central Government, after making such inquiry into the matter and after obtaining such advice as it thinks fit, shall give its decision thereon in writing to the Marriage Officer who shall act in conformity with the decision of the Central Government.

11. Declaration by parties and witnesses.—Before the marriage is solemnized the parties and three witnesses shall, in the presence of the Marriage Officer, sign a declaration in the form specified in the Third Schedule to this Act, and the declaration shall be countersigned by the Marriage Officer.

12. Place and form of solemnization.—(1) The marriage may be solemnized at the office of the Marriage Officer, or at such other place within a reasonable distance therefrom as the parties may desire, and upon such conditions and the payment of such additional fees as may be prescribed.

(2) The marriage may be solemnized in any form which the parties may choose to adopt:

Provided that it shall not be complete and binding on the parties unless each party says to the other in the presence of the Marriage Officer and the three witnesses and in any language understood by the parties,—“I, (A), take the (B), to be my lawful wife (or husband)”.

13. Certificate of marriage.—(1) When the marriage has been solemnized, the Marriage Officer shall enter a certificate thereof in the form specified in the Fourth Schedule in a book to be kept by him for that purpose and to be called the Marriage Certificate Book and such certificate shall be signed by the parties to the marriage and the three witnesses.

(2) On a certificate being entered in the Marriage Certificate Book by the Marriage Officer, the Certificate shall be deemed to be conclusive evidence of the fact that a marriage under this Act has been solemnized and that all formalities respecting the signatures of witnesses have been complied with.

14. New notice when marriage not solemnized within three months.—Whenever a marriage is not solemnized within three calendar months from the date on which notice thereof has been given to the Marriage Officer as required by section 5, or where an appeal has been filed under sub-section (2) of section 8, within three months from the date of the decision of the district court on such appeal or, where the record of a case has been transmitted to the Central Government under section 10, within three months from the date of decision of the Central Government, the notice and all other proceedings arising therefrom shall be deemed to have lapsed, and no Marriage Officer shall solemnize the marriage until a new notice has been given in the manner laid down in this Act.

CHAPTER III

REGISTRATION OF MARRIAGES CELEBRATED IN OTHER FORMS

15. Registration of marriages celebrated in other forms.—Any marriage celebrated, whether before or after the commencement of this Act, other than a marriage solemnized under the Special

1. Subs. by Act 33 of 1969, s. 29, for “outside the territories to which this Act extends in respect of an intended marriage outside the said territories” (w.e.f. 31-8-1969).

Marriage Act, 1872 (3 of 1872), or under this Act, may be registered under this Chapter by a Marriage Officer in the territories to which this Act extends if the following conditions are fulfilled, namely:—

- (a) a ceremony of marriage has been performed between the parties and they have been living together as husband and wife ever since;
- (b) neither party has at the time of registration more than one spouse living;
- (c) neither party is an idiot or a lunatic at the time of registration;
- (d) the parties have completed the age of twenty-one years at the time of registration;
- (e) the parties are not within the degrees of prohibited relationship:

Provided that in the case of a marriage celebrated before the commencement of this Act, this condition shall be subject to any law, custom or usage having the force of law governing each of them which permits of a marriage between the two; and

- (f) the parties have been residing within the district of the Marriage Officer for a period of not less than thirty days immediately preceding the date on which the application is made to him for registration of the marriage.

16. Procedure for registration.—Upon receipt of an application signed by both the parties to the marriage for the registration of their marriage under this Chapter the Marriage Officer shall give public notice thereof in such manner as may be prescribed and after allowing a period of thirty days for objections and after hearing any objection received within that period, shall, if satisfied that all the conditions mentioned in section 15 are fulfilled, enter a certificate of the marriage in the Marriage Certificate Book in the form specified in the Fifth Schedule, and such certificate shall be signed by the parties to the marriage and by three witnesses.

17. Appeals from orders under section 16.—Any person aggrieved by any order of a Marriage Officer refusing to register a marriage under this Chapter may, within thirty days from the date of the order, appeal against that order to the district court within the local limits of whose jurisdiction the Marriage Officer has his office, and the decision of the district court on such appeal shall be final, and the Marriage Officer to whom the application was made shall act in conformity with such decision.

18. Effect of registration of marriage under this Chapter.—Subject to the provisions contained in sub-section (2) of section 24, where a certificate of marriage has been finally entered in the Marriage Certificate Book under this Chapter, the marriage shall, as from the date of such entry, be deemed to be a marriage solemnized under this Act, and all children born after the date of the ceremony of marriage (whose names shall also be entered in the Marriage Certificate Book) shall in all respects be deemed to be and always to have been the legitimate children of their parents:

Provided that nothing contained in this section shall be construed as conferring upon any such children any rights in or to the property of any person other than their parents in any case where, but for the passing of this Act, such children would have been incapable of possessing or acquiring any such rights by reason of their not being the legitimate children of their parents.

CHAPTER IV

CONSEQUENCES OF MARRIAGE UNDER THIS ACT

19. Effect of marriage on member of undivided family.—The marriage solemnized under this Act of any member of an undivided family who professes the Hindu, Buddhist, Sikh or Jaina religions shall be deemed to effect his severance from such family.

20. Rights and disabilities not affected by Act.—Subject to the provisions of section 19, any person whose marriage is solemnized under this Act shall have the same rights and shall be subject to the same disabilities in regard to the right of succession to any property as a person to whom the Caste Disabilities Removal Act, 1850 (21 of 1850), applies.

21. Succession to property of parties married under Act.—Notwithstanding any restrictions contained in the Indian Succession Act, 1925 (39 of 1925), with respect to its application to members of

certain communities, succession to the property or any person whose marriage is solemnized under this Act and to the property of the issue of such marriage shall be regulated by the provisions of the said Act and for the purposes of this Act shall have effect as if Chapter III of Part V (Special Rules for Parsi Intestates) had been omitted therefrom.

¹[**21A. Special provision in certain cases.**—Where the marriage is solemnized under this Act of any person who professes the Hindu, Buddhist, Sikh or Jaina religion with a person who professes the Hindu, Buddhist, Sikh or Jaina religion, section 19 and section 21 shall not apply and so much of section 20 as creates a disability shall also not apply.]

CHAPTER V

RESTITUTION OF CONJUGAL RIGHTS AND JUDICIAL SEPARATION

22. Restitution of conjugal rights.—When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply by petition to the district court 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.

²[*Explanation.*—Where a question arises whether there has been reasonable excuse for withdrawal from the society, the burden of providing reasonable excuse shall be on the person who has withdrawn from the society.]

23. Judicial separation.—(1) A petition for judicial separation may be presented to the district court either by the husband or the wife,—

(a) on any of the grounds specified ³[in sub-section (1) ⁴[and sub-section (1A)] of section 27] on which a petition for divorce might have been presented; or

(b) on the ground of failure to comply with a decree 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 judicial separation accordingly.

(2) Where the court grants a decree for judicial separation, it shall be no longer 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.

CHAPTER VI

NULLITY OF MARRIAGE AND DIVORCE

24. Void marriages.—(1) Any marriage solemnized under this Act shall be null and void ⁵[and may, on a petition presented by either party thereto against the other party, be so declared] by a decree of nullity if—

(i) any of the conditions specified in clauses (a), (b), (c) and (d) of section 4 has not been fulfilled; or

(ii) the respondent was impotent at the time of the marriage and at the time of the institution of the suit.

(2) Nothing contained in this section shall apply to any marriage deemed to be solemnized under this Act within the meaning of section 18, but the registration of any such marriage under Chapter III may be declared to be of no effect if the registration was in contravention of any of the conditions specified in clauses (a) to (e) of section 15:

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

2. Added by s. 23, *ibid.*

3. Subs. by Act 29 of 1970, s. 2, for certain words (w.e.f. 12-8-1970).

4. Ins. by Act 68 of 1976, s. 24 (w.e.f. 27-5-1976).

5. Subs. by s. 25, *ibid.*, for “and may be so declared” (w.e.f. 27-5-1976).

Provided that no such declaration shall be made in any case where an appeal has been preferred under section 17 and the decision of the district court has become final.

25. Voidable marriages.—Any marriage solemnized under this Act shall be voidable and may be annulled by a decree of nullity if,—

(i) the marriage has not been consummated owing to the wilful refusal of the respondent to consummate the marriage; or

(ii) the respondent was at the time of the marriage pregnant by some person other than the petitioner; or

(iii) the consent of either party to the marriage was obtained by coercion or fraud, as defined in the Indian Contract Act, 1872 (9 of 1872):

Provided that, in the case specified in clause (ii), the court shall not grant a decree unless it is satisfied,—

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

(b) that proceedings were instituted within a year from the date of the marriage; and

(c) that marital intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of the existence of the grounds for a decree:

Provided further that in the case specified in clause (iii), the court shall not grant a decree if,—

(a) proceedings have not been instituted within one year after the coercion had ceased or, as the case may be, the fraud had been discovered; or

(b) the petitioner has with his or her free consent lived with the other party to the marriage as husband and wife after the coercion had ceased or, as the case may be, the fraud had been discovered.

¹**[26. Legitimacy of children of void and voidable marriages.**—(1) Notwithstanding that a marriage is null and void under section 24, 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 25, 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 has 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 25, 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 not his being the legitimate child of his parents.]

27. Divorce.—²[(1)] Subject to the provisions of this Act and to the rules made thereunder, a petition for divorce may be presented to the district court either by the husband or the wife on the ground that the respondent—

³[(a) has, after the solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse; or

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

1. Subs. by Act 68 of 1976, s. 26, for section 26 (w.e.f. 27-5-1976).

2. Section 27 renumbered as sub-section (1) thereof by Act 29 of 1970, s. 3 (w.e.f. 12-8-1970).

3. Subs. by Act 68 of 1976, s. 27, for clauses (a) and (b).

(c) is undergoing a sentence of imprisonment for seven years or more for an offence as defined in the Indian Penal Code (45 of 1860);

¹* * * *

(d) has since the solemnization of the marriage treated the petitioner with cruelty; or

²[(e) 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 respondent, and whether or not it requires or is susceptible to medical treatment; or

(f) has been suffering from venereal disease in a communicable form; or]

(g) has ³* * * been suffering from leprosy, the disease not having been contracted from the petitioner; or

(h) 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; ⁴* * *

⁵[*Explanation.*—In this sub-section, the expression “desertion” means 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;]

⁶* * * *

⁷* * * *

⁸[(1A) A wife may also present a petition for divorce to the district court on the ground,—

(i) that her husband has, since the solemnization of the marriage, been guilty of rape, sodomy or bestiality;

(ii) 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.]

1. The Proviso omitted by Act 68 of 1976, s. 27 (w.e.f. 27-5-1976).

2. Subs. by s. 27, *ibid.*, for clauses (e) and (f) (w.e.f. 27-5-1976).

3. The words “for a period of not less than three years immediately preceding the presentation of the petition” omitted by s. 27, *ibid.* (w.e.f. 27-5-1976).

4. The word “or” omitted by Act 29 of 1970, s. 3 (w.e.f. 12-8-1970).

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

6. The words “and by the wife on the ground that her husband has, since the solemnization of the marriage, been guilty of rape, sodomy or bestiality” omitted by s. 27, *ibid.* (w.e.f. 27-5-1976).

7. Omitted by Act 29 of 1970, s. 3 (w.e.f. 12-8-1970).

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

¹[(2) Subject to the provisions of this Act and to the rules made thereunder, either party to a marriage, whether solemnized before or after the commencement of the Special Marriage (Amendment) Act, 1970 (29 of 1970), may present a petition for divorce to the district court on the ground—

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

²[**27A. Alternative relief in divorce proceedings.**—In any proceeding under this Act, on a petition for dissolution of marriage by a decree of divorce, except insofar as the petition is founded on the ground mentioned in clause (h) of sub-section (1) of section 27, 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.]

28. Divorce by mutual consent.—(1) Subject to the provisions of this Act and to the rules made thereunder, a petition for divorce may be presented to the district court by both the parties together 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) ³[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 district court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnized under this Act, and that the averments in the petition are true, pass a decree declaring the marriage to be dissolved with effect from the date of the decree.

29. Restriction on petitions for divorce during first one year after marriage.—(1) No petition for divorce shall be presented to the district court ⁴[unless at the date of the presentation of the petition one year has passed] since the date of entering the certificate of marriage in the Marriage Certificate Book:

Provided that the district court may, upon application being made to it, allow a petition to be presented ⁵[before one year has passed] on the ground that the case is one of exceptional hardship suffered by the petitioner or of exceptional depravity on the part of the respondent, but if it appears to the district 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 district court may, if it pronounces a decree, do so subject to the condition that the decree shall not have effect until after the ⁶[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 the ⁷[expiration of the said one year] upon the same, or substantially the same, facts as those proved 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 ⁸[expiration of one year] from the date of the marriage, the district 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 ⁹[said one year].

30. Remarriage of divorced persons.—Where 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

1. Ins. by Act 29 of 1970, s. 3 (w.e.f. 12-8-1970).

2. Ins. by Act 68 of 1976, s. 28 (w.e.f. 27-5-1976).

3. Subs. by s. 29, *ibid.*, for “On the motion of both the parties made not earlier than one year after the date of the presentation of the petition referred to in sub-section (1) and not later than two years” (w.e.f. 27-5-1976).

4. Subs. by s. 30, *ibid.*, for “unless at the date of the presentation of the petition three years have passed” (w.e.f. 27-5-1976).

5. Subs. by s. 30, *ibid.*, for “before three years have passed” (w.e.f. 27-5-1976).

6. Subs. by s. 30, *ibid.*, for “expiry of three years” (w.e.f. 27-5-1976).

7. Subs. by s. 30, *ibid.*, for “expiration of the said three years” (w.e.f. 27-5-1976).

8. Subs. by s. 30, *ibid.*, for “expiration of the three years” (w.e.f. 27-5-1976).

9. Subs. by s. 30, *ibid.*, for “said three years” (w.e.f. 27-5-1976).

appealing has expired without an appeal having been presented, or an appeal has been presented but has been dismissed¹ * * * either party to the marriage may marry again.

CHAPTER VII

JURISDICTION AND PROCEDURE

31. Court to which petition should be made.—²[(I) Every petition under Chapter V or Chapter VI shall be presented to the district court within the local limits of whose 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

³[(iiia) in case the wife is the petitioner, where 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 by those who would naturally have heard of him if he were alive.]

(2) Without prejudice to any jurisdiction exercisable by the court under sub-section (I), the district court may, by virtue of this sub-section, entertain a petition by a wife domiciled in the territories to which this Act extends for nullity of marriage or for divorce if she is resident in the said territories and has been ordinarily resident therein for a period of three years immediately preceding the presentation of the petition and the husband is not resident in the said territories.

32. Contents and verification of petitions.—(I) Every petition under Chapter V or Chapter VI shall state, as distinctly as the nature of the case permits the facts on which the claim to relief is founded, and shall also state that there is no collusion between, the petitioner and the other party to the marriage.

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

⁴[**33. Proceedings to be *in camera* and may not be printed or published.**—(I) 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 (I), he shall be punishable with fine which may extend to one thousand rupees.]

34. Duty of court in passing decrees.—(I) In any proceeding under Chapter V or Chapter VI, whether defended or not, if the court is satisfied that,—

(a) any of the grounds for granting relief exists; and

(b) ⁵[where the petition is founded on the ground specified in clause (a) of sub-section (I) of section 27, the petitioner has not in any manner been accessory to or connived at or condoned the act of sexual intercourse referred to therein], or, where the ground of the petition is cruelty,

the petitioner has not in any manner condoned the cruelty; and

(c) when divorce is sought on the ground of mutual consent, such consent has not been obtained by force, fraud or undue influence; and

1. The words “and one year has elapsed thereafter but not sooner” omitted by Act 68 of 1976, s. 31, (w.e.f. 27-5-1976).

2. Subs. by s. 32, *ibid.*, for sub-section (I) (w.e.f. 27-5-1976).

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

4. Subs. by Act 68 of 1976, s. 33, for section 33 (w.e.f. 27-5-1976).

5. Subs. by s. 34, *ibid.* for “where the ground of the petition is adultery, the petitioner has not in any manner been accessory to or connived at or condoned the adultery” (w.e.f. 27-5-1976).

- (d) the petition is not presented or prosecuted in collusion with the respondent; and
- (e) there has not been any unnecessary or improper delay in instituting the proceedings; and
- (f) there is no other legal ground why the 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 a reconciliation between the parties:

¹[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 (c), clause (e), clause (f), clause (g) and clause (h) of sub-section (1) of section 27.]

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.]

³[**35. 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.]

36. Alimony pendente lite.—Where in any proceeding under Chapter V or Chapter VI it appears to the district court that the wife has no independent income sufficient for her support and the necessary expenses of the proceeding, it may, on the application of the wife, order the husband to pay to her the expenses of the proceeding, and weekly or monthly during the proceeding such sum as having regard to the husband’s income, it may seem to the court to be reasonable.

⁴[Provided that the application for the payment of the expenses of the proceeding and such weekly or monthly sum during the proceeding under Chapter V or Chapter VI, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the husband.]

37. Permanent alimony and maintenance.—(1) Any court exercising jurisdiction under Chapter V or Chapter VI may, at the time of passing any decree or at any time subsequent to the decree, on application made to it for the purpose, order that the husband shall secure to the wife for her maintenance and support, if necessary, by a charge on the husband’s property such gross sum or such monthly or periodical payment of money for a term not exceeding her life, as, having regard to her own property, if any, her husband’s property and ability ⁵[the conduct of the parties and other circumstances of the case], it may seem to the court to be just.

(2) If the district 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 it may seem to the court to be just.

1. Added by Act 68 of 1976, s. 34 (w.e.f. 27-5-1976).

2. Ins. by s. 34, *ibid.* (w.e.f. 27-5-1976).

3. Subs. by s. 35, *ibid.*, for section 35 (w.e.f. 27-5-1976).

4. Ins. by Act 49 of 2001, s. 6 (w.e.f. 24-9-2001).

5. Subs. by Act 68 of 1976, s. 36, for “and the conduct of the parties” (w.e.f. 27-5-1976).

(3) If the district court is satisfied that the wife in whose favour an order has been made under this section has remarried or is not leading a chaste life, ¹[it may, at the instance of the husband vary, modify or rescind any such order and in such manner as the court may deem just.]

38. Custody of children.—In any proceeding under Chapter V or Chapter VI the district court may, from time to time, pass such interim orders and make such provisions in the decree as it may seem to it to be 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, revoke, suspend or vary, 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.

²[Provided that the application with respect to the maintenance and education of the minor children, during the proceeding, under Chapter V or Chapter VI, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the respondent.]

³**[39. Appeals from decrees and orders.**—(1) All decrees made by the court in any proceeding under Chapter V or Chapter VI 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 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 37 or section 38 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 the exercise of its original 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 ⁴[period of ninety days] from the date of the decree or order.

39A. Enforcement of decrees and orders.—All decrees and orders made by the court in any proceeding under Chapter V or Chapter VI 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 are enforced.]

40. 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 (5 of 1908).

⁵**[40A. Power to transfer petitions in certain cases.**—(1) Where—

(a) a petition under this Act has been presented to the district court having jurisdiction, by a party to the marriage praying for a decree for judicial separation under section 23 or for a decree of divorce under section 27, and

(b) another petition under this Act has been presented thereafter by the other party to the marriage praying for decree for judicial separation under section 23, or for decree of divorce under section 27 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 petition 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;

1. Subs. by Act 68 of 1976, s. 36, for “it shall rescind the order” (w.e.f. 27-5-1976).

2. The proviso ins. by Act 49 of 2001, s. 7 (w.e.f. 24-9-2001).

3. Subs. by Act 68 of 1976, s. 37, for section 39 (w.e.f. 27-5-1976).

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

5. Ins. by Act 68 of 1976, s. 38 (w.e.f. 27-5-1976).

(b) if the petitions are presented to different district courts, the petitions 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.

40B. Special provisions 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 conclusions, 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.

40C. Documentary evidence.—Notwithstanding anything contained 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.]

41. Power of High Court to make rules regulating procedure.—(1) The High Court shall, by notification in the Official Gazette, make such rules consistent with the provisions contained in this Act and the Code of Civil Procedure, 1908 (5 of 1908), as it may consider expedient for the purpose of carrying into effect the provisions of Chapters V, VI and VII.

(2) In particular, and without prejudice to the generality of the foregoing provision, such rules shall provide for,—

(a) the impleading by the petitioner of the adulterer as a co-respondent on a petition for divorce on the ground of adultery, and the circumstances in which the petitioner may be excused from doing so;

(b) the awarding of damages against any such co-respondent;

(c) the intervention in any proceeding under Chapter V or Chapter VI by any person not already a party thereto;

(d) the form and contents of petitions for nullity of marriage or for divorce and the payment of costs incurred by parties to such petitions; and

(e) any other matter for which no provision or no sufficient provision is made in this Act, and for which provision is made in the Indian Divorce Act, 1869 (4 of 1869).

CHAPTER VIII

MISCELLANEOUS

42. Saving.—Nothing contained in this Act shall affect the validity of any marriage not solemnized under its provisions; nor shall this Act be deemed directly or indirectly to affect the validity of any mode of contracting marriage.

43. Penalty on married person marrying again under this Act.—Save as otherwise provided in Chapter III, every person who, being at the time married, procures, a marriage of himself or herself to be solemnized under this Act shall be deemed to have committed an offence under section 494 or section 495 of the Indian Penal Code (45 of 1860), as the case may be, and the marriage so solemnized shall be void.

44. Punishment of bigamy.—Every person whose marriage is solemnized under this Act and who, during the lifetime of his or her wife or husband, contracts any other marriage shall be subject to the penalties provided in section 494 and section 495 of the Indian Penal Code (45 of 1860), for the offence of marrying again during the lifetime of a husband or wife, and the marriage so contracted shall be void.

45. Penalty for signing false declaration or certificate.—Every person making, signing or attesting any declaration or certificate required by or under this Act containing a statement which is false and which he either knows or believes to be false or does not believe to be true shall be guilty of the offence described in section 199 of the Indian Penal Code (45 of 1860).

46. Penalty for wrongful action of Marriage Officer.—Any Marriage Officer who knowingly and wilfully solemnizes a marriage under this Act,—

- (1) without publishing a notice regarding such marriage as required by section 5, or
- (2) within thirty days of the publication of the notice of such marriage, or
- (3) in contravention of any other provision in this Act,

shall be punishable with simple imprisonment for a term which may extend to one year, or with fine which may extend to five hundred rupees, or with both.

47. Marriage Certificate Book to be open to inspection.—(1) The Marriage Certificate Book kept under this Act shall at all reasonable times be open for inspection and shall be admissible as evidence of the statements therein contained.

(2) Certified extracts from the Marriage Certificate Book shall, on application, be given by the Marriage Officer to the applicant on payment by him of the prescribed fee.

48. Transmission of copies of entries in marriage records.—Every Marriage Officer in a State shall send to Registrar-General of Births, Deaths and Marriages of that State at such intervals and in such form as may be prescribed, a true copy of all entries made by him in the Marriage Certificate Book since the last of such intervals, and, in the case of Marriage Officers outside the territories to which this Act extends, the true copy shall be sent to such authority as the Central Government may specify in this behalf.

49. Correction of errors.—(1) Any Marriage Officer who discovers any error in the form or substance of any entry in the Marriage Certificate Book may, within one month next after the discovery of such error, in the presence of the persons married or, in case of their death or absence, in the presence of two other credible witnesses, correct the error by entry in the margin without any alteration of the original entry and shall sign the marginal entry and add thereto the date of such correction and the Marriage Officer shall make the like marginal entry in the certificate thereof.

(2) Every correction made under this section shall be attested by the witnesses in whose presence it was made.

(3) Where a copy of any entry has already been sent under section 48 to the Registrar-General or other authority the Marriage Officer shall make and send in like manner a separate certificate of the original erroneous entry and of the marginal corrections therein made.

50. Power to make rules.—(1) The Central Government, in the case of ¹* * * officers of the Central Government, and the State Government, in all other cases, may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the duties and powers of Marriage Officers and the areas in which they may exercise jurisdiction;

1. The words “diplomatic and consular officers and other” omitted by Act 33 of 1969, s. 29 (w.e.f. 31-8-1969).

(b) the manner in which a Marriage Officer may hold inquiries under this Act and the procedure therefor;

(c) the form and manner in which any books required by or under this Act shall be maintained;

(d) the fees that may be levied for the performance of any duty imposed upon a Marriage Officer under this Act;

(e) the manner in which public notice shall be given under section 16;

(f) the form in which, and the intervals within which, copies of entries in the Marriage Certificate Book shall be sent in pursuance of section 48;

(g) any other matter which may be or requires to be prescribed.

¹[(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

(4) Every rule made by the State Government under this Act shall be laid, as soon as it is made before the State Legislature.]

51. Repeals and savings.—(1) The Special Marriage Act, 1872 (3 of 1872), and any law corresponding to the Special Marriage Act, 1872 (3 of 1872), in force in any Part B State immediately before the commencement of this Act are hereby repealed.

(2) Notwithstanding such repeal,—

(a) all marriages duly solemnized under the Special Marriage Act, 1872 (3 of 1872), or any such corresponding law shall be deemed to have been solemnized under this Act;

(b) all suits and proceedings in causes and matters matrimonial which, when this Act comes into operation, are pending in any court, shall be dealt with and decided by such court, so far as may be, as if they had been originally instituted therein under this Act.

(3) The provisions of sub-section (2) shall be without prejudice to the provisions contained in section 6 of the General Clauses Act, 1897 (10 of 1897), which shall also apply to the repeal of the corresponding law as if such corresponding law had been an enactment.

1. Ins. by Act 20 of 1983, s. 2 and the Schedule (w.e.f. 15.3.1984).

THE FIRST SCHEDULE

[See section 2(b) “Degrees of prohibited relationship”]

PART I

1. Mother.
2. Father’s widow (step-mother).
3. Mother’s mother.
4. Mother’s father’s widow (step grand-mother).
5. Mother’s mother’s mother.
6. Mother’s mother’s father’s widow (step great grand-mother).
7. Mother’s father’s mother.
8. Mother’s father’s father’s widow (step great grand-mother).
9. Father’s mother.
10. Father’s father’s widow (step-grand mother).
11. Father’s mother’s mother.
12. Father’s mother’s father’s widow (step great grand-mother).
13. Father’s father’s mother.
14. Father’s father’s father’s widow (step great grand-mother).
15. Daughter.
16. Son’s widow.
17. Daughter’s daughter.
18. Daughter’s son’s widow.
19. Son’s daughter.
20. Son’s son’s widow.
21. Daughter’s daughter’s daughter.
22. Daughter’s daughter’s son’s widow.
23. Daughter’s son’s daughter.
24. Daughter’s son’s son’s widow.
25. Son’s daughter’s daughter.
26. Son’s daughter’s son’s widow.
27. Son’s son’s daughter.
28. Son’s son’s son’s widow.
29. Sister.
30. Sister’s daughter.
31. Brother’s daughter.
32. Mother’s sister.
33. Father’s sister.
34. Father’s brother’s daughter.

35. Father's sister's daughter.
36. Mother's sister's daughter.
37. Mother's brother's daughter.

Explanation.—For the purposes of this Part, the expression “widow” includes a divorced wife.

PART II

1. Father.
2. Mother's husband (step-father).
3. Father's father.
4. Father's mother's husband (step grand-father).
5. Father's father's father.
6. Father's father's mother's husband (step great grand-father).
7. Father's mother's father.
8. Father's mother's mother's husband (step great grand-father).
9. Mother's father.
10. Mother's mother's husband (step grand-father).
11. Mother's father's father.
12. Mother's father's mother's husband (step great grand-father).
13. Mother's mother's father.
14. Mother's mother's mother's husband (step great grand-father).
15. Son.
16. Daughter's husband.
17. Son's son.
18. Son's daughter's husband.
19. Daughter's son.
20. Daughter's daughter's husband.
21. Son's son's son.
22. Son's son's daughter's husband.
23. Son's daughter's son.
24. Son's daughter's daughter's husband.
25. Daughter's son's son.
26. Daughter's son's daughter's husband.
27. Daughter's daughter's son.
28. Daughter's daughter's daughter's husband.
29. Brother.
30. Brother's son.
31. Sister's son.
32. Mother's brother.

33. Father's brother.

34. Father's brother's son.

35. Father's sister's son.

36. Mother's sister's son.

37. Mother's brother's son.

Explanation.—For the purposes of this part, the expression “husband” includes a divorced husband.

THE SECOND SCHEDULE
(See section 5)
NOTICE OF INTENDED MARRIAGE

To

Marriage Officer for theDistrict.

We hereby give you notice that a marriage under the Special Marriage Act, 1954, is intended to be solemnized between us within three calendar months from the date hereof.

Name	Condition	Occupation	Age	Dwelling place	Permanent place dwelling if present dwelling place not permanent	Length of residence
A.B.	<u>Unmarried</u> <u>Widower</u> Divorcee					
C.D.	<u>Unmarried</u> <u>Widow</u> Divorcee					

Witness our hands thisday of.....20.....

(Sd.) A.B.,

(Sd.) C.D.,

THE THIRD SCHEDULE

(See section 11)

DECLARATION TO BE MADE BY THE BRIDEGROOM

I, A.B., hereby declare as follows:—

1. I am at the present time unmarried (or a widower or a divorcee, as the case may be).
2. I have completedyears of age.
3. I am not related to C.D. (the bride) within the degrees of prohibited relationship.
4. I am aware that, if any statement in this declaration is false, and if in making such statement I either know or believe it to be false or do not believe it to be true, I am liable to imprisonment and also to fine.

(Sd.) A.B. (the Bridegroom).

DECLARATION TO BE MADE BY THE BRIDE

I, C.D., hereby declare as follows:—

1. I am at the present time unmarried (or a widow or a divorcee, as the case may be).
2. I have completedyears of age.
3. I am not related to A.B. (the Bridegroom) within the degrees of prohibited relationship.
4. I am aware that, if any statement in this declaration is false, and if in making such statement I either know or believe it to be false or do not believe it to be true, I am liable to imprisonment and also to fine.

(Sd.) C.D. (the Bride)

Signed in our presence by the above-named A.B. and C.D. So far as we are aware there is no lawful impediment to the marriage.

(Sd.) G.H. } *Three witnesses.*
(Sd.) I.J. }
(Sd.) K.L. }
Countersigned E.F.,

Countersigned E.F.,

Marriage Officer

Dated the _____ day of _____ 20____

THE FOURTH SCHEDULE

(See section 13)

CERTIFICATE OF MARRIAGE

I, E.F., hereby certify that on the.....day of
.....20.....,A.B. and C.D* appeared before me and
that each of them, in my presence and in the presence of three witnesses who have signed hereunder,
made the declarations required by section 11 and that a marriage under this Act was solemnized between
them in my presence.

(Sd.) E.F.,

Marriage Officer for

(Sd.) A.B.,

Bridegroom

(Sd.) C.D.,

Bride.

(Sd.) G.H.

(Sd.) I.J.

(Sd.) K.L.

} *Three witnesses*

Dated the

day of

20

* Herein give particulars of the parties.

THE FIFTH SCHEDULE

(See section 16)

CERTIFICATE OF MARRIAGE CELEBRATED IN OTHER FORMS

I, E.F., hereby certify that A.B. and CD.* appeared before me thisday of..... 20 and that each of them, in my presence and in the presence of three witnesses who have signed hereunder have declared that a ceremony of marriage has been performed between them and that they have been living together as husband and wife since the time of their marriage, and that in accordance with their desire to have their marriage registered under this Act, the said marriage has, this day of 20..... been registered under this Act, having effect as from.

<i>Marriage Officer for</i>	(Sd.) E.F.,	
	(Sd.) A.B.,	<i>Husband.</i>
	(Sd.) C.D.	<i>Wife.</i>
	(Sd.) G.H.	} <i>Three witnesses.</i>
	(Sd.) IJ.	
(Sd.) K.L.		

Dated the _____ *day of* _____ *20.*

* Herein give particulars of the parties.

4. Hindu Marriage Act, 1955

THE HINDU MARRIAGE ACT, 1955

ARRANGEMENT OF SECTIONS

PRELIMINARY

SECTIONS

1. Short title and extent.
2. Application of Act.
3. Definitions.
4. Overriding effect of Act.

HINDU MARRIAGES

5. Conditions for a Hindu marriage.
6. [*Omitted.*].
7. Ceremonies for a Hindu marriage.
8. Registration of Hindu marriages.

RESTITUTION OF CONJUGAL RIGHTS AND JUDICIAL SEPARATION

9. Restitution of conjugal right.
10. Judicial separation.

NULLITY OF MARRIAGE AND DIVORCE

11. Void marriages.
12. Voidable marriages.
13. Divorce.
- 13A. Alternate relief in divorce proceedings.
- 13B. Divorce by mutual consent.
14. No petition for divorce to be presented within one year of marriage.
15. Divorced persons when may marry again.
16. Legitimacy of children of void and voidable marriages.
17. Punishment of bigamy.
18. Punishment for contravention of certain other conditions for a Hindu marriage.

JURISDICTION AND PROCEDURE

19. Court to which petition shall be presented.
20. Contents and verification of petitions.
21. Application of Act 5 of 1908.
- 21A. Power to transfer petitions in certain cases.
- 21B. Special provision relating to trial and disposal of petitions under the Act.
- 21C. Documentary evidence.
22. Proceedings to be in camera and may not be printed or published.
23. Decree in proceedings.
- 23A. Relief for respondent in divorce and other proceedings.
24. Maintenance *pendente lite* and expenses of proceedings.
25. Permanent alimony and maintenance.
26. Custody of children.
27. Disposal of property.
28. Appeals from decrees and orders.
- 28A. Enforcement of decrees and orders.

SAVINGS AND REPEALS

SECTIONS

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^{2***}, 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.

2. The words “except the State of Jammu and Kashmir” omitted by Act 34 of 2019, s. 95 and the Fifth Schedule (w.e.f. 31-10-2019).

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).

(b) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or

(c) has been subject to recurrent attacks of insanity ^{1***;}]

(iii) the bridegroom has completed the age of ²[twenty-one years] and the bride, the age of ³[eighteen years] at the time of the marriage;

(iv) the parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two;

(v) the parties are not *sapindas* of each other, unless the custom or usage governing each of them permits of a marriage between the two;

4* * * * *

6. [*Guardianship in marriage.*—Omitted by the *Child Marriage Restraint (Amendment) Act, 1978*, (2 of 1978), s. 6 and *Schedule* (w.e.f. 1-10-1978).

7. Ceremonies for a Hindu marriage.—(1) A Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto.

(2) Where such rites and ceremonies include the *Saptapadi* (that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire), the marriage becomes complete and binding when the seventh step is taken.

8. Registration of Hindu marriages.—(1) For the purpose of facilitating the proof of Hindu marriages, the State Government may make rules providing that the parties to any such marriage may have the particulars relating to their marriage entered in such manner and subject to such conditions as may be prescribed in a Hindu Marriage Register kept for the purpose.

(2) Notwithstanding anything contained in sub-section (1), the State Government may, if it is of opinion that it is necessary or expedient so to do, provide that the entering of the particulars referred to in sub-section (1) shall be compulsory in the State or in any part thereof, whether in all cases or in such cases as may be specified, and where any such direction has been issued, any person contravening any rule made in this behalf shall be punishable with fine which may extend to twenty-five rupees.

(3) All rules made under this section shall be laid before the State Legislature, as soon as may be, after they are made.

(4) The Hindu Marriage Register shall at all reasonable times be open for inspection, and shall be admissible as evidence of the statements therein contained and certified extracts therefrom shall, on application, be given by the Registrar on payment to him of the prescribed fee.

(5) Notwithstanding anything contained in this section, the validity of any Hindu marriage shall in no way be affected by the omission to make the entry.

RESTITUTION OF CONJUGAL RIGHTS AND JUDICIAL SEPARATION

9. Restitution of conjugal right.—^{5**} * When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply, by petition to the district court, 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.

⁶[*Explanation.*—Where a question arises whether there has been reasonable excuse for withdrawal from the society, the burden of proving reasonable excuse shall be on the person who has withdrawn from the society.]

7* * * * *

1. The words “or epilepsy” omitted by Act 39 of 1999, s. 2 (w.e.f. 29-12-1999).

2. Subs. by Act 2 of 1978, s. 6 and Schedule for “eighteen years” (w.e.f. 1-10-1978).

3. Subs. by s. 6 and Schedule, *ibid.*, for “fifteen years” (w.e.f. 1-10-1978).

4. Clause (vi) omitted by s. 6 and Schedule, *ibid.* (w.e.f. 1-10-1978).

5. The brackets and figure “(1)” omitted by Act 68 of 1976, s. 3 (w.e.f. 27-5-1976).

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

7. Sub-section (2) omitted by s. 3, *ibid.* (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 ⁴* * * 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; ⁵***

⁶* * * * *

⁷[*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.]

⁸[(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 ⁹[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 ⁹[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. Certain words omitted by s. 7, *ibid.* (w.e.f. 27-5-1976).

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

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

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

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

9. 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 or ¹[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).]

STATE AMENDMENT

Uttar Pradesh

Amendment of section 13 of Act XXV of 1955.—In sub-section (1) of section 13 of the Hindu Marriage Act, 1955,—

(a) after clause (i) the following new cause shall be inserted and shall be deemed always to have been inserted;

“(i-a) has persistently or repeatedly treated the petitioner with such cruelty as to cause a reasonable apprehension in the mind of the petitioner that it will be harmful or injurious for the petitioner to live with the other party ;or”, and

(b) for clause (vii), the following clause shall be substituted and shall be deemed always to have been substituted;

“(viii) has not resumed cohabitation after the passing of a decree for judicial separation against that party and—

(a) a period of two years has elapsed since the passing of such decree, or

(b) the case is one of exceptional hardship to the petitioner or of exceptional depravity on the part of the other party; or”.

[*Vide* Uttar Pradesh Act XIII of 1962, s. 2]

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.

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).

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, ¹[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 decree shall not have effect until after the ²[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 ³[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 ⁴[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 ⁵[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.

6* * * * *

⁷[16. Legitimacy of children of void and voidable marriages.—(1) Notwithstanding that a 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.

1. Subs. by Act 68 of 1976, s. 9, for certain words (w.e.f. 27-5-1976).

2. Subs. by s. 9, *ibid.*, for “expiry of three years” (w.e.f. 27-5-1976).

3. Subs. by s. 9, *ibid.*, for “expiration of the said one year” (w.e.f. 27-5-1976).

4. Subs. by s. 9, *ibid.*, for “expiry of three years” (w.e.f. 27-5-1976).

5. Subs. by s. 9, *ibid.*, for “said three years” (w.e.f. 27-5-1976).

6. Proviso omitted by s.10, *ibid.* (w.e.f. 27-5-1976).

7. Subs. by s. 11, *ibid.*, for s. 16 (w.e.f. 27-5-1976).

(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), ¹[and (v)] of section 5 shall be punishable—

²[(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; ³* * *

4* * * * *

JURISDICTION AND PROCEDURE

⁵[**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

⁶[(iiiia) 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 ⁷[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 complaints, 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.

1. Subs. by Act 2 of 1978, s. 6 and Schedule, for “(v) and (vi)” (w.e.f. 1-10-1978).

2. Subs. by Act 6 of 2007, s. 20 (w.e.f. 30-10-2007).

3. The word “and” omitted by Act 2 of 1978, s. 6 and Schedule (w.e.f. 1-10-1978).

4. Clause (c) omitted by s. 6 and Schedule, *ibid.* (w.e.f. 1-10-1978).

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

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

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

¹[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.

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.]

²[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 ³[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

1. Ins. by Act 68 of 1976, s. 14, (w.e.f. 27-5-1976).

2. Subs. by s. 15, *ibid.*, for s. 22 (w.e.f. 27-5-1976).

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

(b) where the ground of the petition is the ground specified ¹* * * in clause (i) of sub-section (I) 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) ²[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:

³[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 (I) of section 13.]

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.]

⁴[**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.

⁵[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.—(I) 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 ⁶* * * pay to

1. The words, bracket, letter of figure “in clause (f) of sub-section (I) of section 10 or” omitted by Act 68 of 1976, s. 16, (w.e.f. 27-5-1976).

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

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

4. Ins by s. 17, *ibid.* (w.e.f. 27-5-1976).

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

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

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 ¹[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, ²[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:

³[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.

⁴[**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 ⁵[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

1. Subs. by Act 68 of 1976, s. 18, for certain words. (w.e.f. 27-5-1976).

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

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

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

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

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).*

5. Hindu Adoptions and Maintenance Act, 1956

THE HINDU ADOPTIONS AND MAINTENANCE ACT, 1956

ARRANGEMENT OF SECTIONS

CHAPTER I PRELIMINARY

SECTIONS

1. Short title and extent.
2. Application of Act.
3. Definitions.
4. Overriding effect of Act.

CHAPTER II ADOPTION

5. Adoptions to be regulated by this Chapter.
6. Requisites of a valid adoption.
7. Capacity of a male Hindu to take in adoption.
8. Capacity of a female Hindu to take in adoption.
9. Persons capable of giving in adoption.
10. Persons who may be adopted.
11. Other conditions for a valid adoption.
12. Effects of adoption.
13. Right of adoptive parents to dispose of their properties.
14. Determination of adoptive mother in certain cases.
15. Valid adoption not to be cancelled.
16. Presumption as to registered documents relating to adoptions.
17. Prohibition of certain payments.

CHAPTER III MAINTENANCE

18. Maintenance of wife.
19. Maintenance of widowed daughter-in-law.
20. Maintenance of children and aged parents.
21. Dependants defined.
22. Maintenance of dependants.
23. Amount of maintenance.
24. Claimant to maintenance should be a Hindu.
25. Amount of maintenance may be altered on change of circumstances.
26. Debts to have priority.
27. Maintenance when to be a charge.
28. Effect of transfer of property on right to maintenance.
29. *[Repealed.]*.
30. Savings.

THE HINDU ADOPTIONS AND MAINTENANCE ACT, 1956

ACT No. 78 OF 1956¹

[21st December, 1956.]

An Act to amend and codify the law relating to adoptions and maintenance among Hindus.

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

CHAPTER I

PRELIMINARY

1. Short title and extent.—(1) This Act may be called the Hindu Adoptions and Maintenance Act, 1956.

(2) It extends to the whole of India ^{2***}.

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 AryaSamaj,

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

(c) to any other person 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; ^{3* * *}

⁴[(bb) any child, legitimate or illegitimate, who has been abandoned both by his father and mother or whose parentage is not known and who in either case is brought up as a Hindu, Buddhist, Jaina or Sikh; 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.

1. This Act has been extended to Dadra and Nagar Haveli by Reg. 6 of 1963, s. 2 and First Schedule.

This Act has been amended in U.P. Act 57 of 1976.

This Act shall, from a date to be notified by the administrator, come into force in Pondicherry, subject to the following modification:

In section 2, after sub-section (2), insert:—

“(2A) Notwithstanding anything contained in sub-section (1) nothing contained in this Act shall apply to the renoncants of the Union territory of Pondicherry.”

2. The words “except the State of Jammu and Kashmir” omitted by Act 34 of 2019, s. 95 and the Fifth Schedule (w.e.f. 31-10-2019).

3. The word “and” omitted by Act 45 of 1962, s. 2 (w.e.f. 19-11-1962).

4. Ins. by s. 2, *ibid.* (w.e.f. 19-11-1962).

(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) “maintenance” includes—

(i) in all cases, provision for food, clothing, residence, education and medical attendance and treatment;

(ii) in the case of an unmarried daughter, also the reasonable expenses of and incident to her marriage;

(c) “minor” means a person who has not completed his or her age of eighteen years.

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 apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act.

CHAPTER II

ADOPTION

5. Adoptions to be regulated by this Chapter.—(1) No adoption shall be made after the commencement of this Act by or to a Hindu except in accordance with the provisions contained in this Chapter, and any adoption made in contravention of the said provisions shall be void.

(2) An adoption which is void shall neither create any rights in the adoptive family in favour of any person which he or she could not have acquired except by reason of the adoption, nor destroy the rights of any person in the family of his or her birth.

6. Requisites of a valid adoption.—No adoption shall be valid unless—

(i) the person adopting has the capacity, and also the right, to take in adoption;

(ii) the person giving in adoption has the capacity to do so;

(iii) the person adopted is capable of being taken in adoption; and

(iv) the adoption is made in compliance with the other conditions mentioned in this Chapter.

7. Capacity of a male Hindu to take in adoption.—Any male Hindu who is of sound mind and is not a minor has the capacity to take on or a daughter in adoption:

Provided that, if he has a wife living, he shall not adopt except with the consent of his wife unless the wife has completely and finally renounced the word or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.

Explanation.—If a person has more than one wife living at the time of adoption, the consent of all the wives is necessary unless the consent of any one of them is unnecessary for any of the reasons specified in the preceding proviso.

¹**[8.Capacity of a female Hindu to take in adoption.**—Any female Hindu who is of sound mind and is not a minor has the capacity to take a son or daughter in adoption:

Provided that, if she has a husband living, she shall not adopt a son or daughter except with the consent of her husband unless the husband has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.]

9.Persons capable of giving in adoption.—(1)No person except the father or mother or the guardian of a child shall have the capacity to give the child in adoption.

²[(2) Subject to the provisions of sub-section (4), the father or the mother, if alive, shall have equal right to give a son or daughter in adoption:

Provided that such right shall not be exercised by either of them save with the consent of the other unless one of them has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.]

3* * * * *

⁴[(4) Where both the father and mother are dead or have completely and finally renounced the world or have abandoned the child or have been declared by a court of competent jurisdiction to be of unsound mind or where the parentage of the child is not known, the guardian of the child may give the child in adoption with the previous permission of the court to any person including the guardian himself.]

(5) Before granting permission to a guardian under sub-section (4), the court shall be satisfied that the adoption will be for the welfare of the child, due consideration being for this purpose given to the wishes of the child having regard to the age and understanding of the child and that the applicant for permission has not received or agreed to receive and that no person has made or given or agreed to make or give to the applicant any payment or reward in consideration of the adoption except such as the court may sanction.

Explanation.—For the purposes of this section—

(i) the expressions “father” and “mother” do not include an adoptive father and an adoptive mother; ⁵* * *

⁶[(ia) “guardian” means a person having the care of the person of a child or of both his person and property and includes—

(a) a guardian appointed by the will of the child's father or mother, and

(b) a guardian appointed or declared by a court; and]

(ii) “court” means the city civil court or a district court within the local limits of whose jurisdiction the child to be adopted ordinarily resides.

1. Subs. by Act 30 of 2010, s. 3, for section 8 (w.e.f. 31-8-2010).

2. Subs. by s. 3, *ibid.*, for sub-section (2) (w.e.f. 31-8-2010).

3. Sub-section (3) omitted by s. 3, *ibid.* (w.e.f. 31-8-2010).

4. Subs.by Act 45 of 1962, s. 3, for sub-section (4) (w.e.f. 29-11-1962).

5. The word “and” omitted by s. 3, *ibid.* (w.e.f. 29-11-1962).

6. Ins. by s. 3, *ibid.*(w.e.f. 29-11-1962).

10. Persons who may be adopted.—No person shall be capable of being taken in adoption unless the following conditions are fulfilled, namely:—

(i) he or she is a Hindu;

(ii) he or she has not already been adopted;

(iii) he or she has not been married, unless there is a custom or usage applicable to the parties which permits persons who are married being taken in adoption;

(iv) he or she has not completed the age of fifteen years, unless there is a custom or usage applicable to the parties which permits persons who have completed the age of fifteen years being taken in adoption.

11. Other conditions for a valid adoption.—In every adoption, the following conditions must be complied with:—

(i) if the adoption is of a son, the adoptive father or mother by whom the adoption is made must not have a Hindu sonson's son or son's son's son (whether by legitimate blood relationship or by adoption) living at the time of adoption;

(ii) if the adoption is of a daughter, the adoptive father or mother by whom the adoption is made must not have a Hindu daughter or son's daughter (whether by legitimate blood relationship or by adoption) living at the time of adoption;

(iii) if the adoption is by a male and the person to be adopted is a female, the adoptive father is at least twenty-one years older than the person to be adopted;

(iv) if the adoption is by a female and the person to be adopted is a male, the adoptive mother is at least twenty-one years older than the person to be adopted;

(v) the same child may not be adopted simultaneously by two or more persons;

(vi) the child to be adopted must be actually given and taken in adoption by the parents or guardian concerned or under their authority with intent to transfer the child from the family of its birth ¹[or in the case of an abandoned child or a child whose parentage is not known, from the place or family where it has been brought up] to the family of its adoption:

Provided that the performance of *dattahomam* shall not be essential to the validity of an adoption.

12. Effects of adoption.—An adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption and from such date all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family:

Provided that—

(a) the child cannot marry any person whom he or she could not have married if he or she had continued in the family of his or her birth;

(b) any property which vested in the adopted child before the adoption shall continue to vest in such person subject to the obligations, if any, attaching to the ownership of such property, including the obligation to maintain relatives in the family of his or her birth;

(c) the adopted child shall not divest any person of any estate which vested in him or her before the adoption.

1. Ins. by Act 45 of 1962, s. 4 (w.e.f. 29-11-1962).

13. Right of adoptive parents to dispose of their properties.—Subject to any agreement to the contrary, an adoption does not deprive the adoptive father or mother of the power to dispose of his or her property by transfer *inter vivos* or by will.

14. Determination of adoptive mother in certain cases.—(1) Where a Hindu who has a wife living adopts a child, she shall be deemed to be the adoptive mother.

(2) Where an adoption has been made with the consent of more than one wife, the senior most in marriage among them shall be deemed to be the adoptive mother and the others to be step-mothers.

(3) Where a widower or a bachelor adopts a child, any wife whom he subsequently marries shall be deemed to be the step-mother of the adopted child.

(4) Where a widow or an unmarried woman adopts a child, any husband whom she marries subsequently shall be deemed to be the step-father of the adopted child.

15. Valid adoption not to be cancelled.—No adoption which has been validly made can be cancelled by the adoptive father or mother or any other person, nor can the adopted child renounce his or her status as such and return to the family of his or her birth.

16. Presumption as to registered documents relating to adoption.—Whenever any document registered under any law for the time being in force is produced before any court purporting to record an adoption made and is signed by the person giving and the person taking the child in adoption, the court shall presume that the adoption has been made in compliance with the provisions of this Act unless and until it is disproved.

STATE AMENDMENT

Uttar Pradesh

Amendment of section 16 of Act 78 of 1956.—In the Hindu Adaptation and Maintenance Act, 1956, section 16 shall be re-numbered as sub-section (1) thereof, and after sub-section (1) as so re-numbered the following sub-section shall be inserted namely:—

“(2) In case any adoption made on or after the first day of January, 1977 no Court in Uttar Pradesh shall accept any evidence in proof of the giving and taking of the child in adoption, except a document recording an adoption, made and signed by the person giving and the person taking the child in adoption, and registered under any law for the time being in force;

Provided that secondary evidence of such document shall be admissible in the circumstances and the manner laid down in the Indian Evidence Act, 1872 (1 of 1872).”.

[Vide Uttar Pradesh Act 57 of 1976, s. 35]

17. Prohibition of certain payments.—(1) No person shall receive or agree to receive any payment or other reward in consideration of the adoption of any person, and no person shall make or give or agree to make or give to any other person any payment or reward the receipt of which is prohibited by this section.

(2) If any person contravenes the provisions of sub-section (1), he shall be punishable with imprisonment which may extend to six months, or with fine, or with both.

(3) No prosecution under this section shall be instituted without the previous sanction of the State Government or an officer authorised by the State Government in this behalf.

CHAPTER III

MAINTENANCE

18. Maintenance of wife.—(1) Subject to the provisions of this section, a Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained by her husband during her life time.

(2) A Hindu wife shall be entitled to live separately from her husband without forfeiting her claim to maintenance,—

(a) if he is guilty of desertion, that is to say, of abandoning her without reasonable cause and without her consent or against her wish, or of wilfully neglecting her;

(b) if he has treated her with such cruelty as to cause a reasonable apprehension in her mind that it will be harmful or injurious to live with her husband;

1* * * *

(d) if he has any other wife living;

(e) if he keeps a concubine in the same house in which his wife is living or habitually resides with a concubine elsewhere;

(f) if he has ceased to be a Hindu by conversion to another religion;

(g) if there is any other cause justifying her living separately.

(3) A Hindu wife shall not be entitled to separate residence and maintenance from her husband if she is unchaste or ceases to be a Hindu by conversion to another religion.

19. Maintenance of widowed daughter-in-law.—(1) A Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained after the death of her husband by her father-in-law:

Provided and to the extent that she is unable to maintain herself out of her own earnings or other property or, where she has no property of her own, is unable to obtain maintenance—

(a) from the estate of her husband or her father or mother, or

(b) from her son or daughter, if any, or his or her estate.

(2) Any obligation under sub-section (1) shall not be enforceable if the father-in-law has not the means to do so from any coparcenary property in his possession out of which the daughter-in-law has not obtained any share, and any such obligation shall cease on the remarriage of the daughter-in-law.

20. Maintenance of children and aged parents.—(1) Subject to the provisions of this section a Hindu is bound, during his or her life-time, to maintain his or her legitimate or illegitimate children and his or her aged or infirm parents.

(2) A legitimate or illegitimate child may claim maintenance from his or her father or mother so long as the child is a minor.

(3) The obligation of a person to maintain his or her aged or infirm parent or a daughter who is unmarried extends in so far as the parent or the unmarried daughter, as the case may be, is unable to maintain himself or herself out of his or her own earnings or other property.

Explanation.—In this section “parent” includes a childless step-mother.

21. Dependants defined.—For the purposes of this Chapter “dependants” mean the following relatives of the deceased:—

(i) his or her father;

(ii) his or her mother;

(iii) his widow, so long as she does not re-marry;

(iv) his or her son or the son of his predeceased son or the son of a predeceased son of his pre-deceased son, so long as he is a minor: provided and to the extent that he is unable to obtain maintenance, in the case of a grandson from his father’s or mother’s estate, and in the case of a great-grandson, from the estate of his father or mother or father’s father or father’s mother;

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

(v) his or her unmarried daughter, or the unmarried daughter of his predeceased son or the unmarried daughter of a predeceased son of his predeceased son, so long as she remains unmarried: provided and to the extent that she is unable to obtain maintenance, in the case of a grand-daughter from her father's or mother's estate and in the case of a great-grand-daughter from the estate of her father or mother or father's father or father's mother;

(vi) his widowed daughter: provided and to the extent that she is unable to obtain maintenance—

(a) from the estate of her husband; or

(b) from her son or daughter if any, or his or her estate; or

(c) from her father-in-law or his father or the estate of either of them;

(vii) any widow of his son or of a son of his predeceased son, so long as she does not re-marry: provided and to the extent that she is unable to obtain maintenance from her husband's estate, or from her son or daughter, if any, or his or her estate; or in the case of a grandson's widow, also from her father-in-law's estate;

(viii) his or her minor illegitimate son, so long as he remains a minor;

(ix) his or her illegitimate daughter, so long as she remains unmarried.

22. Maintenance of dependants.—(1) Subject to the provisions of sub-section (2), the heirs of a deceased Hindu are bound to maintain the dependants of the deceased out of the estate inherited by them from the deceased.

(2) Where a dependant has not obtained, by testamentary or intestate succession, any share in the estate of a Hindu dying after the commencement of this Act, the dependant shall be entitled, subject to the provisions of this Act, to maintenance from those who take the estate.

(3) The liability of each of the persons who takes the estate shall be in proportion to the value of the share or part of the estate taken by him or her.

(4) Notwithstanding anything contained in sub-section (2) or sub-section (3), no person who is himself or herself a dependant shall be liable to contribute to the maintenance of others, if he or she has obtained a share or part the value of which is, or would, if the liability to contribute were enforced, become less than what would be awarded to him or her by way of maintenance under this Act.

23. Amount of maintenance.—(1) It shall be in the discretion of the court to determine whether any, and if so what, maintenance shall be awarded under the provisions of this Act, and in doing so the court shall have due regard to the considerations set out in sub-section (2) or sub-section (3), as the case may be, so far as they are applicable.

(2) In determining the amount of maintenance, if any, to be awarded to a wife, children or aged or infirm parents under this Act, regard shall be had to—

(a) the position and status of the parties;

(b) the reasonable wants of the claimant;

(c) if the claimant is living separately, whether the claimant is justified in doing so;

(d) the value of the claimant's property and any income derived from such property, or from the claimant's own earnings or from any other source;

(e) the number of persons entitled to maintenance under this Act.

(3) In determining the amount of maintenance, if any, to be awarded to a dependent under this Act, regard shall be had to—

(a) the net value of the estate of the deceased after providing for the payment of his debts;

- (b) the provision, if any, made under a will of the deceased in respect of the dependant;
- (c) the degree of relationship between the two;
- (d) the reasonable wants of the dependant;
- (e) the past relations between the dependant and the deceased;
- (f) the value of the property of the dependant and any income derived from such property; or from his or her earnings or from any other source;
- (g) the number of dependants entitled to maintenance under this Act.

24. Claimant to maintenance should be a Hindu.—No person shall be entitled to claim maintenance under this Chapter if he or she has ceased to be a Hindu by conversion to another religion.

25. Amount of maintenance may be altered on change of circumstances.—The amount of maintenance, whether fixed by a decree of court or by agreement, either before or after the commencement of this Act, may be altered subsequently if there is a material change in the circumstances justifying such alteration.

26. Debts to have priority.—Subject to the provisions contained in section 27 debts of every description contracted or payable by the deceased shall have priority over the claims of his dependants for maintenance under this Act.

27. Maintenance when to be a charge.—A dependant's claim for maintenance under this Act shall not be a charge on the estate of the deceased or any portion thereof, unless one has been created by the will of the deceased, by a decree of court, by agreement between the dependant and the owner of the estate or portion, or otherwise.

28. Effect of transfer of property on right to maintenance.—Where a dependant has a right to receive maintenance out of an estate and such estate or any part thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the right, or if the transfer is gratuitous; but not against the transferee for consideration and without notice of the right.

CHAPTER IV

REPEALS AND SAVINGS

29. [Repeals.]—*Rep. by the Repealing and Amending Act, 1960 (58 of 1960), s. 2 and the First Schedule (w.e.f. 26-11-1960).*

30. Savings.—Nothing contained in this Act shall affect any adoption made before the commencement of this Act, and the validity and effect of any such adoption shall be determined as if this Act had not been passed.

6. Hindu Minority and Guardianship Act, 1956

THE HINDU MINORITY AND GUARDIANSHIP ACT, 1956

ARRANGEMENT OF SECTIONS

SECTIONS

1. Short title and extent.
2. Act to be supplemental to Act 8 of 1890.
3. Application of Act.
4. Definitions.
5. Over-riding effect of Act.
6. Natural guardians of a Hindu minor.
7. Natural guardianship of adopted son.
8. Powers of natural guardian.
9. Testamentary guardians and their powers.
10. Incapacity of minor to act as guardian of property.
11. *De facto* guardian not to deal with minor's property.
12. Guardian not to be appointed for minors undivided interest in joint family property.
13. Welfare of minor to be paramount consideration.

THE HINDU MINORITY AND GUARDIANSHIP ACT, 1956

ACT NO. 32 OF 1956

[25th August, 1956.]

An Act to amend and codify certain parts of the law relating to minority and guardianship among Hindus.

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

1. Short title and extent.—(1) This Act may be called the Hindu Minority and Guardianship Act, 1956.

(2) It extends to the whole of India ^{1***} and applies also to Hindus domiciled in the territories to which this Act extends who are outside the said territories.

2. Act to be supplemental to Act 8 of 1890.—The provisions of this Act shall be in addition to, and not, save as hereinafter expressly provided, in derogation of, the Guardians and Wards Act, 1890 (8 of 1890).

3. 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, Jain 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, Jains, or Sikhs by religion, as the case may be:—

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

(ii) any child, legitimate or illegitimate, one of whose parents is a Hindu, Buddhist, Jain 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

(iii) any person who is convert or re-convert to the Hindu, Buddhist, Jain 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.

²[(2A) Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the Renoncants of the Union Territory of Pondicherry.]

(3) The expression “Hindu”, in any provision 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.

4. Definitions.—In this Act,—

(a) “minor” means a person who has not completed the age of eighteen years;

(b) “guardian” means a person having the care of the person of a minor or of his property or of both his person and property, and includes—

1. The words “except the State of Jammu and Kashmir” omitted by Act 34 of 2019, s. 95 and the Fifth Schedule (w.e.f. 31-10-2019).

2. Ins. by Act 26 of 1968, s. 3(1) and the Schedule (w.e.f. 24-5-1968).

- (i) a natural guardian,
- (ii) a guardian appointed by the will of the minor's father or mother,
- (iii) a guardian appointed or declared by a court, and
- (iv) a person empowered to act as such by or under any enactment relating to any Court of wards.

(c) "natural guardian" means any of the guardians mentioned in section 6.

5. Over-riding 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.

6. Natural guardians of a Hindu minor.—The natural guardians of a Hindu minor; in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property), are—

(a) in the case of a boy or an unmarried girl—the father, and after him, the mother: provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother;

(b) in the case of an illegitimate boy or an illegitimate unmarried girl—the mother, and after her, the father;

(c) in the case of a married girl—the husband:

Provided that no person shall be entitled to act as the natural guardian of a minor under the provisions of this section—

(a) if he has ceased to be a Hindu, or

(b) if he has completely and finally renounced the world by becoming a hermit (vanaprastha) or an ascetic (yati or sanyasi).

Explanation.—In this section, the expressions "father" and "mother" do not include a step-father and a step-mother.

7. Natural guardianship of adopted son.—The natural guardianship of an adopted son who is a minor passes, on adoption, to the adoptive father and after him to the adoptive mother.

8. Powers of natural guardian.—(1) The natural guardian of a Hindu minor has power, subject to the provisions of this section, to do all acts which are necessary or reasonable and proper for the benefit of the minor or for the realization, protection or benefit of the minor's estate; but the guardian can in no case bind the minor by a personal covenant.

(2) The natural guardian shall not, without the previous permission of the court,—

(a) mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of the minor; or

(b) lease any part of such property for a term exceeding five years or for a term extending more than one year beyond the date on which the minor will attain majority.

(3) Any disposal of immovable property by a natural guardian, in contravention of sub-section (1) or sub-section (2), is voidable at the instance of the minor or any person claiming under him.

(4) No court shall grant permission to the natural guardian to do any of the acts mentioned in sub-section (2) except in case of necessity or for an evident advantage to the minor.

(5) The Guardians and Wards Act, 1890 (8 of 1890), shall apply to and in respect of an application for obtaining the permission of the court under sub-section (2) in all respects as if it were an application for obtaining the permission of the court under section 29 of that Act, and in particular—

(a) proceedings in connection with the application shall be deemed to be proceedings under that Act within the meaning of section 4A thereof;

(b) the court shall observe the procedure and have the powers specified in sub-sections (2), (3) and (4) of section 31 of that Act; and

(c) an appeal shall lie from an order of the court refusing permission to the natural guardian to do any of the Acts mentioned in sub-section (2) of this section to the court to which appeals ordinarily lie from the decisions of that court.

(6) In this section, “Court” means the city civil court or a district court or a court empowered under section 4A of the Guardians and Wards Act, 1890 (8 of 1890), within the local limits of whose jurisdiction the immovable property in respect of which the application is made is situate, and where the immovable property is situate within the jurisdiction of more than one such court, means the court within the local limits of whose jurisdiction any portion of the property is situate.

9. Testamentary guardians and their powers.—(1) A Hindu father entitled to act as the natural guardian of his minor legitimate children may, by will appoint a guardian for any of them in respect of the minor’s person or in respect of the minor’s property (other than the undivided interest referred to in section 12) or in respect of both.

(2) An appointment made under sub-section (1) shall have no effect if the father predeceases the mother, but shall revive if the mother dies without appointing, by will, any person as guardian.

(3) A Hindu widow entitled to act as the natural guardian of her minor legitimate children, and a Hindu mother entitled to act as the natural guardian of her minor legitimate children by reason of the fact that the father has become disentitled to act as such, may, by will, appoint a guardian for any of them in respect of the minor’s person or in respect of the minor’s property (other than the undivided interest referred to in section 12) or in respect of both.

(4) A Hindu mother entitled to act as the natural guardian of her minor illegitimate children may; by will, appoint a guardian for any of them in respect of the minor’s person or in respect of the minor’s property or in respect of both.

(5) The guardian so appointed by will has the right to act as the minor’s guardian after the death of the minor’s father or mother, as the case may be, and to exercise all the rights of a natural guardian under this Act to such extent and subject to such restrictions, if any, as are specified in this Act and in the will.

(6) The right of the guardian so appointed by will shall, where the minor is a girl, cease on her marriage.

10. Incapacity of minor to act as guardian of property.—A minor shall be incompetent to act as guardian of the property of any minor.

11. De facto guardian not to deal with minor’s property.—After the commencement of this Act, no person shall be entitled to dispose of, or deal with, the property of a Hindu minor merely on the ground of his or her being the *de facto* guardian of the minor.

12. Guardian not to be appointed for minors undivided interest in joint family property.—Where a minor has an undivided interest in joint family property and the property is under the management of an adult member of the family, no guardian shall be appointed for the minor in respect of such undivided interest:

Provided that nothing in this section shall be deemed to affect the jurisdiction of a High Court to appoint a guardian in respect of such interest.

13. Welfare of minor to be paramount consideration.—(1) In the appointment of declaration of any person as guardian of a Hindu minor by a court, the welfare of the minor shall be the paramount consideration.

(2) No person shall be entitled to the guardianship by virtue of the provisions of this Act or of any law relating to guardianship in marriage among Hindus, if the court is of opinion that his or her guardianship will not be for the welfare of the minor.

7. Hindu Women's Right to separate Residence Act, 1956

8. Prohibition of Child Marriages Act, 2006

THE PROHIBITION OF CHILD MARRIAGE ACT, 2006

ARRANGEMENT OF SECTIONS

SECTIONS

1. Short title, extent and commencement.
2. Definitions.
3. Child marriages to be voidable at the option of contracting party being a child.
4. Provision for maintenance and residence to female contracting party to child marriage.
5. Custody and maintenance of children of child marriages.
6. Legitimacy of children born of child marriages.
7. Power of district court to modify orders issued under section 4 or section 5.
8. Court to which petition should be made.
9. Punishment for male adult marrying a child.
10. Punishment for solemnising a child marriage.
11. Punishment for promoting or permitting solemnisation of child marriages.
12. Marriage of a minor child to be void in certain circumstances.
13. Power of court to issue injunction prohibiting child marriages.
14. Child marriages in contravention of injunction orders to be void.
15. Offences to be cognizable and non-bailable.
16. Child Marriage Prohibition Officers.
17. Child Marriage Prohibition Officers to be public servants.
18. Protection of action taken in good faith.
19. Power of State Government to make rules.
20. Amendment of Act No. 25 of 1955.
21. Repeal and savings.

THE PROHIBITION OF CHILD MARRIAGE ACT, 2006

ACT NO. 6 OF 2007

[10th January, 2007.]

An Act to provide for the prohibition of solemnisation of child marriages and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Fifty-seventh Year of the Republic of India as follows:—

1. Short title, extent and commencement.—(1) This Act may be called the Prohibition of Child Marriage Act, 2006.

(2) It extends to the whole of India^{1***}; and it applies also to all citizens of India without and beyond India:

Provided that nothing contained in this Act shall apply to the Renoncants of the Union territory of Pondicherry.

(3) It shall come into force on such date² as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different States and any reference in any provision to the commencement of this Act shall be construed in relation to any State as a reference to the coming into force of that provision in that State.

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

(a) “child” means a person who, if a male, has not completed twenty-one years of age, and if a female, has not completed eighteen years of age;

(b) “child marriage” means a marriage to which either of the contracting parties is a child;

(c) “contracting party”, in relation to a marriage, means either of the parties whose marriage is or is about to be thereby solemnised;

(d) “Child Marriage Prohibition Officer” includes the Child Marriage Prohibition Officer appointed under sub-section (1) of section 16;

(e) “district court” means, in any area for which a Family Court established under section 3 of the Family Courts Act, 1984 (66 of 1984) exists, such Family Court, and in any area for which there is no Family Court but a city civil court exists, that court and in any other area, the principal civil court of original jurisdiction and includes any other civil court which 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;

(f) “minor” means a person who, under the provisions of the Majority Act, 1875 (9 of 1875), is to be deemed not to have attained his majority.

3. Child marriages to be voidable at the option of contracting party being a child.—(1) Every child marriage, whether solemnised before or after the commencement of this Act, shall be voidable at the option of the contracting party who was a child at the time of the marriage:

Provided that a petition for annulling a child marriage by a decree of nullity may be filed in the district court only by a contracting party to the marriage who was a child at the time of the marriage.

(2) If at the time of filing a petition, the petitioner is a minor, the petition may be filed through his or her guardian or next friend along with the Child Marriage Prohibition Officer.

(3) The petition under this section may be filed at any time but before the child filing the petition completes two years of attaining majority.

1. The words “except the State of Jammu and Kashmir” omitted by Act 34 of 2019, s. 95 and the Fifth Schedule (w.e.f. 31-10-2019).

2. 1st November, 2007, vide notification No. S.O. 1850(E), dated 30th October, 2007, see Gazette of India, Extraordinary, Part II, sec. 3(ii).

(4) While granting a decree of nullity under this section, the district court shall make an order directing both the parties to the marriage and their parents or their guardians to return to the other party, his or her parents or guardian, as the case may be, the money, valuables, ornaments and other gifts received on the occasion of the marriage by them from the other side, or an amount equal to the value of such valuables, ornaments, other gifts and money:

Provided that no order under this section shall be passed unless the concerned parties have been given notices to appear before the district court and show cause why such order should not be passed.

STATE AMENDMENTS

Karnataka

Substitution of section 3.—In the Prohibition of Child Marriage Act, 2006 (Central Act 6 of 2007) (hereinafter referred to as the principal Act), In section 3, after sub-section (1) the following shall be inserted, namely;—

“(1A) Notwithstanding anything contained in sub-section (1) every child marriage solemnized on or after the date of coming into force of the Prohibition of Child Marriage (Karnataka Amendment) Act, 2016 shall be void abinitio”.

[Vide Karnataka Act 26 of 2017, s. 2].

4. Provision for maintenance and residence to female contracting party to child marriage.—(1) While granting a decree under section 3, the district court may also make an interim or final order directing the male contracting party to the child marriage, and in case the male contracting party to such marriage is a minor, his parent or guardian to pay maintenance to the female contracting party to the marriage until her remarriage.

(2) The quantum of maintenance payable shall be determined by the district court having regard to the needs of the child, the lifestyle enjoyed by such child during her marriage and the means of income of the paying party.

(3) The amount of maintenance may be directed to be paid monthly or in lump sum.

(4) In case the party making the petition under section 3 is the female contracting party, the district court may also make a suitable order as to her residence until her remarriage.

5. Custody and maintenance of children of child marriages.—(1) Where there are children born of the child marriage, the district court shall make an appropriate order for the custody of such children.

(2) While making an order for the custody of a child under this section, the welfare and best interests of the child shall be the paramount consideration to be given by the district court.

(3) An order for custody of a child may also include appropriate directions for giving to the other party access to the child in such a manner as may best serve the interests of the child, and such other orders as the district court may, in the interest of the child, deem proper.

(4) The district court may also make an appropriate order for providing maintenance to the child by a party to the marriage or their parents or guardians.

6. Legitimacy of children born of child marriages.—Notwithstanding that a child marriage has been annulled by a decree of nullity under section 3, every child begotten or conceived of such marriage before the decree is made, whether born before or after the commencement of this Act, shall be deemed to be a legitimate child for all purposes.

7. Power of district court to modify orders issued under section 4 or section 5.—The district court shall have the power to add to, modify or revoke any order made under section 4 or section 5 and if there is any change in the circumstances at any time during the pendency of the petition and even after the final disposal of the petition.

8. Court to which petition should be made.—For the purpose of grant of reliefs under sections 3, 4 and 5, the district court having jurisdiction shall include the district court having jurisdiction over the

place where the defendant or the child resides, or where the marriage was solemnised or where the parties last resided together or the petitioner is residing on the date of presentation of the petition.

9. Punishment for male adult marrying a child.—Whoever, being a male adult above eighteen years of age, contracts a child marriage shall be punishable with rigorous imprisonment which may extend to two years or with fine which may extend to one lakh rupees or with both.

STATE AMENDMENTS

Karnataka

Amendment of section 9.—In section 9 of the principal Act, for the words “be punishable with rigorous imprisonment which may extend to two years”, the words “be punishable with rigorous imprisonment of not less one year which may extend up to two years” shall be substituted.

[Vide Karnataka Act 26 of 2017, s. 3].

10. Punishment for solemnising a child marriage.—Whoever performs, conducts, directs or abets any child marriage shall be punishable with rigorous imprisonment which may extend to two years and shall be liable to fine which may extend to one lakh rupees unless he proves that he had reasons to believe that the marriage was not a child marriage.

STATE AMENDMENTS

Karnataka

Amendment of section 10.—In section 10 of the principal Act, for the words “be punishable with rigorous imprisonment which may extend to two years,” the words “be punishable with rigorous imprisonment of not less than one year which may extend up to two years” shall be substituted.

[Vide Karnataka Act 26 of 2017, s. 4].

11. Punishment for promoting or permitting solemnisation of child marriages.—(1) Where a child contracts a child marriage, any person having charge of the child, whether as parent or guardian or any other person or in any other capacity, lawful or unlawful, including any member of an organisation or association of persons who does any act to promote the marriage or permits it to be solemnised, or negligently fails to prevent it from being solemnised, including attending or participating in a child marriage, shall be punishable with rigorous imprisonment which may extend to two years and shall also be liable to fine which may extend up to one lakh rupees:

Provided that no woman shall be punishable with imprisonment.

(2) For the purposes of this section, it shall be presumed, unless and until the contrary is proved, that where a minor child has contracted a marriage, the person having charge of such minor child has negligently failed to prevent the marriage from being solemnised.

STATE AMENDMENTS

Karnataka

Amendment of section 11.—In section 11 of the principal Act, in sub-section (1),—

(a) for the words “be punishable with rigorous imprisonment which may extend to two years”, the words “be punishable with a rigorous imprisonment of not less than one year which may extend up to two years” shall be substituted.

(b) proviso shall be omitted.

[Vide Karnataka Act 26 of 2017, s. 5].

12. Marriage of a minor child to be void in certain circumstances.—Where a child, being a minor—

(a) is taken or enticed out of the keeping of the lawful guardian; or

(b) by force compelled, or by any deceitful means induced to go from any place; or

(c) is sold for the purpose of marriage; and made to go through a form of marriage or if the minor is married after which the minor is sold or trafficked or used for immoral purposes, such marriage shall be null and void.

13. Power of court to issue injunction prohibiting child marriages.—(1) Notwithstanding anything to the contrary contained in this Act, if, on an application of the Child Marriage Prohibition Officer or on receipt of information through a complaint or otherwise from any person, a Judicial Magistrate of the first class or a Metropolitan Magistrate is satisfied that a child marriage in contravention of this Act has been arranged or is about to be solemnised, such Magistrate shall issue an injunction against any person including a member of an organisation or an association of persons prohibiting such marriage.

(2) A complaint under sub-section (1) may be made by any person having personal knowledge or reason to believe, and a non-governmental organisation having reasonable information, relating to the likelihood of taking place of solemnisation of a child marriage or child marriages.

(3) The Court of the Judicial Magistrate of the first class or the Metropolitan Magistrate may also take *suomotu* cognizance on the basis of any reliable report or information.

(4) For the purposes of preventing solemnisation of mass child marriages on certain days such as *AkshayaTrutiya*, the District Magistrate shall be deemed to be the Child Marriage Prohibition Officer with all powers as are conferred on a Child Marriage Prohibition Officer by or under this Act.

(5) The District Magistrate shall also have additional powers to stop or prevent solemnisation of child marriages and for this purpose, he may take all appropriate measures and use the minimum force required.

(6) No injunction under sub-section (1) shall be issued against any person or member of any organisation or association of persons unless the Court has previously given notice to such person, members of the organisation or association of persons, as the case may be, and has offered him or them an opportunity to show cause against the issue of the injunction:

Provided that in the case of any urgency, the Court shall have the power to issue an interim injunction without giving any notice under this section.

(7) An injunction issued under sub-section (1) may be confirmed or vacated after giving notice and hearing the party against whom the injunction was issued.

(8) The Court may either on its own motion or on the application of any person aggrieved, rescind or alter an injunction issued under sub-section (1).

(9) Where an application is received under sub-section (1), the Court shall afford the applicant an early opportunity of appearing before it either in person or by an advocate and if the Court, after hearing the applicant rejects the application wholly or in part, it shall record in writing its reasons for so doing.

(10) Whoever knowing that an injunction has been issued under sub-section (1) against him disobeys such injunction shall be punishable with imprisonment of either description for a term which may extend to two years or with fine which may extend to one lakh rupees or with both:

Provided that no woman shall be punishable with imprisonment.

STATE AMENDMENTS

Karnataka

Amendment of section 13.—In section 13 of the principal Act, in sub-section (10), —

(a) for the words “of either description for a term which may extend to two years”, the words “with a minimum term of one year, which may extent up to two years” shall be substituted.

(b) proviso shall be omitted.

[Vide Karnataka Act 26 of 2017, s. 6].

14. Child marriages in contravention of injunction orders to be void.—Any child marriage solemnised in contravention of an injunction order issued under section 13, whether interim or final, shall be void *ab initio*.

15. Offences to be cognizable and non-bailable.—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence punishable under this Act shall be cognizable and non-bailable.

STATE AMENDMENTS

Karnataka

Insertion of new section 15A.—In the principal Act, after section 15, the following shall be inserted, namely:—

“15A. Police Officer to take cognizance of an offence suo-motto.—Every Police Officer shall take cognizance of an offence committed in his jurisdiction under this Act, suo motto.”

[Vide Karnataka Act 26 of 2017, s. 7].

16. Child Marriage Prohibition Officers.—(1) The State Government shall, by notification in the Official Gazette, appoint for the whole State, or such part thereof as may be specified in that notification, an officer or officers to be known as the Child Marriage Prohibition Officer having jurisdiction over the area or areas specified in the notification.

(2) The State Government may also request a respectable member of the locality with a record of social service or an officer of the Gram Panchayat or Municipality or an officer of the Government or any public sector undertaking or an office bearer of any non-governmental organisation to assist the Child Marriage Prohibition Officer and such member, officer or office bearer, as the case may be, shall be bound to act accordingly.

(3) It shall be the duty of the Child Marriage Prohibition Officer—

(a) to prevent solemnisation of child marriages by taking such action as he may deem fit;

(b) to collect evidence for the effective prosecution of persons contravening the provisions of this Act;

(c) to advise either individual cases or counsel the residents of the locality generally not to indulge in promoting, helping, aiding or allowing the solemnisation of child marriages;

(d) to create awareness of the evil which results from child marriages;

(e) to sensitize the community on the issue of child marriages;

(f) to furnish such periodical returns and statistics as the State Government may direct; and

(g) to discharge such other functions and duties as may be assigned to him by the State Government.

(4) The State Government may, by notification in the Official Gazette, subject to such conditions and limitations, invest the Child Marriage Prohibition Officer with such powers of a police officer as may be specified in the notification and the Child Marriage Prohibition Officer shall exercise such powers subject to such conditions and limitations, as may be specified in the notification.

(5) The Child Marriage Prohibition Officer shall have the power to move the Court for an order under sections 4, 5 and 13 and along with the child under section 3.

17. Child Marriage Prohibition Officers to be public servants.—The Child Marriage Prohibition Officers shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

18. Protection of action taken in good faith.—No suit, prosecution or other legal proceedings shall lie against the Child Marriage Prohibition Officer in respect of anything in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.

19. Power of State Government to make rules.—(1) The State Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) Every rule made under this Act shall, as soon as may be after it is made, be laid before the State Legislature.

20. Amendment of Act No. 25 of 1955.—In the Hindu Marriage Act, 1955, in section 18, for clause (a), the following clause shall be substituted, namely:—

“(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”.

21. Repeal and savings.—(1) The Child Marriage Restraint Act, 1929 (19 of 1929) is hereby repealed.

(2) Notwithstanding such repeal, all cases and other proceedings pending or continued under the said Act at the commencement of this Act shall be continued and disposed of in accordance with the provisions of the repealed Act, as if this Act had not been passed.

9. Guardianship and Wars Act, 1890

THE GUARDIANS AND WARDS ACT, 1890

ARRANGEMENT OF SECTIONS

CHAPTER I PRELIMINARY

SECTIONS

1. Title, extent and commencement.
2. [*Repealed.*].
3. Saving of jurisdiction of Courts of Wards and Chartered High Courts.
4. Definitions.
- 4A. Power to confer jurisdiction on subordinate judicial officers and to transfer proceedings to such officers.

CHAPTER II

APPOINTMENT AND DECLARATION OF GUARDIANS

5. [*Omitted.*].
6. Saving of power to appoint in other cases.
7. Power of the Court to make order as to guardianship.
8. Persons entitled to apply for order.
9. Court having jurisdiction to entertain application.
10. Form of application.
11. Procedure on admission of application.
12. Power to make interlocutory order for production of minor and interim protection of person and property.
13. Hearing of evidence before making of order.
14. Simultaneous proceedings in different Courts.
15. Appointment or declaration of several guardians.
16. Appointment or declaration of guardian for property beyond jurisdiction of the Court.
17. Matters to be considered by the Court in appointing guardian.
18. Appointment or declaration of Collector in virtue of office.
19. Guardian not to be appointed by the Court in certain cases.

CHAPTER III
DUTIES, RIGHTS AND LIABILITIES OF GUARDIANS
General

SECTIONS

- 20. Fiduciary relation of guardian to ward.
- 21. Capacity of minors to act as guardians.
- 22. Remuneration of guardian.
- 23. Control of Collector as guardian.

Guardian of the person

- 24. Duties of guardian of the person.
- 25. Title of guardian to custody of ward.
- 26. Removal of ward from jurisdiction.

Guardian of property

- 27. Duties of guardian of property.
- 28. Powers of testamentary guardian.
- 29. Limitation of powers of guardian of property appointed or declared by the Court.
- 30. Voidability of transfers made in contravention of section 28 or section 29.
- 31. Practice with respect to permitting transfers under section 29.
- 32. Variation of powers of guardian of property appointed or declared by the Court.
- 33. Right of guardian so appointed or declared to apply to the Court for opinion in management of property, of ward.
- 34. Obligations on guardian of property appointed or declared by the Court.
- 34A. Power to award remuneration for auditing accounts.
- 35. Suit against guardian where administration-bond was taken.
- 36. Suit against guardian where administration-bond was not taken.
- 37. General liability of guardian as trustee.

Termination of guardianship

- 38. Right of survivorship among joint guardians.
- 39. Removal of guardian.
- 40. Discharge of guardian.
- 41. Cessation of authority of guardian.
- 42. Appointment of successor to guardian dead, discharged or removed.

CHAPTER IV
SUPPLEMENTAL PROVISIONS

- 43. Orders for regulating conduct or proceedings of guardians, and enforcement of those orders.
- 44. Penalty for removal of ward from jurisdiction.

SECTIONS

- 45. Penalty for contumacy.
- 46. Reports by Collectors and subordinate Courts.
- 47. Orders appealable.
- 48. Finality of other orders.
- 49. Costs.
- 50. Power of High Court to make rules.
- 51. Applicability of Act to guardians already appointed by Court.
- 52. [*Repealed.*].
- 53. [*Repealed.*].

THE SCHEDULE. — [*Repealed.*].

THE GUARDIANS AND WARDS ACT, 1890

ACT NO. 8 OF 1890¹

[21st March, 1890.]

An Act to consolidate and amend the law relating to Guardian and Ward.

WHEREAS it is expedient to consolidate and amend the law relating to guardian and ward; It is hereby enacted as follows:—

CHAPTER I PRELIMINARY

1. Title, extent and commencement.— (1) This Act may be called the Guardians and Wards Act, 1890.

(2) It extends to the whole of India ^{2***},

^{3*}

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^{4***}

(3) It shall come into force on the first day of July, 1890.

2. [Repeal.] *Rep. by the Repealing Act, 1938 (1 of 1938), s. 2 and the Schedule.*

3. Saving of jurisdiction of Courts of Wards and Chartered High Courts.— This Act shall be read subject to every enactment heretofore or hereafter passed relating to any Court of Wards by ⁵[any competent legislature, authority or person in ⁶[any State to which this Act extends]], and nothing in this Act shall be construed to affect, or in any way derogate from the jurisdiction or authority of any Court of Wards, or to take away any power possessed by ⁷[any High Court ^{8***}].

4. Definitions.— In this Act, unless there is something repugnant in the subject or context,—

(1) “minor” means a person who, under the provisions of the Indian Majority Act, 1875, (9 of 1875) is to be deemed not to have attained his majority:

(2) “guardian” means a person having the care of the person of a minor or of his property, or of both is person and property:

(3) “ward” means a minor for whose person or property, or both, there is a guardian:

(4) “District Court” has the meaning assigned to that expression in the ⁹Code of Civil

1. This Act has been extended to Dadra and Nagar Haveli by Reg. 6 of 1963, s. 2 and Sch. I, to the whole of the Union territory of Lakshadweep by Reg. 8 of 1965, s. 3 and Sch. and to Sikkim vide Notifn. No. S.O. 644(E), dated 24-8-1984, Gazette of India, Extraordinary, Pt. II, s. 3(ii) (w.e.f. 1-9-1984).

This Act has been extended to Pondicherry by Act 26 of 1968, with the following modification:

In section 1, after sub-section (2), insert:—

“Provided that nothing contained in this Act shall apply to the Renoncants of the Union territory of Pondicherry.”.

2. The words “except the State of Jammu and Kashmir” omitted by Act 34 of 2019, s. 95 and the Fifth Schedule (w.e.f. 31-10-2019).

3. The words “inclusive of British Baluchistan” rep by A.O. 1948.

4. The word “and” omitted by Act 40 of 1949, s. 3 and the Second Schedule.

5. Subs. by the A.O. 1937, for “the G.G. in C., or by a Governor or Lieutenant-Governor in Council”.

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

7. Subs. by the A.O. 1937, for “any High Court established under the Statute 24 and 25 Victoria, Ch. 104 (an Act for establishing High Courts of Judicature in India)”.

8. The words “established in Part A States and Part C States” omitted by Act 3 of 1951, s. 3 and the Schedule.

9. See now the Code of Civil Procedure, 1908 (Act 5 of 1908).

Procedure (14 of 1882), and includes a High Court in the exercise of its ordinary original civil jurisdiction:

¹[(5) “the Court” means—

(a) the District Court having jurisdiction to entertain an application under this Act for an order appointing or declaring a person to be a guardian; or

(b) where a guardian has been appointed or declared in pursuance of any such application—

(i) the Court which, or the Court of the officer who, appointed or declared the guardian or is under this Act deemed to have appointed or declared the guardian; or

(ii) in any matter relating to the person of the ward the District Court having jurisdiction in the place where the ward for the time being ordinarily resides; or

(c) in respect of any proceeding transferred under section 4A, the Court of the officer to whom such proceeding has been transferred:]

(6) “Collector” means the chief officer in charge of the revenue—administration of a district, and includes any officer whom the State Government, by notification in the Official Gazette, may, by name or in virtue of his office, appoint to be a Collector in any local area, or with respect to any class of persons, for all or any of the purposes of this Act:

²* * * * *

(8) “prescribed” means prescribed by rules made by the High Court under this Act.

³ [4A. **Power to confer jurisdiction on subordinate judicial officers and to transfer proceedings to such officers.**—(1) The High Court may, by general or special order, empower any officer exercising original civil jurisdiction subordinate to a District Court, or authorise the Judge of any District Court to empower any such officer subordinate to him, to dispose of any proceedings under this Act transferred to such officer under the provisions of this section.

(2) The Judge of a District Court may, by order in writing, transfer at any stage any proceeding under this Act pending in his Court for disposal to any officer subordinate to him empowered under sub-section (1).

(3) The Judge of a District Court may at any stage transfer to his own Court or to any officer subordinate to him empowered under sub-section (1) any proceeding under this Act pending in the Court of any other such officer.

(4) When any proceedings are transferred under this section in any case in which a guardian has been appointed or declared, the Judge of the District Court may, by order in writing, declare that the Court of the Judge or officer to whom they are transferred shall, for all or any of the purposes of this Act, be deemed to be the Court which appointed or declared the guardian.]

1. Subs. by Act 4 of 1926, s. 2, for the clause (5).

2. Clause (7) omitted by Act 3 of 1951, s. 3 and the Schedule.

3. Ins. by Act 4 of 1926, s. 3.

CHAPTER II

APPOINTMENT AND DECLARATION OF GUARDIANS

5. *[Power of parents to appoint in case of European British subjects.] Omitted by the Part B States (Laws) Act, 1951 (3 of 1951), s. 3 and Schedule.*

6. Saving of power to appoint in other cases.—In the case of a minor^{1***}, nothing in this Act shall be construed to take away or derogate from any power to appoint a guardian of his person or property, or both, which is valid by the law to which the minor is subject.

7. Power of the Court to make order as to guardianship.—(1) where the Court is satisfied that it is for the welfare of a minor that an order should be made—

(a) appointing a guardian of his person or property, or both, or

(b) declaring a person to be such a guardian,

the Court may make an order accordingly.

(2) An order under this section shall imply the removal of any guardian who has not been appointed by will or other instrument or appointed or declared by the Court.

(3) Where a guardian has been appointed by will or other instrument or appointed or declared by the Court, an order under this section appointing or declaring another person to be guardian in his stead shall not be made until the powers of the guardian appointed or declared as aforesaid have ceased under the provisions of this Act.

8. Persons entitled to apply for order.—An order shall not be made under the last foregoing section except on the application of—

(a) the person desirous of being, or claiming to be, the guardian of the minor, or

(b) any relative or friend of the minor, or

(c) the Collector of the district or other local area within which the minor ordinarily resides or in which he has property, or

(d) the Collector having authority with respect to the class to which the minor belongs.

9. Court having jurisdiction to entertain application.—(1) If the application is with respect to the guardianship of the person of the minor, it shall be made to the District Court having jurisdiction in the place where the minor ordinarily resides.

(2) If the application is with respect to the guardianship of the property of the minor, it may be made either to the District Court having jurisdiction in the place where the minor ordinarily resides or to a District Court having jurisdiction in a place where he has property.

(3) If an application with respect to the guardianship of the property of a minor is made to a District Court other than that having jurisdiction in the place where the minor ordinarily resides, the Court may return the application if in its opinion the application would be disposed of more justly or conveniently by any other District Court having jurisdiction.

10. Form of application.—(1) If the application is not made by the Collector, it shall be by petition signed and verified in manner prescribed by the²Code of Civil Procedure (14 of 1882) for the signing and verification of a plaint, and stating, so far as can be ascertained—

(a) the name, sex, religion, date of birth and ordinary residence of the minor;

(b) where the minor is a female, whether she is married, and, if so, the name and age of her husband;

(c) the nature, situation and approximate value of the property, if any, of the minor;

1. The words “who is not an European British subject” omitted by Act 3 of 1951, s. 3 and the Schedule.

2. See now the Code of Civil Procedure, 1908 (Act 5 of 1908).

(d) the name and residence of the person having the custody or possession of the person or property of the minor;

(e) what near relations the minor has, and where they reside;

(f) whether a guardian of the person or property, or both, of the minor has been appointed by any person entitled or claiming to be entitled by the law to which the minor is subject to make such an appointment;

(g) whether an application has at any time been made to the Court or to any other Court with respect to the guardianship of the person or property, or both, of the minor, and, if so, when, to what Court and with what result;

(h) whether the application is for the appointment or declaration of a guardian of the person of the minor, or of his property, or of both;

(i) where the application is to appoint a guardian, the qualifications of the proposed guardian;

(j) where the application is to declare a person to be a guardian, the grounds on which that person claims;

(k) the causes which have led to the making of the applications; and

(l) such other particulars, if any, as may be prescribed or as the nature of the application renders it necessary to state.

(2) If the application is made by the Collector, it shall be by letter addressed to the Court and forwarded by post or in such other manner as may be found convenient, and shall state as far as possible the particulars mentioned in sub-section (1).

(3) The application must be accompanied by a declaration of the willingness of the proposed guardian to act and the declaration must be signed by him and attested by at least two witnesses.

11. Procedure on admission of application.—(1) If the Court is satisfied that there is ground for proceeding on the application, it shall fix a day for the hearing thereof, and cause notice of the application and of the date fixed for the hearing—

(a) to be served in the manner directed in the ¹Code of Civil Procedure (14 of 1882) on—

(i) the parents of the minor if they are residing in ²[any State to which this Act extends],

(ii) the person, if any, named in the petition or letter as having the custody or possession of the person or property of the minor,

(iii) the person proposed in the application or letter to be appointed or declared guardian, unless that person is himself the applicant, and

(iv) any other person to whom, in the opinion of the Court, special notice of the application should be given; and

(b) to be posted on some conspicuous part of the court-house, and of the residence of the minor, and otherwise published in such manner as the Court, subject to any rules made by the High Court under this Act, thinks fit.

(2) The State Government may, by general or special order, require that, when any part of the property described in a petition under section 10, sub-section (1), is land of which a Court of Wards could assume the superintendence, the Court shall also cause a notice as aforesaid to be served on the Collector in whose district the minor ordinarily resides, and on

1. See now the Code of Civil Procedure, 1908 (Act 5 of 1908).

2. Subs. by Act 3 of 1951, s. 3 and the Schedule, for “a Part A State or a Part C State”.

every Collector in whose district any portion of the land is situate, and the Collector may cause the notice to be published in any manner he deems fit.

(3) No charge shall be made by the Court or the Collector for the service or publication of any notice served or published under sub-section (2).

12. Power to make interlocutory order for production of minor and interim protection of person and property.—(1) The Court may direct that the person, if any, having the custody of the minor shall produce him or cause him to be produced at such place and time and before such person as it appoints, and may make such order for the temporary custody and protection of the person or property of the minor as it thinks proper.

(2) If the minor is a female who ought not to be compelled to appear in public, the direction under sub-section (1) for her production shall require her to be produced in accordance with the customs and manners of the country.

(3) Nothing in this section shall authorise—

(a) the Court to place a female minor in the temporary custody of a person claiming to be her guardian on the ground of his being her husband, unless she is already in his custody with the consent of her parents, if any, or

(b) any person to whom the temporary custody and protection of the property of a minor is entrusted to dispossess otherwise than by due course of law any person in possession of any of the property.

13. Hearing of evidence before making of order.—On the day fixed for the hearing of the application, or as soon afterwards as may be, the Court shall hear such evidence as may be adduced in support of or in opposition to the application.

14. Simultaneous proceedings in different Courts.—(1) If proceedings for the appointment or declaration of a guardian of a minor are taken in more Courts than one, each of those Courts shall, on being apprised of the proceedings in the other Court or Courts, stay the proceedings before itself.

(2) If the Courts are both or all subordinate to the same High Court, they shall report the case to the High Court, and the High Court shall determine in which of the Courts the proceedings with respect to the appointment or declaration of a guardian of the minor shall be had.

¹[(3) In any other case in which proceedings are stayed under sub-section (1), the Courts shall report the case to, and be guided by such orders as they may receive from, their respective State Governments]

15. Appointment or declaration of several guardians.—(1) If the law to which the minor is subject admits of his having two or more joint guardians of his person or property, or both, the Court may, if it thinks fit, appoint or declare them.

2* * * *

(4) Separate guardians may be appointed or declared of the person and of the property of a minor.

(5) If a minor has several properties, the Court may, if it thinks fit, appoint or declare a separate guardian for any one or more of the properties.

16. Appointment or declaration of guardian for property beyond jurisdiction of the Court.—If the Court appoints or declares a guardian for any property situate beyond the local limits of its jurisdiction, the Court having jurisdiction in the place where the

1. Subs. by the A.O. 1937, for sub-section (3).

2. Sub-sections (2) and (3) omitted by Act 3 of 1951, s. 3 and the Schedule.

property is situate shall, on production of a certified copy of the order appointing or declaring the guardian, accept him as duly appointed or declared and give effect to the order.

17. Matters to be considered by the Court in appointing guardian.—(1) In appointing or declaring the guardian of a minor, the Court shall, subject to the provisions of this section, be guided by what, consistently with the law to which the minor is subject, appears in the circumstances to be for the welfare of the minor.

(2) In considering what will be for the welfare of the minor, the Court shall have regard to the age, sex and religion of the minor, the character and capacity of the proposed guardian and his nearness of kin to the minor, the wishes, if any, of a deceased parent, and any existing or previous relations of the proposed guardian with the minor or his property.

(3) If the minor is old enough to form an intelligent preference, the Court may consider that preference.

¹* * * *

(5) The Court shall not appoint or declare any person to be a guardian against his will.

18. Appointment or declaration of Collector in virtue of office.—Where a Collector is appointed or declared by the Court in virtue of his office to be guardian of the person or property, or both, of a minor, the order appointing or declaring him shall be deemed to authorize and require the person for the time being holding the office to act as guardian of the minor with respect to his person or property, or both, as the case may be.

19. Guardian not to be appointed by the Court in certain cases.—Nothing in this Chapter shall authorise the Court to appoint or declare a guardian of the property of a minor whose property is under the superintendence of a Court of Wards, or to appoint or declare a guardian of the person—

(a) of a minor who is a married female and whose husband is not, in the opinion of the Court, unfit to be guardian of her person, or

²[(b) of a minor, other than a married female, whose father or mother is living and is not, in the opinion of the court, unfit to be guardian of the person of the minor, or.]

(c) of a minor whose property is under the superintendence of a Court of Wards competent to appoint a guardian of the person of the minor.

CHAPTER III

DUTIES, RIGHTS AND LIABILITIES OF GUARDIANS

General

20. Fiduciary relation of guardian to ward.—(1) A guardian stands in a fiduciary relation to his ward, and, save as provided by the will or other instrument, if any, by which he was appointed, or by this Act, he must not make any profit out of his office.

(2) The fiduciary relation of it guardian to his ward extends to and affects purchases by the guardian of the property of the ward, and by the ward of the property of the guardian, immediately or soon after the ward has ceased to be a minor, and generally all transactions between them while the influence of the guardian still lasts or is recent.

21. Capacity of minors to act as guardians.—A minor is incompetent to act as guardian of any minor except his own wife or child or where he is the managing member of an undivided Hindu family, the wife or child of another minor Member of that family.

1. Sub-section (4) omitted by Act 3 of 1951, s. 3 and the Schedule.

2. Subs. by Act 30 of 2010, s. 2 for sub-clause (b) (w.e.f. 31-8-2010).

22. Remuneration of guardian.—(1) A guardian appointed or declared by the Court shall be entitled to such allowance, if any, as the Court thinks fit for his care and pains in the execution of his duties.

(2) When an officer of the Government, as such officer, is so appointed or declared to be guardian, such fees shall be paid to the Government out of the property of the ward as the State Government, by general or special order, directs.

23. Control of Collector as guardian.—A Collector appointed or declared by the Court to be guardian of the person or property, or both, of a minor shall, in all matters connected with the guardianship of his ward, be subject to the control of the State Government or of such authority as that Government, by ¹notification in the Official Gazette, appoints in this behalf.

Guardian of the person

24. Duties of guardian of the person.—A guardian of the person of a ward is charged with the custody of the ward and must look to his support, health and education, and such other matters as the law to which the ward is subject requires.

25. Title of guardian to custody of ward.—(1) If a ward leaves or is removed from the custody of a guardian of his person, the Court, if it is of opinion that it will be for the welfare of the ward to return to the custody of his guardian, may make an order for his return, and for the purpose of enforcing the order may cause the ward to be arrested and to be delivered into the custody of the guardian.

(2) For the purpose of arresting the ward, the Court may exercise the power conferred on a Magistrate of the first class by section 100 of the ²Code of Criminal Procedure, 1882 (10 of 1882).

(3) The residence of a ward against the will of his guardian with a person who is not his guardian does not of itself terminate the guardianship.

26. Removal of ward from jurisdiction.—(1) A guardian of the person appointed or declared by the Court unless he is the Collector or is a guardian appointed by will or other instrument, shall not, without the leave of the Court by which he was appointed or declared, remove *the* ward from the limits of its jurisdiction except for such purposes as may be prescribed.

(2) The leave granted by the Court under sub-section (1) may be special or general, and may be defined by the order granting it.

Guardian of property

27. Duties of guardian of property.—A guardian of the property of a ward is bound to deal therewith as carefully as a man of ordinary prudence would deal with it if it were his own, and, subject to the provisions of this Chapter, he may do all acts which are reasonable and proper for the realisation, protection or benefit of the property.

28. Powers of testamentary guardian.—Where a guardian has been appointed by will or other instrument, his power to mortgage or charge, or transfer by sale, gift, exchange or otherwise, immovable property belonging to his ward is subject to any restriction which may be imposed by the instrument, unless he has under this Act been declared guardian and the Court which made the declaration permits him by an order in writing, notwithstanding the restriction, to dispose of any immovable property specified in the order in a manner permitted by the order.

29. Limitation of powers of guardian of property appointed or declared by the Court.—Where a person other than a Collector, or than a guardian appointed by will or other

1. For notifications appointing authorities to whose control Collectors appointed under the Act shall be subject, *see* different local R. & O.

2. *See* now the Code of Criminal Procedure, 1898 (Act 5 of 1898).

instrument, has been appointed or declared by the Court to be guardian of the property of a ward, he shall not, without the previous permission of the Court,—

(a) mortgage or charge, or transfer by sale, gift, exchange or otherwise, any part of the immovable property of his ward, or

(b) lease any part of that property for a term exceeding five years or for any term extending more than one year beyond the date on which the ward will cease to be a minor.

30. Voidability of transfers made in contravention of section 28 or section 29.—A disposal of immovable property by a guardian in contravention of either of the two last foregoing sections is voidable at the instance of any other person affected thereby.

31. Practice with respect to permitting transfers under section 29.—(1) Permission to the guardian to do any of the acts mentioned in section 29 shall not be granted by the Court except in case of necessity or for an evident advantage to the ward.

(2) The order granting the permission shall recite the necessity or advantage, as the case may be, describe the property with respect to which the act permitted is to be done, and specify such conditions, if any, as the Court may see fit to attach to the permission; and it shall be recorded, dated and signed by the Judge of the Court with his own hand, or, when from any cause he is prevented from recording the order with his own hand, shall be taken down in writing from his dictation and be dated and signed by him.

(3) The Court may in its discretion attach to the permission the following among other conditions, namely:—

(a) that a sale shall not be completed without the sanction of the Court;

(b) that a sale shall be made to the highest bidder by public auction, before the Court or some person specially appointed by the Court for that purpose, at a time and place to be specified by the Court, after such proclamation of the intended sale as the Court, subject to any rules made under this Act by the High Court, directs;

(c) that a lease shall not be made in consideration of a premium or shall be made for such term of years and subject to such rents and covenants as the Court directs;

(d) that the whole or any part of the proceeds of the act permitted shall be paid into the Court by the guardian, to be disbursed therefrom or to be invested by the Court on prescribed securities or to be otherwise disposed of as the Court directs.

(4) Before granting permission to a guardian to do an act mentioned in section 29, the Court may cause notice of the application for the permission to be given to any relative or friend of the ward who should, in its opinion, receive notice thereof, and shall hear and record the statement of any person who appears in opposition to the application.

32. Variation of powers of guardian of property appointed or declared by the Court.—Where a guardian of the property of a ward has been appointed or declared by the Court and such guardian is not the Collector, the Court may, from time to time, by order, define, restrict or extend his powers with respect to the property of the ward in such manner and to such extent as it may consider to be for the advantage of the ward and consistent with the law to which the ward is subject.

33. Right of guardian so appointed or declared to apply to the Court for opinion in management of property of ward.—(1) A guardian appointed or declared by the Court may apply by petition to the Court which appointed or declared him for its opinion, advice or direction on any present question respecting the management or administration of the property of his ward.

(2) If the Court considers the question to be proper for summary disposal, it shall cause a copy of the petition to be served on, and the hearing thereof may be attended by, such of the persons interested in the application as the Court thinks fit.

(3) The guardian stating in good faith the facts in the petition and acting upon the opinion, advice or direction given by the Court shall be deemed, so far as regards his own responsibility, to have performed his duty as guardian in the subject-matter of the application.

34. Obligations on guardian of property appointed or declared by the Court.—Where a guardian of the property of a ward has been appointed or declared by the Court and such guardian is not the Collector, he shall,—

(a) if so required by the Court, give a bond, as nearly as may be in the prescribed form, to the Judge of the Court to ensure for the benefit of the Judge for the time being, with or without sureties, as may be prescribed, engaging duly to account for what he may receive in respect of the property of the ward;

(b) if so required by the Court, deliver to the Court, within six months from the date of his appointment or declaration by the Court, or within such other time as the Court directs, a statement of the immovable property belonging to the ward, of the money and other movable property which he has received on behalf of the ward up to the date of delivering the statement, and of the debts due on that date to or from the ward;

(c) if so required by the Court, exhibit his accounts in the Court at such times and in such form as the Court from time to time directs;

(e) if so required by the Court, pay into the Court at such time as the Court directs the balance due from him on those accounts, or so much thereof as the Court directs; and

(f) apply for the maintenance, education and advancement of the ward and of such persons as are dependent on him, and for the celebration of ceremonies to which the ward or any of those persons may be a party, such portion of the income of the property of the ward as the Court from time to time directs, and, if the Court so directs, the whole or any part of that property.

¹[**34A. Power to award remuneration for auditing accounts.**—When accounts are exhibited by a guardian of the property of a ward in pursuance of a requisition made under clause (c) of section 34 or otherwise, the Court may appoint a person to audit the accounts, and may direct that remuneration for the work be paid out of the income of the property.]

35. Suit against guardian where administration bond was taken.—Where a guardian appointed or declared by the Court has given a bond duly to account for what he may receive in respect of the property of his ward, the Court may, on application made by petition and on being satisfied that the engagement of the bond has not been kept, and upon such terms as to security, or providing that any money received be paid into the Court, or otherwise as the Court thinks fit, assign the bond to some proper person, who shall thereupon be entitled to sue on the bond in his own name as if the bond had been originally given to him instead of to the Judge of the Court, and shall be entitled to recover thereon, as trustee for the ward, in respect of any breach thereof.

36. Suit against guardian where administration bond was not taken.—(1) Where a guardian appointed or declared by the Court has not given a bond as aforesaid, any person, with the leave of the Court, may, as next friend, at any time during the continuance of the minority of the ward, and upon such terms as aforesaid, institute a suit against the guardian, or, in case of his death, against his representative, for an account of what the guardian has received in respect of the property of the ward, and may recover in the suit, as trustee for the ward, such amount as may be found to be payable by the guardian or his representative, as the case may be.

1. Ins. by Act 17 of 1929, s. 2.

(2) The provisions of sub-section (1) shall, so far as they relate to a suit against a guardian, be subject to the provisions of section 440 of the Code of Civil Procedure (14 of 1882) as amended by this Act¹.

37. General liability of guardian as trustee.—Nothing in either of the two last foregoing sections shall be construed to deprive a ward or his representative of any remedy against his guardian, or the representative of the guardian, which, not being expressly provided in either of those sections, any other beneficiary or his representative would have against his trustee or the representative of the trustee.

Termination of guardianship

38. Right of survivorship among joint guardians.—On the death of one of two or more joint guardians, the guardianship continues to the survivor or survivors until a further appointment is made by the Court.

39. Removal of guardian.—The Court may, on the application of any person interested, or of its own motion, remove a guardian appointed or declared by the Court, or a guardian appointed by will or other instrument, for any of the following causes, namely:—

- (a) for abuse of his trust;
- (b) for continued failure to perform the duties of his trust;
- (c) for incapacity to perform the duties of his trust;
- (d) for ill-treatment, or neglect to take proper care, of his ward;
- (e) for contumacious disregard of any provision of this Act or of any order of the Court;
- (f) for conviction of an offence implying, in the opinion of the Court, a defect of character which unfits him to be the guardian of his ward;
- (g) for having an interest adverse to the faithful performance of his duties;
- (h) for ceasing to reside within the local limits of the jurisdiction of the Court;
- (i) in the case of a guardian of the property, for bankruptcy or insolvency;
- (j) by reason of the guardianship of the guardian ceasing, or being liable to cease, under the law to which the minor is subject:

Provided that a guardian appointed by will or other instrument, whether he has been declared under this Act or not, shall not be removed—

(a) for the cause mentioned in clause (g) unless the adverse interest accrued after the death of the person who appointed him, or it is shown that that person made and maintained the appointment in ignorance of the existence of the adverse interest, or

(b) for the cause mentioned in clause (h) unless such guardian has taken up such a residence as, in the opinion of the Court, renders it impracticable for him to discharge the functions of guardian.

40. Discharge of guardian.—(1) If a guardian appointed or declared by the Court desires to resign his office, he may apply to the Court to be discharged.

(2) If the Court finds that there is sufficient reason for the application, it shall discharge him, and if the guardian making the application is the Collector and the State Government approves of his applying to be discharged, the Court shall in any case discharge him.

41. Cessation of authority of guardian.—(1) The powers of a guardian of the person cease—

- (a) by his death, removal or discharge;
- (b) by the Court of Wards assuming superintendence of the person of the ward;

1. See now Order XXXII, rules 1 and 4(2), in the First Schedule to the Code of Civil Procedure, 1908 (Act 5 of 1908).

(c) by the ward ceasing to be a minor;

(d) in the case of a female ward, by her marriage to a husband who is not unfit to be guardian of her person or, if the guardian was appointed or declared by the Court, by her marriage to a husband who is not, in the opinion of the Court, so unfit; or

(e) in the case of a ward whose father was unfit to be guardian of the person of the ward, by the father ceasing to be so or, if the father was deemed by the Court to be so unfit, by his ceasing to be so in the opinion of the Court.

(2) The powers of a guardian of the property cease—

(a) by his death, removal or discharge;

(b) by the Court of Wards assuming superintendence of the property of the ward; or

(c) by the ward ceasing to be a minor.

(3) When for any cause the powers of a guardian cease, the Court may require him or, if he is dead, his representative to deliver as it directs any property in his possession or control belonging to the ward or any accounts in his possession or control relating to any past or present property of the ward.

(4) When he has delivered the property or accounts as required by the Court, the Court may declare him to be discharged from his liabilities save as regards any fraud which may subsequently be discovered.

42. Appointment to successor to guardian dead, discharged or removed.—When a guardian appointed or declared by the Court is discharged, or, under the law to which the ward is subject, ceases to be entitled to act, or when any such guardian or a guardian appointed by will or other instrument is removed or dies, the Court, of its own motion or on application under Chapter II, may, if the ward is still a minor, appoint or declare another guardian of his person or property, or both, as the case may be.

CHAPTER IV

SUPPLEMENTAL PROVISIONS

43. Orders for regulating conduct or proceedings of guardians, and enforcement of those orders.—(1) The Court may, on the application of any person interested or of its own motion, make an order regulating the conduct or proceedings of any guardian appointed or declared by the Court.

(2) Where there are more guardians than one of a ward, and they are unable to agree upon a question affecting his welfare, any of them may apply to the Court for its direction, and the Court may make such order respecting the matter in difference as it thinks fit.

(3) Except where it appears that the object of making an order under sub-section (1) or sub-section (2) would be defeated by the delay, the Court shall, before making the order, direct notice of the application therefor or of the intention of the Court to make it, as the case may be, to be given, in a case under sub-section (1), to the guardian or, in a case under sub-section (2), to the guardian who has not made the application

(4) In case of disobedience to an order made under sub-section (1) or sub-section (2), the order may be enforced in the same manner as an injunction granted under section 492 or section 493 of the Code of Civil Procedure (14 of 1882), in a case under sub-section (1), as if the ward were the plaintiff and the guardian were the defendant or, in a case under sub-section (2), as if the guardian who made the application were the plaintiff and the other guardian were the defendant.

(5) Except in a case under sub-section (2), nothing in this section shall apply to a Collector who is, as such, a guardian.

44. Penalty for removal of ward from jurisdiction.—If, for the purpose or with the effect of preventing the Court from exercising its authority with respect to a ward, a guardian appointed or declared by the Court removes the ward from the limits of the jurisdiction of the Court in contravention of the provisions of section 26, he shall be liable, by order of the Court, to find not exceeding one thousand rupees, or to imprisonment in the civil jail for a term which may extend to six months.

45. Penalty for contumacy.—(1) In the following cases, namely:—

(a) if a person having the custody of a minor fails to produce him or cause him to be produced in compliance with a direction under section 12, sub-section (1), or to do his utmost to compel the minor to return to the custody of his guardian in obedience to an order under section 25, sub-section (1), or

(b) if a guardian appointed or declared by the Court fails to deliver to the Court, within the time allowed by or under clause (b) of section 34, a statement required under that clause, or to exhibit accounts in compliance with a requisition under clause (c) of that section, or to pay into the Court the balance due from him on those accounts in compliance with a requisition under clause (d) of that section, or

(c) if a person who has ceased to be a guardian, or the representative of such a person, fails to deliver any property or accounts in compliance with a requisition under section 41, sub-section (3),

the person, guardian or representative, as the case may be, shall be liable, by order of the Court, to fine not exceeding one hundred rupees, and in case of recusancy to further fine not exceeding ten rupees for each day after the first during which the default continues, and not exceeding five hundred rupees in the aggregate, and to detention in the civil jail until he undertakes to produce the minor or cause him to be produced, or to compel his return, or to deliver the statement, or to exhibit the accounts, or to pay the balance, or to deliver the property or accounts, as the case may be.

(2) If a person who has been released from detention on giving an undertaking under sub-section (1) fails to carry out the undertaking within the time allowed by the Court, the Court may cause him to be arrested and re-committed to the civil jail.

46. Reports by Collectors and subordinate Courts.—(1) The Court may call upon the Collector, or upon any court subordinate to the Court, for a report on any matter arising in any proceeding under this Act and treat the report as evidence.

(2) For the purpose of preparing the report the Collector or the Judge of the subordinate Court as the case may be, shall make such inquiry as he deems necessary, and may for the purposes of the inquiry exercise any power of compelling the attendance of a witness to give evidence or produce a document which is conferred on a Court by the ¹Code of Civil Procedure (14 of 1882).

47. Orders appealable.— An appeal shall lie to the High Court from an order made by a ^{2***} Court,—

(a) under section 7, appointing or declaring or refusing to appoint or declare a guardian; or,

(b) under section 9, sub-section (3), returning an application ; or,

1. See now the Code of Civil Procedure, 1908 (Act 5 of 1908).

2. The word “District” rep. by Act 4 of 1926, s. 4.

(c) under section 25, making or refusing to make an order for the return of a ward to the custody of his guardian; or,

(d) under section 26, refusing leave for, the removal of award from the limits of the jurisdiction of the Court, or imposing conditions with respect thereto; or,

(e) under section 28 or section 29, refusing permission to a guardian to do an act referred to in the section; or,

(f) under section 32, defining, restricting or extending the powers of a guardian ; or,

(g) under section 39, removing a guardian ; or,

(h) under section 40, refusing to discharge a guardian; or,

(i) under section 43, regulating the conduct or proceedings of a guardian or settling a matter in difference between joint guardians, or enforcing the order ; or,

(j) under section 44 or section 45, imposing a penalty.

48. Finality of other orders.—Save as provided by the last foregoing section and by ¹section 622 of the Code of Civil Procedure (14 of 1882), an order made under this Act shall be final and shall not be liable to be contested by suit or otherwise.

49. Costs.—The costs of any proceeding under this Act, including the costs of maintaining a guardian or other person in the civil jail, shall, subject to any rules made by the High Court under this Act, be in the discretion of the Court in which the proceeding is had.

50. Power of High Court to make rules.—(1) In addition to any other power to make rules conferred expressly or impliedly by this Act, the High Court may from time to time make rules consistent with this Act—

(a) as to the matters respecting which, and the time at which, reports should be called for from Collectors and subordinate Courts;

(b) as to the allowances to be granted to, and the security to be required from, guardians, and the cases in which such allowances should be granted;

(c) as to the procedure to be followed with respect to applications of guardians for permission to do acts referred to in sections 28 and 29 ;

(d) as to the circumstances in which such requisitions as are mentioned in clauses (a), (b), (c) and (d) of section 34 should be made ;

(e) as to the preservation of statements and accounts delivered and exhibited by guardians ;

(ff) as to the inspection of those statements and accounts by persons interested ;

²[(ff) as to the audit of accounts under section 34A, the class of persons who should be appointed to audit accounts, and the scales of remuneration to be granted to them;]

(g) as to the custody of money, and securities for money, belonging to wards ;

(h) as to the securities on which money belonging to wards may be invested ;

(i) as to the education of wards for whom guardians, not being Collectors, have been appointed or declared by the Court ; and,

(j) generally, for the guidance of the Courts in carrying out the purposes of this Act.

(2) Rules under clauses (a) and (1) of sub-section (1) shall not have effect until they have been approved by the State Government, nor shall any rule under this section have effect until it has been published in the Official Gazette.

1. See now s. 115 of the Code of Civil Procedure, 1908 (Act 5 of 1908).

2. Ins. by Act 17 of 1929, s. 3.

51. Applicability of Act to guardians already appointed by Court.—A guardian appointed by, or holding a certificate of administration from, a Civil Court under any enactment repealed by this Act shall, save as may be prescribed, be subject to the provisions of this Act, and of the rules made under it, as if he had been appointed or declared by the Court under Chapter II.

52. [*Amendment of Indian Majority Act.*] *Rep. by the Repealing Act, 1938 (1 of 1938), s. 2 and the Schedule.*

53. [*Amendment of Chapter XXXI of the Code of Civil Procedure.*] *Rep. by the Code of Civil Procedure, 1908 (5 of 1908), s. 156 and the Fifth Schedule.*

THE SCHEDULE.—[*Enactments repealed.*] *Rep. by the Repealing Act, 1938 (1 of 1938), s. 2 and the Schedule.*

10. Personal laws (Amendment Act) 2010

THE PERSONAL LAWS (AMENDMENT) ACT, 2010

NO. 30 OF 2010
[31st August, 2010.]

An Act further to amend the Guardians and Wards Act, 1890 and the Hindu Adoptions and Maintenance Act, 1956.

BE it enacted by Parliament in the Sixty-first Year of the Republic of India as follows:—

CHAPTER I PRELIMINARY

1. Short title. - This Act may be called the Personal Laws (Amendment) Act, 2010.

CHAPTER II AMENDMENT TO THE GUARDIANS AND WARDS ACT, 1890

2. Amendment of section 19 of Act 8 of 1890. - In section 19 of the Guardians and Wards Act, 1890, for clause (b), the following clause shall be substituted, namely:—
"(b) of a minor, other than a married female, whose father or mother is living and is not, in the opinion of the court, unfit to be guardian of the person of the minor, or".

CHAPTER III AMENDMENTS TO THE HINDU ADOPTIONS AND MAINTENANCE ACT, 1956

3. Substitution of new section for section 8. - In the Hindu Adoptions and Maintenance Act, 1956 (hereafter in this Chapter referred to as the Hindu Adoptions and Maintenance Act), for section 8, the following section shall be substituted, namely:—

"8. Capacity of a female Hindu to take in adoption. - Any female Hindu who is of sound mind and is not a minor has the capacity to take a son or daughter in adoption: Provided that, if she has a husband living, she shall not adopt a son or daughter except with the consent of her husband unless the husband has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind."

4. Amendment of section 9. - In the Hindu Adoptions and Maintenance Act, in section 9, —

(i) for sub-section (2), the following sub-section shall be substituted, namely:

—
"(2) Subject to the provisions of sub-section (4), the father or the mother, if alive, shall have equal right to give a son or daughter in adoption: Provided that such right shall not be exercised by either of them save with the consent of the other unless one of them has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.";

(ii) sub-section (3) shall be omitted.

V.K. BHASIN,
Secy. to the Govt. of India.

11. Indian Majority Act, 1875

THE MAJORITY ACT, 1875

ARRANGEMENT OF SECTIONS

SECTIONS

PREAMBLE.

1. Short title.

Local extent.

Commencement and operation.

2. Saving.

3. Age of majority of persons domiciled in India.

THE MAJORITY ACT, 1875

ACT NO. 9 OF 1875¹

[2nd March, 1875].

An Act to amend the law respecting the age of majority.

Preamble. — Whereas, in the case of persons domiciled in ²[India] it is expedient ³[to specify the age of majority]; It is hereby enacted as follows: —

1. Short title.— This Act may be called the ^{4***} Majority Act, 1875.

Local extent. — ⁵[It extends to the whole of India ⁶[except the State of Jammu and Kashmir]].

Commencement and operation. —and it shall come into force and have effect only on the expiration of three months from the passing thereof.

2. Saving.—Nothing herein contained shall affect: —

(a) the capacity of any persons to act in the following matters (namely), —marriage, dower, divorce and adoption;

(b) the religion or religious rites and usages of any class of ⁷[citizens of India]; or

(c) the capacity of any person who before this Act comes into force has attained majority under the law applicable to him.

⁸**[3. Age of majority of persons domiciled in India.** —(1) Every person domiciled in India shall attain the age of majority on his completing the age of eighteen years and not before.

(2) In computing the age of any person, the day on which he was born is to be included as a whole day and he shall be deemed to have attained majority at the beginning of the eighteenth anniversary of that day.]

Illustrations

(a) Z is born in ²[India] on the first day of January, 1850, and has ⁹[an Indian domicile]. A guardian of his person is appointed by a Court of Justice. Z attains majority at the first moment of the first day of January, 1871.

(b) Z is born in ²[India] on the twenty-ninth day of February 1852, and has ¹⁰[an Indian domicile]. A guardian of his property is appointed by a Court of Justice. Z attains majority at the first moment of the twenty-eighth day of February, 1873.

(c) Z is born on the first day of January, 1850. He acquires a domicile in ²[India]. No guardian is appointed of his person or property of any Court of Justice, nor is he under the jurisdiction of any Court of Wards. Z attains majority at the first moment of the day of January, 1868.

1. This Act has been extended to Dadra and Nagar Haveli by Reg. 6 of 1963, s. 2 and the First Schedule, and the whole of the Union territory of Lakshadweep by Reg. 8 of 1965, s. 3 and Schedule.

This Act has been extended to Pondicherry by Act 26 of 1968, subject to the following modification:

In section 1 at the end, insert:—

“Provided that nothing contained in this Act shall apply to the Renoncants of the Union territory of Pondicherry.”.

2. Subs. by Act 3 of 1951, s. 3 and the Schedule, for “Part A States and Part C States”.

3. Subs. by Act 33 of 1999, s. 2, for “to prolong the period of nonage, and to attain more uniformity and certainty respecting the age of majority that now exists” (w.e.f. 16-12-1999).

4. The word “Indian” omitted by s. 3, *ibid* (w.e.f. 16-12-1999).

5. Subs. by the A.O. 1950, for the original para.

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

7. Subs. by A.O. 1950, for “His Majesty’s subject in India.”

8. Subs. by Act 33 of 1999, s. 4, for sections 3 and 4 (w.e.f. 16-12-1999).

9. Subs. by Act 3 of 1951 s. 3 and the Schedule *ibid.*, for “a Part A State or a Part C State”.

10. Subs. by s. 3 and the Schedule *ibid.*, for “a domicile in a Part A State or a Part C State”.

12. The dissolution of Muslim Marriage Act, 1939

THE DISSOLUTION OF MUSLIM MARRIAGES ACT, 1939

ARRANGEMENT OF SECTIONS

SECTIONS

1. Short title and extent.
2. Grounds for decree for dissolution of marriage
3. Notice to be served on heirs of the husband when the husband's whereabouts are not known.
4. Effect of conversion to another faith.
5. Rights to dower not to be affected.
6. [*Repealed.*].

THE DISSOLUTION OF MUSLIM MARRIAGES ACT, 1939

ACT NO. 8 OF 1939

[17th March, 1939.]

An Act to consolidate and clarify the provisions of Muslim law relating to suits for dissolution of marriage by women married under Muslim law and to remove doubts as to the effect of the renunciation of Islam by a married Muslim woman on her marriage tie.

WHEREAS it is expedient to consolidate and clarify the provisions of Muslim law relating to suits for dissolution of marriage by women married under Muslim law and to remove doubts as to the effect of the renunciation of Islam by a married Muslim woman on her marriage tie; It is hereby enacted as follows: —

1. Short title and extent. — (1) This Act may be called the Dissolution of Muslim Marriages Act, 1939.

(2) It extends to the whole of India ¹[^{2***}] ³.

2. Grounds for decree for dissolution of marriage.—A woman married under Muslim law shall be entitled to obtain a decree for the dissolution of her marriage on any one or more of the following grounds, namely: —

(i) that the whereabouts of the husband have not been known for a period of four years;

(ii) that the husband has neglected or has failed to provide for her maintenance for a period of two years;

(iii) that the husband has been sentenced to imprisonment for a period of seven years or upwards;

(iv) that the husband has failed to perform, without reasonable cause, his marital obligations for a period of three years;

(v) that the husband was impotent at the time of the marriage and continues to be so;

(vi) that the husband has been insane for a period of two years or is suffering from ^{4***} a virulent venereal disease;

(vii) that she, having been given in marriage by her father or other guardian before she attained the age of fifteen years, repudiated the marriage before attaining the age of eighteen years :

Provided that the marriage has not been consummated ;

1. Subs by Act 48 of 1959, s. 3 and Sch. I, for certain words (w.e.f. 1-2-1960).

2. The words “except the State of Jammu and Kashmir” omitted by Act 34 of 2019, s. 95 and the Fifth Schedule (w.e.f. 31-10-2019).

3. In its application to Pondicherry, in section 1, after sub-section (2), the following shall be inserted—

“Provided that nothing contained in this Act shall apply to the Renoncants of the Union territory of Pondicherry.” — (Vide Act 26 of 1968).

The Act has been extended to Dadra and Nagar Haveli by Reg. 6 of 1963, s. 2 and Sch. I.

4. The words “leprosy or” omitted by Act 6 of 2019, s. 3 (w.e.f. 1-3-2019).

(viii) that the husband treats her with cruelty, that is to say, —

(a) habitually assaults her or makes her life miserable by cruelty of conduct even if such conduct does not amount to physical ill-treatment, or

(b) associates with women of evil repute or leads an infamous life, or

(c) attempts to force her to lead an immoral life, or

(d) disposes of her property or prevents her exercising her legal rights over it, or

(e) obstructs her in the observance of her religious profession or practice, or

(f) if he has more wives than one, does not treat her equitably in accordance with the injunctions of the Qoran;

(ix) on any other ground which is recognised as valid for the dissolution of marriages under muslim law :

Provided that —

(a) no decree shall be passed on ground (iii) until the sentence has become final;

(b) a decree passed on ground (i) shall not take effect for a period of six months from the date of such decree, and if the husband appears either in person or through an authorised agent within that period and satisfies the Court that he is prepared to perform his conjugal duties, the Court shall set aside the said decree; and

(c) before passing a decree on ground (v) the Court shall, on application by the husband, make an order requiring the husband to satisfy the Court within a period of one year from the date of such order that he has ceased to be impotent, and if the husband so satisfies the Court within such period, no decree shall be passed on the said ground.

3. Notice to be served on heirs of the husband when the husband's whereabouts are not known. — In a suit to which clause (i) of section 2 applies —

(a) the names and addresses of the persons who would have been the heirs of the husband under Muslim law if he had died on the date of the filing of the plant shall be stated in the plaint,

(b) notice of the suit shall be served on such persons, and

(c) such persons shall have the right to be heard in the suit :

Provided that paternal uncle and brother of the husband, if any, shall be cited as party even if he or they are not heirs.

4. Effect of conversion to another faith. —The renunciation of Islam by a married Muslim woman or her conversion to a faith other than Islam shall not by itself operate to dissolve her marriage :

Provided that after such renunciation, or conversion, the woman shall be entitled to obtain a decree for the dissolution of her marriage on any of the grounds mentioned in section 2:

Provided further that the provisions of this section shall not apply to a woman converted to Islam from some other faith who re-embraces her former faith.

5. Rights to dower not to be affected. — Nothing contained in this Act shall affect any right which a married woman may have under Muslim law to her dower or any part thereof on the dissolution of her marriage.

6. *[Repeal of section 5 of Act 26 of 1937.] Rep. by the Repealing and Amending Act, 1942 (25 of 1942), s. 2 and the First Schedule .*

13. The Christian Marriage Act, 1872

THE INDIAN CHRISTIAN MARRIAGE ACT, 1872

ARRANGEMENT OF SECTIONS

PREAMBLE

PRELIMINARY

SECTIONS

1. Short title.
Extent.
2. [*Repealed.*].
3. Interpretation clause.

PART I

THE PERSONS BY WHOM MARRIAGES MAY BE SOLEMNIZED

4. Marriages to be solemnized according to Act.
5. Persons by whom marriages may be solemnized.
6. Grant and revocation of licenses to solemnize marriages.
7. Marriage Registrars.
Senior Marriage Registrar.
Magistrate when to be marriage Registrar.
8. [*Repealed.*].
9. Licensing of persons to grant certificates of marriage between Indian Christians.

PART II

TIME AND PLACE AT WHICH MARRIAGES MAY BE SOLEMNIZED

10. Time for solemnizing marriage.
Exceptions.
11. Place for solemnizing marriage.
Fee for special license.

PART III

MARRIAGES SOLEMNIZED BY MINISTERS OF RELIGION LICENSED UNDER THIS ACT

12. Notice of intended marriage.
13. Publication of such notice.
Return or transfer of notice.
14. Notice of intended marriage in private dwelling.
15. Sending copy of notice to Marriage Registrar when one party is a minor.
16. Procedure on receipt of notice.
17. Issue of certificate of notice given and declaration made.
Proviso.
18. Declaration before issue of certificate.
19. Consent of father, or guardian, or mother.
20. Power to prohibit by notice issue of certificate.
21. Procedure on receipt of notice.
22. Issue of certificate in case of minority.
23. Issue of certificates to Indian Christians.

SECTIONS

- 24. Form of certificate.
- 25. Solemnization of marriage.
- 26. Certificate void if marriage not solemnized within two months.

PART IV

REGISTRATION OF MARRIAGES SOLEMNIZED BY MINISTERS OF RELIGION

- 27. Marriages when to be registered.
- 28. Registration of marriages solemnized by Clergymen of Church of England.
- 29. Quarterly returns to Archdeaconry.
 - Contents of returns.
- 30. Registration and returns of marriages solemnized by Clergymen of Church of Rome.
- 31. Registration and returns of marriages solemnized by Clergymen of Church of Scotland.
- 32. Certain marriages to be registered in duplicate.
- 33. Entries of such marriages to be signed and attested.
- 34. Certificate to be forwarded to Marriage Registrar, copied and sent to Registrar General.
- 35. Copies of certificates to be entered and numbered.
- 36. Registrar to add number of entry to certificate, and send to Registrar General.
- 37. Registration of marriages between Indian Christians, by persons referred to in clauses (1), (2) and (3) of section 5.
 - Custody and disposal of register-book.

PART V

MARRIAGES SOLEMNIZED BY, OR IN THE PRESENCE OF, A MARRIAGE REGISTRAR

- 38. Notice of intended marriage before Marriage Registrar.
- 39. Publication of notice.
- 40. Notice to be filed and copy entered in Marriage Notice Book.
- 41. Certificate of notice given and oath made.
 - Proviso.
- 42. Oath before issue of certificate.
- 43. Petition to High Court to order certificate in less than fourteen days.
 - Order on petition.
- 44. Consent of father or guardian.
 - Protest against issue of certificate.
 - Effect of protest.
- 45. Petition where person whose consent is necessary is insane, or unjustly withholds consent.
 - Procedure on petition.
- 46. Petition when Marriage Registrar refuses certificate.
 - Procedure on petition.
- 47. *[Repealed.]*.
- 48. Petition when Registrar doubts authority of person for bidding.
 - Procedure on petition.
- 49. Liability for frivolous protest against issue of certificate.
- 50. Form of certificate.
- 51. Solemnization of marriage after issue of certificate.
- 52. When marriage not had within two months after notice, new notice required.
- 53. Marriage Registrar may ask for particulars to be registered.
- 54. Registration of marriages solemnized under part V.

SECTIONS

- 55. Certificates to be sent monthly to Registrar General.
Custody of register-book.
- 56. [*Repealed.*].
- 57. Registrars to ascertain that notice and certificate are understood by Indian Christians.
- 58. Indian Christians to be made to understand declarations.
- 59. Registration of marriages between Indian Christians.

PART VI

MARRIAGE OF INDIAN CHRISTIANS

- 60. On what conditions marriages of Indian Christians may be certified.
- 61. Grant of certificate.
- 62. Keeping of register-book and deposit of extracts therefrom with Registrar General.
- 63. Searches in register-book and copies of entries.
- 64. Books in which marriages of Indian Christians under Part I or Part III are registered.
- 65. Part VI not to apply to Roman Catholics.
Saving of certain marriages.

PART VII

PENALTIES

- 66. False oath, declaration, notice or certificate for procuring marriage.
- 67. Forbidding, by false personation issue of certificate by Marriage Registrar.
- 68. Solemnizing marriage without due authority.
- 69. Solemnizing marriage out of proper time, or without witnesses.
Saving of marriages solemnized under special license.
- 70. Solemnizing without notice or within fourteen days after notice, marriage with minor.
- 71. Issuing certificate, or marrying, without publication of notice;
Marrying after expiry of notice;
Solemnizing, marriage with minor within fourteen days, without authority of Court, or without sending copy of notice;
issuing certificate against authorized prohibition.
- 72. Issuing certificate after expiry of notice, or, in case of minor, within fourteen days after notice, or against authorized prohibition.
- 73. Persons authorized to solemnize marriage (other than Clergy of Churches of England, Scotland or Rome);
issuing certificate, or marrying, without publishing notice, or after expiry of certificate;
issuing certificate for, or solemnizing, marriage with minor, within fourteen days after notice;
issuing certificate authorizedly forbidden;
solemnizing marriage authorizedly forbidden.
- 74. Unlicensed person granting certificate pretending to be licensed.
- 75. Destroying or falsifying register-books.
- 76. Limitation of prosecutions under Act.

PART VIII

MISCELLANEOUS

- 77. What matters need not be proved in respect of marriage in accordance with Act.
- 78. Corrections of errors.
- 79. Searches and copies of entries.

SECTIONS

80. Certified copy of entry in marriage-register, etc., to be evidence.
81. Certificates of certain marriages to be sent to Central Government.
82. State Government to prescribe fees.
83. Power to make rules.
84. [*Repealed.*].
85. Power to declare who shall be District Judge.
86. [*Repealed.*].
87. Saving of Consular marriages.
88. Non-validation of marriages within prohibited degrees.

SCHEDULE I.—NOTICE OF MARRIAGE.

SCHEDULE II.—CERTIFICATE OF RECEIPT OF NOTICE.

SCHEDULE III.—FORM OR REGISTER OF MARRIAGES.

SCHEDULE IV.—MARRIAGE REGISTER-BOOK.

CERTIFICATE OF MARRIAGE.

SCHEDULE V.—[*Repealed.*].

THE INDIAN CHRISTIAN MARRIAGE ACT, 1872

ACT NO. 15 OF 1872

[18th July, 1872.]

An Act to consolidate and amend the law relating to the solemnization in India of the marriages of Christians.

PREAMBLE.—WHEREAS it is expedient to consolidate and amend the law relating to the solemnization in India of the marriages of persons professing the Christian religion; It is hereby enacted as follows:—

PRELIMINARY

1. Short title.—This Act may be called the Indian Christian Marriage Act, 1872.

Extent.—¹[It extends to the whole of India ²[except ³[the territories which, immediately before the 1st November, 1956, were comprised in the States] of Travancore-Cochin, Manipur and ⁴***].]⁵

6* * * *

2. [Enactments repealed.]—*Rep. by the Repealing Act, 1938 (1 of 1938), s. 2 and the Schedule.*

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

“Church of England” and “Anglican”.—mean and apply to the Church of England as by law established;

“Church of Scotland”.—means the Church of Scotland as by law established;

“Church of Rome” and “Roman Catholic”.—mean and apply to the Church which regards the Pope of Rome as its spiritual head;

“Church”.—includes any chapel or other building generally used for public Christian worship;

⁷[**“India”.**—means the ⁸[territories] to which this Act extends;]

“minor”.—“minor” means a person who has not completed the age of twenty-one years and who is not a widower or a widow;

9* * * *

the expression “Christians” means persons professing the Christian religion;

¹⁰[and the expression “Indian Christians” includes the Christian descendants of natives of India converted to Christianity, as well as such converts;]

1. Subs. by A.O. 1950 for the second para., as amended by A.O. 1937 and A.O. 1948. [NOTE:--The Act does not extend to the State of Manipur, *vide* Act 30 of 1950, s. 3(2A) and Sch. As amended by Act 68 of 1956, s. 2. The Act has been extended to and brought into force in Dadra and Nagar Haveli (w.e.f. 1-7-1965) by Reg. 6 of 1963, s. 2 and Sch. I.]

2. Subs. by Act 3 of 1951, s. 3 and Sch., for “except Part B States”.

3. Subs. by the Adaption of Laws (No. 2) Order, 1956, for “the States”.

4. The words “State of Jammu and Kashmir” omitted by Act 34 of 2019, s. 95 and the Fifth Schedule (w.e.f. 31-10-2019).

5. In its application to Pondicherry, in section 1, the following proviso shall be added at the end of section 1—

“Provided that nothing contained in this Act shall apply to the Renoncants of the Union territory of Pondicherry.”—
(*vide* Act 26 of 1968).

6. The commencement cl. rep. by Act 16 of 1874, s. 1 and the Schedule.

7. Ins. by Act 3 of 1951, s. 3 and Sch.

8. Subs. by the Adaptation of Laws (No. 2) Order, 1956, for “territory comprised in the States”.

9. The definition of “Native State” omitted by the A.O. 1937.

10. Subs. by A.O. 1950, for the definition.

¹["**Registrar General of Births, Deaths and Marriages**".—means a Registrar General of Births, Deaths and Marriages appointed under the Births, Deaths and Marriages Registration Act, 1886 (6 of 1886).]

PART I

THE PERSONS BY WHOM MARRIAGES MAY BE SOLEMNIZED

4. Marriages to be solemnized according to Act.—Every marriage between persons, one or both of whom is ²[or are] a Christian or Christians, shall be solemnized in accordance with the provisions of the next following section; and any such marriage solemnized otherwise than in accordance with such provisions shall be void.

5. Persons by whom marriages may be solemnized.—Marriages may be solemnized in ³[India]—

(1) by any person who has received episcopal ordination, provided that the marriage be solemnized according to the rules, rites, ceremonies and customs of the Church of which he is a Minister;

(2) by any Clergyman of the Church of Scotland, provided that such marriage be solemnized according to the rules, rites, ceremonies and customs of the Church of Scotland;

(3) by any Minister of Religion licensed under this Act to solemnize marriages;

(4) by, or in the presence of, a Marriage Registrar appointed under this Act;

(5) by any person licensed under this Act to grant certificates of marriage between ⁴[Indian] Christians.

⁵[**6. Grant and revocation of licenses to solemnize marriages.**—The State Government, so far as regards the territories under its administration, ^{6***} may, by notification in the Official Gazette ^{7***}, grant licenses to Ministers of Religion to solemnize marriages within such territories ^{8***} and may, by a like notification revoke such licenses.]

7. Marriage Registrars.—The State Government may appoint one or more Christians, either by name or as holding any office for the time being, to be the Marriage Registrar or Marriage Registrars for any district subject to its administration.

Senior Marriage Registrar.—Where there are more Marriage Registrars than one in any district, the State Government shall appoint one of them to be the Senior Marriage Registrar.

Magistrate when to be Marriage Registrar.—When there is only one Marriage Registrar in a district, and such Registrar is absent from such district, or ill, or when his office is temporarily vacant, the Magistrate of the district shall act as, and be, Marriage Registrar thereof during such absence, illness, or temporary vacancy.

STATE AMENDMENT

KARNATAKA

In section 7, for the words, "Magistrate of the district" the words "District Magistrate" shall be substituted.

[Vide Karnataka Act 13 of 1965, s. 67 and Schedule.]

8. [Marriage Registrars in Indian States.]—Rep., by the A. O. 1950.

9. Licensing of persons to grant certificates of marriage between Indian Christians.—The State Government ^{9***} may grant a license to any Christian, either by name or as holding any office for the time being, authorizing him to grant certificates of marriage between ⁴[Indian] Christians.

1. Ins. by Act 6 of 1886, s. 30.

2. Ins. by Act 12 of 1891, s. 2 and the Second Schedule.

3. Subs. by Act 3 of 1951, s. 3 and Sch., for "Part A States and Part C States".

4. Subs. by the A. O. 1950, for "Native".

5. Subs. by Act 2 of 1891, s. 1, for s. 6.

6. The words "and the Central Government, so far as regards any Indian State" omitted by the A.O. 1950.

7. The words "or in the Gazette of India, as the case may be" omitted by the A.O. 1937.

8. The words "and State, respectively," omitted by the A.O. 1950.

9. The words and brackets "or (so far as regard any Indian State) the Central Government" omitted by the A.O. 1950.

Any such license may be revoked by the authority by which it was granted, and every such grant or revocation shall be notified in the Official Gazette.

PART II

TIME AND PLACE AT WHICH MARRIAGES MAY BE SOLEMNIZED

10. Time for solemnizing marriage.—Every marriage under this Act shall be solemnized between the hours of six in the morning and seven in the evening:

Exceptions.—Provided that nothing in this section shall apply to—

(1) a Clergyman of the Church of England solemnizing a marriage under a special license permitting him to do so at any hour other than between six in the morning and seven in the evening, under the hand and seal of the Anglican Bishop of the Diocese or his Commissary, or

(2) a Clergyman of the Church of Rome solemnizing a marriage between the hours of seven in the evening and six in the morning, when he has received a general or special license in that behalf from the Roman Catholic Bishop of the Diocese or Vicariate in which such marriage is so solemnized, or from such person as the same Bishop has authorized to grant such license, ¹[or

(3) a Clergyman of the Church of Scotland solemnizing a marriage according to the rules, rites, ceremonies and customs of the Church of Scotland.]

11. Place for solemnizing marriage.—No Clergyman of the Church of England shall solemnize a marriage in any place other than a church²[where worship is generally held according to the forms of the Church of England],

unless there is no ²[such] church within five miles distance by the shortest road from such place, or

unless he has received a special license authorizing him to do so under the hand and seal of the Anglican Bishop of the Diocese or his Commissary.

Fee for special license.—For such special license, the Registrar of the Diocese may charge such additional fee as the said Bishop from time to time authorizes.

PART III

MARRIAGES SOLEMNIZED BY MINISTERS OF RELIGION LICENSED UNDER THIS ACT

12. Notice of intended marriage.—Whenever a marriage is intended to be solemnized by a Minister of Religion licensed to solemnize marriages under this Act—

one of the persons intending marriage shall give notice in writing, according to the form contained in the First Schedule hereto annexed, or to the like effect, to the Minister of Religion whom he or she desires to solemnize the marriage, and shall state therein—

(a) the name and surname, and the profession or condition, of each of the persons intending marriage,

(b) the dwelling-place of each of them,

(c) the time during which each has dwelt there, and

(d) the church or private dwelling in which the marriage is to be solemnized:

Provided that, if either of such persons has dwelt in the place mentioned in the notice during more than one month, it may be stated therein that he or she has dwelt there one month and upwards.

13. Publication of such notice.—If the persons intending marriage desire it to be solemnized in a particular church, and if the Minister of Religion to whom such notice has been delivered be entitled to officiate therein, he shall cause the notice to be affixed in some conspicuous part of such church.

1. Ins. by Act 2 of 1891, s. 2.

2. Ins. by s. 3, *ibid.*

Return or transfer of notice.—But if he is not entitled to officiate as a Minister in such church, he shall, at his option, either return the notice, to the person who delivered it to him, or deliver it to some other Minister entitled to officiate therein, who shall thereupon cause the notice to be affixed as aforesaid.

14. Notice of intended marriage in private dwelling.—If it be intended that the marriage shall be solemnized in a private dwelling, the Minister of Religion, on receiving the notice prescribed in section 12, shall forward it to the Marriage Registrar of the district, who shall affix the same to some conspicuous place in his own office.

15. Sending copy of notice to Marriage Registrar when one party is a minor.—When one of the persons intending marriage is a minor, every Minister receiving such notice shall, unless within twenty-four hours after its receipt he returns the same under the provisions of section 13, send by the post or otherwise a copy of such notice to the Marriage Registrar of the district, or, if there be more than one Registrar of such district, to the Senior Marriage Registrar.

16. Procedure on receipt of notice.—The Marriage Registrar or Senior Marriage Registrar, as the case may be, on receiving any such notice, shall affix it to some conspicuous place in his own office, and the latter shall further cause a copy of the said notice to be sent to each of the other Marriage Registrars in the same district, who shall likewise publish the same in the manner above directed.

17. Issue of certificate of notice given and declaration made.—Any Minister of Religion consenting or intending to solemnize any such marriage as aforesaid, shall, on being required so to do by or on behalf of the person by whom the notice was given, and upon one of the persons intending marriage making the declaration herein after required, issue under his hand a certificate of such notice having been given and of such declaration having been made:

Proviso.—Provided—

(1) that no such certificate shall be issued until the expiration of four days after the date of the receipt of the notice by such Minister;

(2) that no lawful impediment be shown to his satisfaction why such certificate should not issue; and

(3) that the issue of such certificate has not been forbidden, in manner hereinafter mentioned, by any person authorized in that behalf.

18. Declaration before issue of certificate.—The certificate mentioned in section 17 shall not be issued until one of the persons intending marriage has appeared personally before the Minister and made a solemn declaration—

(a) that he or she believes that there is not any impediment of kindred or affinity, or other lawful hindrance, to the said marriage,

And, when either or both of the parties is or are a minor or minors,

(b) that the consent or consents required by law has or have been obtained thereto, or that there is no person resident in India having authority to give such consent, as the case may be.

19. Consent of father, or guardian, or mother.—The father, if living, of any minor, or, if the father be dead the guardian of the person of such minor, and, in case there be no such guardian, then the mother of such minor, may give consent to the minor's marriage,

and such consent is hereby required for the same marriage, unless no person authorized to give such consent be resident in India.

20. Power to prohibit by notice issue of certificate.—Every person whose consent to a marriage is required under section 19, is hereby authorized to prohibit the issue of the certificate by any Minister, at any time before the issue of the same, by notice in writing to such Minister, subscribed by the person so authorized with his or her name and place of abode and position with respect to either of the persons intending marriage, by reason of which he or she is so authorized as aforesaid.

21. Procedure on receipt of notice.—If any such notice be received by such Minister, he shall not issue his certificate and shall not solemnize the said marriage until he has examined into the matter of the said prohibition, and is satisfied that the person prohibiting the marriage has no lawful authority for such prohibition,

or until the said notice is withdrawn by the person who gave it.

22. Issue of certificate in case of minority.—When either of the persons intending marriage is a minor, and the Minister is not satisfied that the consent of the person whose consent to such marriage is required by section 19 has been obtained, such Minister shall not issue such certificate until the expiration of fourteen days after the receipt by him of the notice of marriage.

23. Issue of certificates to Indian Christians.—When any¹[Indian] Christians about to be married takes a notice of marriage to a Minister of Religion, or applies for a certificate from such Minister under section 17, such Minister shall, before issuing the certificate, ascertain whether such ¹[Indian] Christians is cognizant of the purport and effect of the said notice or certificate, as the case may be, and, if not, shall translate or cause to be translated the notice or certificate to such ¹[Indian] Christian into some language which he understands.

24. Form of certificate.—The certificate to be issued by such Minister shall be in the form contained in the Second Schedule hereto annexed, or to the like effect.

25. Solemnization of marriage.—After the issue of the certificate by the Minister, marriage may be solemnized between the persons therein described according to such form or ceremony as the Minister thinks fit to adopt:

Provided that the marriage be solemnized in the presence of at least two witnesses besides the Minister.

26. Certificate void if marriage not solemnized within two months.—Whenever a marriage is not solemnized within two months after the date of the certificate issued by such Minister as aforesaid, such certificate and all proceedings (if any) thereon shall be void,

and no person shall proceed to solemnize the said marriage until new notice has been given and a certificate thereof issued in manner aforesaid.

PART IV

REGISTRATION OF MARRIAGES SOLEMNIZED BY MINISTERS OF RELIGION

27. Marriages when to be registered.—All marriages hereafter solemnized in ²[India] between persons one or both of whom professes or profess the Christian religion, except marriages solemnized under Part V or Part VI of this Act, shall be registered³ in manner hereinafter prescribed.

28. Registration of marriages solemnized by Clergymen of Church of England.—Every Clergyman of the Church of England shall keep a register of marriages and shall register therein, according to the tabular form set forth in the Third Schedule hereto annexed, every marriage which he solemnizes under this Act.

29. Quarterly returns to Archdeaconry.—Every Clergyman of the Church of England shall send four times in every year returns induplicate, authenticated by his signature, of the entries in the register of marriages solemnized at any place where he has any spiritual charge, to the Registrar of the Archdeaconry to which he is subject, or within the limits of which such place is situate.

Contents of returns.—Such quarterly returns shall contain all the entries of marriages contained in the said register from the first day of January to the thirty-first day of March, from the first day of April to the thirtieth day of June, from the first day of July to the thirtieth day of September, and from the first day of October to the thirty-first day of December, of each year, respectively, and shall be sent by such Clergyman within two weeks from the expiration of each of the quarters above specified.

The said Registrar upon receiving the said returns shall send one copy thereof to the ⁴[Registrar General of Births, Deaths and Marriages].

1. Subs. by the A. O. 1950, for “Native”.

2. Subs. by Act 3 of 1951, s. 3 and Sch., for “a Part A State or a Part C State”.

3. As to the establishment of general registry offices of births, deaths and marriages, see the Births, Deaths and Marriages Registration Act, 1886 (6 of 1886), Ch. II.

4. Subs. by Act 6 of 1886, s. 30, for “Secretary to the L. G.”.

30. Registration and returns of marriages solemnized by Clergymen of Church of Rome.—Every marriage solemnized by a Clergyman of the Church of Rome shall be registered by the person and according to the form directed in that behalf by the Roman Catholic Bishop of the Diocese or Vicariate in which such marriage is solemnized,

and such person shall forward quarterly to the ¹[Registrar General of Births, Deaths and Marriages] returns of the entries of all marriages registered by him during the three months next preceding.

31. Registration and returns of marriages solemnized by Clergymen of Church of Scotland.—Every Clergyman of the Church of Scotland shall keep a register of marriages,

and shall register therein, according to the tabular form set forth in the Third Schedule hereto annexed, every marriage which he solemnizes under this Act,

and shall forward quarterly to the ¹[Registrar General of Births, Deaths and Marriages], through the Senior Chaplain of the Church of Scotland, returns, similar to those prescribed in section 29, of all such marriages.

32. Certain marriages to be registered in duplicate.—Every marriage solemnized by any person who has received episcopal ordination, but who is not a Clergyman of the Church of England, or of the Church of Rome, or by any Minister of Religion licensed under this Act to solemnize marriages, shall immediately after the solemnization thereof, be registered in duplicate by the person solemnizing the same; (that is to say) in a marriage-register book to be kept by him for that purpose, according to the form contained in the Fourth Schedule hereto annexed, and also in a certificate attached to the marriage-register-book as a counterfoil.

33. Entries of such marriages to be signed and attested.—The entry of such marriage in both the certificate and marriage-register-book shall be signed by the person solemnizing the marriage, and also by the persons married, and shall be attested by two credible witnesses, other than the person solemnizing the marriage, present at its solemnization.

Every such entry shall be made in order from the beginning to the end of the book, and the number of the certificate shall correspond with that of the entry in the marriage-register-book.

34. Certificate to be forwarded to Marriage Registrar, copied and sent to Registrar General.—The person solemnizing the marriage shall forthwith separate the certificate from the marriage-register-book and send it, within one month from the time of the solemnization, to the Marriage Registrar of the district in which the marriage was solemnized, or, if there be more Marriage Registrars than one, to the Senior Marriage Registrar,

who shall cause such certificate to be copied into a book to be kept by him for that purpose,

and shall send all the certificates which he has received during the month, with such number and signature or initials added thereto as are hereinafter required, to the ¹[Registrar General of Births, Deaths and Marriages].

35. Copies of certificates to be entered and numbered.—Such copies shall be entered in order from the beginning to the end of the said book, and shall bear both the number of the certificate as copied, and also a number to be entered by the Marriage Registrar, indicating the number of the entry of the said copy in the said book, according to the order in which he receives each certificate.

36. Registrar to add number of entry to certificate, and send to Registrar General.—The Marriage Registrar shall also add such last-mentioned number of the entry of the copy in the book to the certificate, with his signature or initials, and shall, at the end of every month, send the same to the ¹[Registrar General of Births, Deaths and Marriages].

37. Registration of marriages between Indian Christians, by persons referred to in clauses (1), (2) and (3) of section 5.—When any marriage between ²[Indian] Christians is solemnized ³[by any such person, Clergyman or Minister of Religion as is referred to in clause (1), clause (2) or clause (3) of section 5], the person solemnizing the same shall, instead of proceeding in the manner provided by

1. Subs. by Act 6 of 1886, s. 30, for “Secretary to the L. G.”.

2. Subs. by the A. O. 1950, for “Native”.

3. Subs. by Act 18 of 1928, s. 2 and the first Schedule, for “under Part I or Part III or this Act”.

sections 28 to 36, both inclusive, register the marriage in a separate register-book, and shall keep it safely until it is filled, or, if he leave the district in which he solemnized the marriage before the said book is filled, shall make over the same to the person succeeding to his duties in the said district.

Custody and disposal of register-book.—Whoever has the control of the book at the time when it is filled, shall send it to the Marriage Registrar of the district, or, if there be more Marriage Registrars than one, to the Senior Marriage Registrar, who shall send it to the ¹[Registrar General of Births, Deaths and Marriages,] to be kept by him with the records of his office.

PART V

MARRIAGES SOLEMNIZED BY, OR IN THE PRESENCE OF, A MARRIAGE REGISTRAR

38. Notice of intended marriage before Marriage Registrar.—When a marriage is intended to be solemnized by, or in the presence of, a Marriage Registrar, one of the parties to such marriage shall give notice in writing, in the form contained in the First Schedule hereto annexed, or to the like effect, to any Marriage Registrar of the district within which the parties have dwelt,

or, if the parties dwell in different districts, shall give the like notice to a Marriage Registrar of each district,

and shall state therein the name and surname, and the profession or condition, of each of the parties intending marriage, the dwelling-place of each of them, the time during which each has dwelt therein, and the place at which the marriage is to be solemnized:

Provided that, if either party has dwelt in the place stated in the notice for more than one month, it may be stated therein that he or she has dwelt there one month and upwards.

39. Publication of notice.—Every Marriage Registrar shall, on receiving any such notice, cause a copy thereof to be affixed in some conspicuous place in his office.

When one of the parties intending marriage is a minor, every Marriage Registrar shall, within twenty-four hours after the receipt by him of the notice of such marriage, send, by post or otherwise, a copy of such notice to each of the other Marriage Registrars (if any) in the same district, who shall likewise affix the copy in some conspicuous place in his own office.

40. Notice to be filed and copy entered in Marriage Notice Book.—The Marriage Registrar shall file all such notices and keep them with the records of his office,

and shall also forthwith enter a true copy of all such notices in a book to be furnished to him for that purpose by the State Government, and to be called the “Marriage Notice Book”,

and the Marriage Notice Book shall be open at all reasonable times, without fee, to all persons desirous of inspecting the same.

41. Certificate of notice given and oath made.—If the party by whom the notice was given requests the Marriage Registrar to issue the certificate next hereinafter mentioned, and if one of the parties intending marriage has made oath as hereinafter required, the Marriage Registrar shall issue under his hand a certificate of such notice having been given and of such oath having been made:

Proviso.—Provided—

that no lawful impediment be shown to his satisfaction why such certificate should not issue;

that the issue of such certificate has not been forbidden, in manner hereinafter mentioned, by any person authorized in that behalf by this Act;

that four days after the receipt of the notice have expired; and further,

that where, by such oath, it appears that one of the parties intending marriage is a minor, fourteen days after the entry of such notice have expired.

42. Oath before issue of certificate.—The certificate mentioned in section 41 shall not be issued by any Marriage Registrar, until one of the parties intending marriage appears personally before such Marriage Registrar, and makes oath²—

1. Subs. by Act 6 of 1886, s. 30, for “Secretary to the Local Government.”.

2. As to the meaning of “oath”, see the General Clauses Act, 1897 (10 of 1897), s. 3(37) and s. 4.

(a) that he or she believes that there is not any impediment of kindred or affinity, or other lawful hindrance, to the said marriage, and

(b) that both the parties have, or (where they have dwelt in the districts of different Marriage Registrars) that the party making such oath has, had their, his or her usual place of abode within the district of such Marriage Registrar,

and, where either or each of the parties is a minor,

(c) that the consent or consents to such marriage required by law has or have been obtained thereto, or that there is no person resident in India authorized to give such consent, as the case may be.

43. Petition to High Court to order certificate in less than fourteen days.—When one of the parties intending marriage is a minor, and both such parties are at the time resident in any of the towns of Calcutta, Madras and Bombay, and are desirous of being married in less than fourteen days after the entry of such notice as aforesaid, they may apply by petition to a Judge of the High Court, for an order upon the Marriage Registrar to whom the notice of marriage has been given, directing him to issue his certificate before the expiration of the said fourteen days required by section 41.

Order on petition.—And on sufficient cause being shown, the said Judge may, in his discretion, make an order upon such Marriage Registrar, directing him to issue his certificate at any time to be mentioned in the said order before the expiration of the fourteen days so required.

And the said Marriage Registrar, on receipt of the said order, shall issue his certificate in accordance therewith.

44. Consent of father or guardian.—The provisions of section 19 apply to every marriage under this Part, either of the parties to which is a minor;

Protest against issue of certificate.—And any person whose consent to such marriage would be required thereunder may enter a protest against the issue of the Marriage Registrar's certificate, by writing, at any time before the issue of such certificate, the word "forbidden" opposite to the entry of the notice of such intended marriage in the Marriage Notice Book, and by subscribing thereto his or her name and place of abode, and his or her position with respect to either of the parties, by reason of which he or she is so authorized.

Effect of protest.—When such protest has been entered, no certificate shall issue until the Marriage Registrar has examined into the matter of the protest, and is satisfied that it ought not to obstruct the issue of the certificate for the said marriage, or until the protest be withdrawn by the person who entered it.

45. Petition where person whose consent is necessary is insane, or unjustly withholds consent.—If any person whose consent is necessary to any marriage under this Part is of unsound mind,

or if any such person (other than the father) without just cause withholds his consent to the marriage,

the parties intending marriage may apply by petition, where the person whose consent is necessary is resident within any of the towns of Calcutta, Madras and Bombay, to a Judge of the High Court, or if he is not resident within any of the said towns, then to the District Judge:

Procedure on petition.—And the said Judge of the High Court, or District Judge, as the case may be, may examine the allegations of the petition in a summary way;

and, if upon examination such marriage appears proper, such Judge of the High Court or District Judge, as the case may be, shall declare the marriage to be a proper marriage.

Such declaration shall be as effectual as if the person whose consent was needed had consented to the marriage;

and, if he has forbidden the issue of the Marriage Registrar's certificate, such certificate shall be issued and the like proceedings may be had under this Part in relation to the marriage as if the issue of such certificate had not been forbidden.

46. Petition when Marriage Registrar refuses certificate.—Whenever a Marriage Registrar refuses to issue a certificate under this Part, either of the parties intending marriage may apply by petition, where

the district of such Registrar is within any of the towns of Calcutta, Madras and Bombay, to a Judge of the High Court, or if such district is not within any of the said towns, then to the District Judge.

Procedure on petition.—The said Judge of the High Court, or District Judge, as the case may be, may examine the allegations of the petition in a summary way, and shall decide thereon.

The decision of such Judge of the High Court or District Judge, as the case may be, shall be final, and the Marriage Registrar to whom the application for the issue of a certificate was originally made shall proceed in accordance therewith.

47. [*Petition when Marriage Registrar in Indian State refuses certificate.*] Omitted by the A.O. 1950.

48. Petition when Registrar doubts authority of person forbidding.—Whenever a Marriage Registrar, acting under the provisions of section 44, is not satisfied that the person forbidding the issue of the certificate is authorized by law so to do, the said Marriage Registrar shall apply by petition, where his district is within any of the towns of Calcutta, Madras and Bombay, to a Judge of the High Court, or if such district be not within any of the said towns, then to the District Judge.

Procedure on petition.—The said petition shall state all the circumstances of the case, and pray for the order and direction of the Court concerning the same,

and the said Judge of the High Court or District Judge, as the case may be, shall examine into the allegations of the petition and the circumstances of the case,

and if, upon such examination, it appears, that the person forbidding the issue of such certificate is not authorized by law so to do, such Judge of the High Court or District Judge, as the case may be, shall declare that the person forbidding the issue of such certificate is not authorized as aforesaid,

and thereupon such certificate shall be issued, and the like proceedings may be had in relation to such marriage as if the issue had not been forbidden.

1* * * *

49. Liability for frivolous protest against issue of certificate.—Every person entering a protest with the Marriage Registrar, under this Part, against the issue of any certificate, on grounds which such Marriage Registrar, under section 44, or a Judge of the High Court or the District Judge, under section 45 or 46, declares to be frivolous and such as ought not to obstruct the issue of the certificate, shall be liable for the costs of all proceedings in relation thereto and for damages, to be recovered by suit by the person against whose marriage such protest was entered.

50. Form of certificate.—The certificate to be issued by the Marriage Registrar under the provisions of section 41 shall be in the form contained in the Second Schedule to this Act annexed or to the like effect,

and the State Government shall furnish to every Marriage Registrar a sufficient number of forms of certificate.

51. Solemnization of marriage after issue of certificate.—After the issue of the certificate of the Marriage Registrar, or, where notice is required to be given under this Act to the Marriage Registrars for different districts, after the issue of the certificates of the Marriage Registrars for such districts,

marriage may, if there be no lawful impediment to the marriage of the parties described in such certificate or certificates, be solemnized between them, according to such form and ceremony as they think fit to adopt.

But every such marriage shall be solemnized in the presence of some Marriage Registrar (to whom shall be delivered such certificate or certificates as aforesaid), and of two or more credible witnesses besides the Marriage Registrar.

And in some part of the ceremony each of the parties shall declare as follows, or to the like effect:—

“I do solemnly declare that I know not of any lawful impediment why I, A. B., may not be joined in matrimony to C. D.”

1. Omitted by the A. O. 1950.

And each of the parties shall say to the other as follows or to the like effect:—

“I call upon these persons here present to witness that I, A. B., do take thee, C. D., to be my lawful wedded wife [or husband].”

52. When marriage not had within two months after notice, new notice required.—Whenever a marriage is not solemnized within two months after the copy of the notice has been entered by the Marriage Registrar, as required by section 40, the notice and the certificate, if any, issued thereupon, and all other proceedings thereupon, shall be void;

and no person shall proceed to solemnize the marriage, nor shall any Marriage Registrar enter the same, until new notice has been given, and entry made, and certificate thereof given, at the time and in the manner aforesaid.

53. Marriage Registrar may ask for particulars to be registered.—A Marriage Registrar before whom any marriage is solemnized under this Part may ask of the persons to be married the several particulars required to be registered touching such marriage.

54. Registration of marriages solemnized under part V.—After the solemnization of any marriage under this Part, the Marriage Registrar present at such solemnization shall forthwith register the marriage induplicate; that is to say, in a marriage-register-book, according to the form of the Fourth Schedule hereto annexed, and also in a certificate attached to the marriage-register-book as a counterfoil.

The entry of such marriage in both the certificates and the marriage-register-book shall be signed by the person by or before whom the marriage has been solemnized, if there be any such person, and by the Marriage Registrar present at such marriage, whether or not it is solemnized by him, and also by the parties married, and attested by two credible witnesses other than the Marriage Registrar and person solemnizing the marriage.

Every such entry shall be made in order from the beginning to the end of the book, and the number of the certificate shall correspond with that of the entry in the marriage-register-book.

55. Certificates to be sent monthly to Registrar General.—The Marriage Registrar shall forthwith separate the certificate from the marriage-register-book and send it, at the end of every month, to the¹[Registrar General of Births, Deaths and Marriages].

Custody of register-book.—The Marriage Registrar shall keep safely the said register-book until it is filled, and shall then send it to the ¹[Registrar General of Births, Deaths and Marriages], to be kept by him with the records of his office.

56. [*Officers to whom Registrars in Indian States shall send certificates.*] Omitted by the A. O. 1950.

57. Registrars to ascertain that notice and certificate are understood by Indian Christians.—When any ²[Indian] Christians about to be married gives a notice of marriage, or applies for a certificate from a Marriage Registrar, such Marriage Registrar shall ascertain whether the said ²[Indian] Christians understands the English language, and, if he does not, the Marriage Registrar shall translate, or cause to be translated, such notice or certificate, or both of them, as the case may be, to such ²[Indian] Christians into a language which he understands;

or the Marriage Registrar shall otherwise ascertain whether the²[Indian] Christians is cognizant of the purport and effect of the said notice and certificate.

58. Indian Christians to be made to understand declarations.—When any ²[Indian] Christians is married under the provisions of this Part, the person solemnizing the marriage shall ascertain whether such ²[Indian] Christians understands the English language, and, if he does not, the person solemnizing the marriage shall, at the time of the solemnization, translate, or cause to be translated, to such ²[Indian] Christians, into a language which he understands, the declarations made at such marriage in accordance with the provisions of this Act.

1. Subs. by Act 6 of 1886, s. 30, for “Secretary to the L.G.”.

2. Subs. by the A.O. 1950, for “Native”.

59. Registration of marriages between Indian Christians.—The registration of marriages between ¹[Indian] Christians under this Part shall be made in conformity with the rules laid down in section 37 (so far as they are applicable), and not otherwise.

PART VI²MARRIAGE OF ¹[INDIAN] CHRISTIANS

60. On what conditions marriages of ¹[Indian] Christians may be certified.—Every marriage between ¹[Indian] Christians applying for a certificate, shall, without the preliminary notice required under Part III, be certified under this Part, if the following conditions be fulfilled, and not otherwise:—

(1) the age of the man intending to be married ³[shall not be under ⁴[twenty-one years]], and the age of the woman intending to be married ⁵[shall not be under ⁶[eighteen years]];

(2) neither of the persons intending to be married shall have a wife or husband still living;

(3) in the presence of a person licensed under section 9, and of at least two credible witnesses other than such person, each of the parties shall say to the other—

“I call upon these persons here present to witness that. 1, *A. B.*, in the presence of Almighty God, and in the name of our Lord Jesus Christ, do take thee, *C. D.*, to be my lawful wedded wife [*or husband*]” or words to the like effect:

7^* * * *

61. Grant of certificate.—When, in respect to any marriage solemnized under this Part, the conditions prescribed in section 60 have been fulfilled, the person licensed as aforesaid, in whose presence the said declaration has been made, shall, on the application of either of the parties to such marriage, and, on the payment of a fee of four annas, grant a certificate of the marriage.

The certificate shall be signed by such licensed person, and shall be received in any suit touching the validity of such marriage as conclusive proof of its having been performed.

⁸[62. Keeping of register-book and deposit of extracts therefrom with Registrar General.—(1) Every person licensed under section 9 shall keep in English, or in the vernacular language in ordinary use in the district or State in which the marriage was solemnized, and in such form as the State Government by which he was licensed may from time to time prescribe, a register-book of all marriages solemnized under this Part in his presence, and shall deposit in the office of the Registrar General of Births, Deaths and Marriages for the territories under the administration of the said State Government, in such form and at such intervals as that Government may prescribe, true and duly authenticated extracts from his register-book of all entries made therein since the last of those intervals.]

9* * * *

63. Searches in register book and copies of entries.—Every person licensed under this Act to grant certificates of marriage, and keeping a marriage-register-book under section 62, shall at all reasonable times, allow search to be made in such book, and shall, on payment of the proper fee, give a copy, certified under his hand, of any entry therein.

1. Subs. by the Act A.O. 1950, for “Native”.

2. As to validation of post marriages solemnized under Part VI between persons of whom one only was an Indian Christian, and penalty for solemnizing such marriages under Part VI in future, see the Marriages Validation Act, 1892 (2 of 1892).

3. Subs. by Act 48 of 1952, s. 3 and the Second Schedule, for “shall exceed sixteen years”.

4. Subs. by Act 2 of 1978, s. 6 and the Schedule, for "eighteen years" (w.e.f. 1-10-1978).

5. Subs. by Act 48 of 1952, s. 3 and the Second Schedule, for "shall exceed thirteen years".

6. Subs. by Act 2 of 1978, s. 6 and Schedule, for "fifteen years" (w.e.f. 1-10-1978).

7. Proviso omitted by s. 6 and the Schedule, *ibid.*, (w.e.f. 1-10-1978).

8. Subs. by Act 2 of 1891, s. 4, for s. 62.

9. Sub-section (2) omitted by the A.O. 1950.

65. Part VI not to apply to Roman Catholics.

Saving of certain marriages.—This Part of this Act, except so much of sections 62 and 63 as are referred to in section 64, shall not apply to marriages between Roman Catholics. But nothing herein contained shall invalidate any marriage celebrated between Roman Catholics under the provisions of ¹[Part V of Act No. 25 of 1864], previous to the twenty-third day of February, 1865.

PART VII

PENALTIES

²[**66. False oath, declaration, notice or certificate for procuring marriage.**—Whoever, for the purpose of procuring a marriage or license of marriage, intentionally,—

(b) where a notice or certificate is required by this Act, signs a false notice or certificate,

67. Forbidding, by false personation issue of certificate by Marriage Registrar.—Whoever forbids the issue, by a Marriage Registrar, of a certificate, by falsely representing himself to be a person whose consent to the marriage is required by law, knowing or believing such representation to be false, or not having reason to believe it to be true, shall be deemed guilty of the offence described in section 205 of the Indian Penal Code (45 of 1860).

4* * * *

69. Solemnizing marriage out of proper time, or without witnesses.—Whoever knowingly and wilfully solemnizes a marriage between persons, one or both of whom is or are a Christian or Christians, at any time other than between the hours of six in the morning and seven in the evening, or in the absence of at least two credible witnesses other than the person solemnizing the marriage, shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

⁵[Nor does this section apply to marriages solemnized by a Clergyman of the Church of Scotland according to the rules, rites, ceremonies and customs of the Church of Scotland.]

5. Ins. by Act 2 of 1891, s. 7.

70. Solemnizing without notice or within fourteen days after notice, marriage with minor.—Any Minister of Religion licensed to solemnize marriages under this Act, who, without a notice in writing, or, when one of the parties to the marriage is a minor and the required consent of the parents or guardians to such marriage has not been obtained, within fourteen days after the receipt by him of notice of such marriage, knowingly and wilfully solemnizes a marriage under Part III, shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine.

71. Issuing certificate, or marrying, without publication of notice.—A Marriage Registrar under this Act, who commits any of the following offences:—

(1) knowingly and wilfully issues any certificate for marriage, or solemnizes any marriage, without publishing the notice of such marriage as directed by this Act;

¹[(2) **marrying after expiry of notice.**—after the expiration of two months after the copy of the notice has been entered as required by section 40 in respect of any marriage, solemnizes such marriage;]

(3) **solemnizing marriage with minor within fourteen days, without authority of Court, or without sending copy of notice.**—solemnizes, without an order of a competent Court authorizing him to do so, any marriage, when one of the parties is a minor, before the expiration of fourteen days after the receipt of the notice of such marriage, or without sending, by the post or otherwise, a copy of such notice to the Senior Marriage Registrar of the district if there be more Marriage Registrars of the district than one, and if he himself be not the Senior Marriage Registrar;

(4) **issuing certificate against authorized prohibition.**—issues any certificate the issue of which has been prohibited, as in this Act provided, by any person authorized to prohibit the issue thereof,

shall be punished with imprisonment for a term which may extend to five years, and shall also be liable to fine.

72. Issuing certificate after expiry of notice, or, in case of minor, within fourteen days after notice, or against authorized prohibition.—Any Marriage Registrar knowingly and wilfully issuing any certificate for marriage after the expiration of ²[two months] after the notice has been entered by him as aforesaid,

or knowingly and wilfully issuing, without the order of a competent Court authorizing him so to do, any certificate for marriage, where one of the parties intending marriage is a minor, before the expiration of fourteen days after the entry of such notice, or any certificate the issue of which has been forbidden as aforesaid by any person authorized in this behalf,

shall be deemed to have committed an offence under section 166 of the Indian Penal Code (45 of 1860).

73. Persons authorized to solemnize marriage (other than Clergy of Churches of England, Scotland or Rome).—Whoever, being authorized under this Act to solemnize a marriage,

and not being a Clergyman of the Church of England solemnizing a marriage after due publication of banns, or under a license from the Anglican Bishop of the Diocese or a Surrogate duly authorized in that behalf,

or, not being a Clergyman of the Church of Scotland, solemnizing a marriage according to the rules, rites, ceremonies and customs of that church,

or, not being a Clergyman of the Church of Rome, solemnizing a marriage according to the rites, rules, ceremonies and customs of that church,

issuing certificate, or marrying, without publishing notice, or after expiry of certificate;—knowingly and wilfully issues any certificate for marriage under this Act, or solemnizes any marriage between such persons as aforesaid, without publishing, or causing to be affixed, the notice of such marriage as directed in Part III of this Act, or after the expiration of two months after the certificate has been issued by him;

1. Subs. by Act 2 of 1891, s. 8(1), for clause (2).

2. Subs. by s. 8(2), *ibid.*, for “three months”.

issuing certificate for, or solemnizing, marriage with minor, within fourteen days after notice.—or knowingly and wilfully issues any certificate for marriage, or solemnizes a marriage between such persons when one of the persons intending marriage is a minor, before the expiration of fourteen days after the receipt of notice of such marriage, or without sending, by the post or otherwise, a copy of such notice to the Marriage Registrar, or, if there be more Marriage Registrars than one, to the Senior Marriage Registrar of the district;

issuing certificate authorizedly forbidden:—or knowingly and wilfully issues any certificate the issue of which has been forbidden, under this Act, by any person authorized to forbid the issue;

solemnizing marriage authorizedly forbidden.—or knowingly and wilfully solemnizes any marriage forbidden by any person authorized to forbid the same;

shall be punished with imprisonment for a term which may extend to four years, and shall also be liable to fine.

74. Unlicensed person granting certificate pretending to be licensed.—Whoever, not being licensed to grant a certificate of marriage under Part VI of this Act, grants such certificate intending thereby to make it appear that he is so licensed, shall be punished with imprisonment for a term which may extend to five years, and shall also be liable to fine.

¹[Whoever, being licensed to grant certificates of marriage under Part VI of this Act, without just cause refuses, or wilfully neglects or omits, to perform any of the duties imposed upon him by that Part shall be punished with fine which may extend to one hundred rupees.]

75. Destroying or falsifying register-books.—Whoever, by himself or another, wilfully destroys or injures any register-book or the counterfoil certificates thereof, or any part thereof, or any authenticated extract therefrom,

or falsely makes or counterfeits any part of such register-book or counterfoil certificates,

or wilfully inserts any false entry in any such register-book or counterfoil certificate or authenticated extract,

shall be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine.

76. Limitation of prosecutions under Act.—The prosecution for every offence punishable under this Act shall be commenced within two years after the offence is committed.

PART VIII

MISCELLANEOUS

77. What matters need not be proved in respect of marriage in accordance with Act.—Whenever any marriage has been solemnized in accordance with the provisions of sections 4 and 5, it shall not be void merely on account of any irregularity in respect of any of the following matters, namely:—

(1) any statement made in regard to the dwelling of the persons married, or to the consent of any person whose consent to such marriage is required by law;

(2) the notice of the marriage;

(3) the certificate or translation thereof;

(4) the time and place at which the marriage has been solemnized;

(5) the registration of the marriage.

78. Corrections of errors.—Every person charged with the duty of registering any marriage, who discovers any error in the form or substance of any such entry, may within one month next after the discovery of such error, in the presence of the persons married, or, in case of their death or absence, in the presence of two other credible witnesses, correct the error by entry in the margin, without any alteration of the original entry, and shall sign the marginal entry, and add thereto the date of such correction, and such person shall make the like marginal entry in the certificate thereof.

1. Ins. by Act 2 of 1891, s. 9.

And every entry made under this section shall be attested by the witnesses in whose presence it was made.

And, in case such certificate has been already sent to the ¹[Registrar General of Births, Deaths and Marriages], such person shall make and send in like manner a separate certificate of the original erroneous entry, and of the marginal correction therein made.

79. Searches and copies of entries.—Every person solemnizing a marriage under this Act, and hereby required to register the same,

and every Marriage Registrar or ¹[Registrar General of Births, Deaths and Marriages] having the custody for the time being of any register of marriages, or of any certificate, or duplicate, or copies of certificate, under this Act,

shall, on payment of the proper fees, at all reasonable times, allow searches to be made in such register, or for such certificate, or duplicate or copies, and give a copy under his hand of any entry in the same.

80. Certified copy of entry in marriage-register, etc., to be evidence.—Every certified copy, purporting to be signed by the person entrusted under this Act with the custody of any marriage-register or certificate, or duplicate, required to be kept or delivered under this Act, of any entry of a marriage in such register or of any such certificate or duplicate, shall be received as evidence of the marriage purporting to be so entered, or of the facts purporting to be so certified therein, without further proof of such register or certificate, or duplicate, or of any entry therein, respectively, or of such copy.

²[**81. Certificates of certain marriages to be sent to Central Government.**—The Registrar General of Births, Deaths and Marriages ^{3****} shall, at the end of every quarter in each year, select, from the certificates of marriages forwarded to ⁴[him], during such quarter, the certificates of the marriages of which ⁵[the Government by whom he was appointed] may desire that evidence shall be transmitted to England, and shall send the same certificates, signed by ⁴[him] to the ⁶[Central Government].]

82. State Government to prescribe fees.—Fees shall be chargeable under this Act for—

receiving and publishing notices of marriages;

issuing⁷[certificates for marriage] by Marriage Registrars, and registering marriages by the same;

entering protests against, or prohibitions of, the issue of ⁸[certificates for marriage] by the said Registrars;

searching register-books or certificates, or duplicates, of copies thereof;

giving copies of entries in the same under sections 63 and 79.

The State Government shall fix the amount of such fees respectively,

and may from time to time vary or remit them either generally or in special cases, as to it may seem fit.

83. Power to make rules.—⁹[(1)] The State Government ¹⁰[may, by notification in the Official Gazette, make rules] in regard to the disposal of the fees mentioned in section 82, the supply of register-books, and the preparation and submission of returns of marriages solemnized under this Act.

¹¹[(2) Every rule made by the State Government under this section shall be laid, as soon as may be after it is made, before the State Legislature.]

1. Subs. by Act 6 of 1886, s. 30, for “Secretary to a L.G.”.

2. Subs. by Act 13 of 1911, s. 2, for s. 81.

3. The words and figures “and the officers appointed under section 56” omitted by Act 48 of 1952, s. 3 and the Second Schedule.

4. Subs. by s. 3 and the Second Schedule, *ibid.*, for “them respectively”.

5. Subs. by the A.O. 1937, for “the G. G. in C.”.

6. Subs. by the A.O. 1948, for “Secretary of State for India”.

7. Subs. by Act 1 of 1903, s. 3 and the Second Schedule, for “certificates of marriage”.

8. Subs. by s. 3 and the Second Schedule, *ibid.*, for “marriage certificates”.

9. Section 83 re-numbered as sub-section (1) thereof by Act 20 of 1983, s. 2 and the Schedule (w.e.f. 15-3-1984).

10. Subs. by s. 2 and the Schedule, *ibid.*, for “may make rules” (w.e.f. 15-3-1984).

11. Ins. by s. 2 and the Schedule, *ibid.* (w.e.f. 15-3-1984).

84. [*Power to prescribe fees and rules for Indian States.*] Omitted by the A.O. 1950.

85. Power to declare who shall be District Judge.—The State Government may, by notification in the Official Gazette, declare who shall, in any place to which this Act applies, be deemed to be the District Judge.

86. [*Powers and functions exercisable as regards Indian States.*] Omitted by the A.O. 1950.

87. Saving of Consular marriages.—Nothing in this Act applies to any marriage performed by any Minister, Consul, or Consular Agent between subjects of the State which he represents and according to the laws of such State.

88. Non-validation of marriages within prohibited degrees.—Nothing in this Act shall be deemed to validate any marriage which the personal law applicable to either of the parties forbids him or her to enter into.

SCHEDULE I
(See sections 12 and 38)
NOTICE OF MARRIAGE

To

a Minister [*or Registrar*] of

I hereby give you notice that a marriage is intended to be had, within three calendar months from the date hereof, between me and the other party herein named and described (that is to say):—

Names.	Condition.	Rank or profession.	Age.	Dwelling place.	Length of residence.	Church, chapel or place of worship in which the marriage is to be solemnized.	District in which the other party resides, when the parties dwell in different districts.
<i>James Smith.</i>	<i>Widower.</i>	<i>Carpenter.</i>	<i>of full age.</i>	<i>16, Clive Street.</i>	<i>23 days.</i>	<i>Free church of Scotland Church, Culcutta.</i>	
<i>Martha Green.</i>	<i>Spinster.</i>	<i>...</i>	<i>Minor.</i>	<i>20, Hastings Street.</i>	<i>More than a month.</i>		

Witness my hand, this

day of

seventy-two

(Signed) JAMES SMITH.

[The *italics* in this schedule are to be filled up, as the case may be, and the blank division thereof is only to be filled up when one of the parties lives in another district.]

SCHEDULE II

(See sections 24 and 50)

CERTIFICATE OF RECEIPT OF NOTICE

I, _____ do hereby certify that, on the _____ day of _____, notice was duly entered in my Marriage Notice Book of the marriage intended between the parties therein named and described, delivered under the hand of, one of the parties, (that is to say):—

Names.	Condition.	Rank or profession.	Age.	Dwelling place.	Length of residence.	Church, chapel or place of worship in which the marriage is to be solemnized.	District in which the other party resides, when the parties dwell in different districts.
<i>James Smith.</i>	<i>Widower.</i>	<i>Carpenter.</i>	<i>of full age.</i>	<i>16, Clive Sreet.</i>	<i>23 days.</i>	<i>Free Church of Scotland Church, Calcutta.</i>	
<i>Martha Green.</i>	<i>Spinster.</i>	<i>.....</i>	<i>Minor.</i>	<i>20, Hastings Street.</i>	<i>More than a month.</i>		

and that the declaration¹[or oath], required by section 17 or 41 of the Indian Christian Marriage Act, 1872 (15 of 1872), has been duly made by the said (*James Smith*).

Date of notice entered Date of Certificate given Witness my hand, this	{	The issue of this certificate has not been prohibited by any person authorized to forbid the issue thereof. <div style="text-align: right;">_____ day of <i>seventy-two</i>.</div>
--	---	---

(Signed)

This certificate will be void, unless the marriage is solemnized on or before the _____ day of _____

[The *italics* in the Schedule are to be filled up, as the case may be, and the blank division thereof is only to be filled up when one of the parties lives in another district].

¹ Ins. by Act 1 of 1903, s. 3, and the Second Schedule.

SCHEDULE III

¹[(See sections 28 and 31)]

FORM OF REGISTER OF MARRIAGES

Quarterly Returns

of

MARRIAGES

FOR

The Archdeaconry of

{
Calcutta.
Madras.
Bombay.

I,

,Registrar of the Archdeaconry of

{
Calcutta,
Madras,
Bombay,

do hereby certify that the annexed are correct copies of the originals and Official Quarterly Returns of Marriage within the Archdeaconry

of

{
Calcutta,
Madras,
Bombay,

as made and transmitted to me for the quarter

commencing the

day of
 of in the year of Our Lord

ending the day

[Signature of Registrar.]

Registrar of the Archdeaconry of

{
Calcutta.
Madras.
Bombay.

MARRIAGES solemnized at

{
Allahabad,
Barrackpore,
Bareilly,
Calcutta, etc., etc.

when married.				Names of parties.									
Year.	Month.	Day.	Christian.	Surname.	Age.	Condition.	Rank or profession.	Residence at the time of marriage.	Father's name and surname.	By banns or license.	Signatures of the parties.	Signatures Of two or more witnesses present.	Signature of the person solemnizing the marriage.

1. Subs. by Act 12 of 1891, s. 2 and the Second Schedule, for “(see section 28)”.

SCHEDULE IV

(See sections 32 and 54)

MARRIAGE REGISTER BOOK

Number.	When married.			Names of Parties.		Age.	Condition.	Rank or profession..	Residence at the time of marriage.	Father's name and surname.
				Christian name.	Surname.					
1	Day.	Month.	Year.							
				<i>James.</i> <i>Martha.</i>	<i>White .</i> <i>Duncan.</i>	<i>26 years.</i> <i>17 years.</i>	<i>Widower.</i> <i>Spinster.</i>	<i>Carpenter.</i> <i>.....</i>	<i>Agra...</i> <i>Agra...</i>	<i>William White.</i> <i>John Duncan.</i>

Married in the

This marriage was solemnized between us

{

*James
White,
Martha
Duncan,*
}
in the presence of us
{

*John Smith.
John Green.*
}

CERTIFICATE OF MARRIAGE

Number.	When married.			Names of Parties.		Age.	Condition.	Rank or profession.	Residence at the time of marriage.	Father's name and surname.
				Christian name.	Surname.					
1	Day.	Month.	Year.							
				<i>James...</i>	<i>White...</i>	<i>26 years.</i>	<i>Widower</i> <i>...</i>	<i>Carpenter</i>	<i>Agra.....</i>	<i>William White</i>
				<i>Martha...</i>	<i>Duncan...</i>	<i>17 years.</i>	<i>Spinster</i>	<i>.....</i>	<i>Agra.....</i>	<i>Jhon Duncan</i>

Married in the

This marriage was solemnized between us $\left\{ \begin{array}{l} \textit{James White,} \\ \textit{Martha Duncan,} \end{array} \right\}$ in the presence of us $\left\{ \begin{array}{l} \textit{John Smith.} \\ \textit{John Green.} \end{array} \right\}$

(SCHEDULE V.)

SCHEDULE V.—*[Enactments repealed.] Rep.by the Repealing Act, 1938 (1 of 1938), s. 2 and the Schedule.*

15. Indian Divorce Act, 1896

THE DIVORCE ACT, 1869

ARRANGEMENT OF SECTIONS

PREAMBLE

I.—PRELIMINARY

SECTIONS

1. Short title.
Commencement of Act.
2. Extent of Act.
Extent of power to grant relief generally, and to make decrees of dissolution, or of nullity.
3. Interpretation-clause.

II.—JURISDICTION

4. Matrimonial jurisdiction of High Courts to be exercised subject to Act. Exception.
5. Enforcement of decrees or orders made heretofore by Supreme or High Court.
6. Pending suits.
7. [*Omitted.*].
8. Extraordinary jurisdiction of High Court.
Power to transfer suits.
9. Reference to High Court.

III.—DISSOLUTION OF MARRIAGE

10. Grounds for dissolution of marriage
- 10A .Dissolution of marriage by mutual consent.
11. Adulterer to be co-respondent.
- 12.Court to be satisfied of absence of collusion.
13. Dismissal of petition.
- 14.Power to Court to pronounce decree for dissolving marriage.
Condonation.
15. Relief in case of opposition on certain grounds.
16. Decrees for dissolution to be *nisi*.
Collusion.
17. Power of High Court to remove certain suits.
- 17A. [*Omitted.*].

IV.—NULLITY OF MARRIAGE

SECTIONS

- 18. Petition for decree of nullity.
- 19. Grounds of decree.
- 20. [*Omitted.*].
- 21. Children of annulled marriage.

V.—JUDICIAL SEPARATION

- 22. Bar to decree for divorce *a mensa et toro*; but judicial separation obtainable by husband or wife.
- 23. Application for separation made by petition.
- 24. Separated wife deemed spinster with respect to after-acquired property.
- 25. Separated wife deemed spinster for purposes of contract and suing.

Reversal of Decree of Separation

- 26. Decree of separation obtained during absence of husband or wife may be reversed.

VI.—PROTECTION-ORDERS

- 27. Deserted wife may apply to court for protection.
- 28. Court may grant protection-order.
- 29. Discharge or variation of orders.
- 30. Liability of husband seizing wife's property after notice of order.
- 31. Wife's legal position during continuance of order.

VII.—RESTITUTION OF CONJUGAL RIGHTS

- 32. Petition for restitution of conjugal rights.
- 33. Answer to petition.

VIII.—DAMAGES AND COSTS

- 34. [*Omitted.*].
- 35. [*Omitted.*].

IX.—ALIMONY

- 36. Alimony *pendente lite*.
- 37. Power to order permanent alimony.
Power to order monthly or weekly payments.
- 38. Court may direct payment of alimony to wife or to her trustee.

X.—SETTLEMENTS

- 39. [*Omitted.*].
- 40. Inquiry into existence of ante-nuptial or post-nuptial settlements.

XI.—CUSTODY OF CHILDREN

SECTIONS

- 41. Power to make orders as to custody of children in suit for separation.
- 42. Power to make such orders after decree.
- 43. Power to make orders as to custody of children in suits for dissolution or nullity.
- 44. Power to make such orders after decree or confirmation.

XII.—PROCEDURE

- 45. Code of Civil Procedure to apply.
- 46. Forms of petitions and statements.
- 47. Petition to state absence of collusion.
 - Statements to be verified.
- 48. Suits on behalf of lunatics.
- 49. Suits by minors.
- 50. Service of petition.
- 51. Mode of taking evidence.
- 52. Competence of husband and wife to give evidence as to cruelty or desertion.
- 53. Power to close doors.
- 54. Power to adjourn.
- 55. Enforcement of, and appeals from, orders and decrees.

No appeal as to costs.

- 56. Appeal to the Supreme Court.

XIII.—RE-MARRIAGE

- 57. Liberty to parties to marry again.
- 58. English clergyman not compelled to solemnize marriages of persons divorced for adultery.
- 59. English Minister refusing to perform ceremony to permit use of his Church.

XIV.—MISCELLANEOUS

- 60. Decree for separation or protection-order valid as to persons dealing with wife before reversal.
 - Indemnity of persons making payment to wife without notice of reversal of decree or protection-order.
- 61. Bar of suit for criminal conversation.
- 62. Power to make rules.

SCHEDULE OF FORMS

Nos.

1. Petition by husband for a dissolution of marriage with damages against co-respondent, by reason of adultery.
2. Respondent's statement in answer to No. 1.
3. Co-respondent's statement in answer to No. 1.
4. Petition for decree of Nullity of Marriage.
5. Petition by wife for judicial separation on the ground of her husband's adultery.
6. Statement in answer to No. 5.
7. Statement in reply to No. 6.
8. Petition for a judicial separation by reason of cruelty.
9. Statement in answer to No. 8.
10. Petition for reversal of decree of separation.
11. Petition for protection-order.
12. Petition for Alimony pending the suit.
13. Statement in answer to No. 12.
14. Undertaking by minor's next friend to be answerable for respondent's costs.

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.

3 * * * *

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.

[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.,

SH EWETH,

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.

SH EWETH,

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. 8 —PETITION for a judicial separation by reason of cruelty
(See section 22)

In the (High) Court of
To the Hon'ble Mr. Justice
The
[or To the Judge of
day of
].
186

The petition of A.B. (wife of C.B.) of
SHEWETH,

1. That on the day of , one thousand eight hundred and ,
your petitioner, then A.D., spinster, was lawfully married to C.B., at
2. That from her said marriage, your petitioner lived and cohabited with her said husband
at until the day of , one thousand eight
hundred and , when your petitioner separated from her said husband as
hereinafter more particularly mentioned, and that your petitioner and her said husband have had no issue of
their said marriage.
3. That from and shortly after your petitioner's said marriage, the said C.B. habitually conducted
himself towards your petitioner with great harshness and cruelty, frequently abusing her in the coarsest and
most insulting language, and beating her with his fists, with a cane, or with some other weapon.
4. That on an evening in or about the month of one thousand eight hundred
and , the said C.B. in the highway and opposite to the house
in which your petitioner and the said C.B. were then residing at aforesaid,
endeavoured to knock your petitioner down, and was only prevented from so doing by the interference of
F.D., your petitioner's brother.
5. That subsequently on the same evening, the said C.B. in his said house at aforesaid,
struck your petitioner with his clenched fists a violent blow on her face.
6. That on one Friday night in the month of one
thousand eight hundred and , the said C.B., in
without provocation, threw a knife at your petitioner, thereby inflicting a severe wound on her right hand.
7. That on the afternoon of the day of one
thousand eight hundred and , your petitioner, by reason of the great and
continued cruelty practised towards her by her said husband, with assistance withdrew from the house of
her said husband to the house of her father at that from and after the said
day of , one thousand eight
hundred and your petitioner hath lived separate and apart from her said
husband, and hath never returned to his house or to cohabitation with him.
8. That there is no collusion or connivance between your petitioner and her said husband with respect to
the subject of the present suit.
Your petitioner, therefore, prays that this (Hon'ble) Court will decree a judicial separation between
your petitioner and the said C.B., and also order that the said C.B., do pay the costs of and incident
to these proceedings.

(Signed) A.B.

Form of Verification : See No. 1

No. 9.—Statement in answer to No. 8

In the (High) Court of
The
Between A.B., petitioner, and
C.B., respondent
day of

C.B., the respondent, in answer to the petition filed in this cause by W.J. his attorney [or vakil] saith
that he denies that he has been guilty of cruelty towards the said A.B., as alleged in the said petition.

(Signed) C.B.

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 remained 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.