

Hindu Marriage Act, 1955

Hindu Marriage Act,1955

[25 of 1955,dt. 18-5-1955]

An Act to amend and codify the law relating to marriage among Hindu

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

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Chapter 1

Preliminary

1. Short title and extent

(1) This Act may be called the Hindu Marriage Act, 1955.

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

outside the said territories.

2 Application of act

(1) This act applies

- (a) to any person who is a Hindu by religion in any of its forms or developments, including a Virashaiva a Lingayat or a follower of the Brahmo, Prathana 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, Buddhist, 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; 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 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.

COMMENT

Where one was initially a Hindu upon conversion to Islam, files a suit claiming dissolution of marriage on the ground of his ceasing to be a Hindu, it was held that the suit could not be maintained.-Zulfiqer Ali v. Anuradha 1985 (2) An. LT 86.

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

(b) “district court” means, in any area 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 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 were 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 ancestor 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 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 brother or of two sister;

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 constructed accordingly

COMMENTS

Section 3(b): It is within the power of State Government to issue notification and designate any other civil court having jurisdiction in respect of the matters dealt with in this Act. In the case of transferring the proceedings by the District Judge to the court of extra Assistant Judge, appeal would lie to the District Court and not to the High Court -Bhaskar Padma v. Meera Bai 1983 HLR 584.

Section 3(f): The question whether the two are sapindas of each other is to be decided on the basis of the definition as laid down under the Hindu Marriage Act,1955. Text would be of no help in this regard. Sudarsan Narkar v.Amina Mandal 1982 HLR 277.

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 insofar as it is inconsistent with any of the provisions contained in this Act.

Chapter II

Hindu Marriages

5. Conditions for a Hindu marriage

A marriage may be solemnized between any two Hindus, if the following condition are fulfilled, namely:-

- (i) neither party has a spouse living at the time of the marriage
- ¹[(ii) at the time of marriage, neither party-
 - (a) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or
 - (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 insanity² [***]
- (iii) the bridegroom has completed the age of ³[twenty one years] and the bride,

the age of ⁴[eighteen years] at the time of 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; ⁵[***].

COMMENTS

Hindu Marriage Act not only makes bigamous marriage void but also punishable under s.17 read with sections 494 and 495 of Indian Penal Code. What is to be established is that the second marriage is valid but for this provision and the spouse to the first marriage is the legally wedded spouse and the that marriage is having its existence on the date second marriage is solemnized- Gopal Lal v. State of Maharashtra AIR 1979 SC 713

In order to render second marriage invalid, it is necessary to establish first marriage as valid. Where an application to claim maintenance is moved by second wife, onus is upon the husband establishing the second marriage in contravention of the provisions of cl.(1) of s.5 -Mohan Ram v. Badamo Devi 1974 cr. LJ 227

Suffering from schizophrenia as a sound ground for a decree of nullity. Whether the disease is curable or not does not make any difference. Where in due course the disease is cured, it would not affect the question of validity of marriage.-Tulsi Bai v. Manoharan 1990 (1)HLR 318

It is not the requirements that a person should be insane or suffering from epilepsy at the time of marriage. It is sufficient if he or she had been subject to recurrent attacks of insanity or epilepsy-Bala Krishna v. Lalitha 1984 (1)APLJ 32

In the case of a bigamous marriage, it is necessary to establish the performance of essential ceremonies which constitute a valid marriage and thereafter leading some evidence in support thereof. -Ashok Kumar v. Krishna Kumari 1993(1) HLR 114

The expression “connivance” suggests some aiding or abetting which is active or some conduct sufficient to infer such aiding or abetting within the term “connivance”is included such conduct which would amount to passive acceptance of the lapse of the wife and the other men concerned-Krushan Chandra Patra v. Tanu Patra 1993 (1) HLR 116

The expression “procreate” having a very wide meaning, indicating capacity of spouse to give birth as also to rear up the children.-Alka Sharma v.A.C.Sharma AIR 1991 MP 205.

Where the marriage is solemnized, disregarding the provision of Child Marriage Restraint Act, the petition of the wife claiming restitution of conjugal rights is liable to be dismissed.-

Dinesh v.Rekha 1986 (1)HLR 265

6 Guardianship in marriage

[Repealed by the Child Marriage Restraint (Amendment), Act., 1978, 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 includes 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.

COMMENTS

Solemnization of marriage through the performance of Karewa ceremony amounts to a valid marriage as per the customary rites prevailing in Punjab but where the husband and the lady is alive on the date the marriage is solemnized, marriage would be treated as void.-

Veena Rani v.Jagdish Mitter 1990(1)HLR113

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.

COMMENTS

The mere fact that marriage has been registered would not convert an invalid marriage into

valid one. In the case of an invalid marriage which has been registered a suit for declaration of marriage as invalid is maintainable.-Krishan Paul v.Ashok Kumar Paul 1982 HLR478

Chapter III

Restitution of conjugal rights and judicial separation.

9. Restitution of conjugal rights

1[***] 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 proving reasonable excuse shall be on the person who has withdrawn from the society.]

3[***]

COMMENTS

As during the lifetime of first spouse living, the second marriage is void, the man marrying when his first wife is living cannot claim restitution as against the second wife. Asha Kumari v.Satish Kumar 1990(1)HLR7

In case there is continuous demand of dowry on the part of husband, this would amount to giving reasonable cause to the wife to withdraw herself from the society of the husband.- Narinder Kumar v.Chander Prabha 1990(1)HLR518

Where a suspicious husband writing letters to the wife raising baseless allegations and unwilling to regret in spite of the fact that wife is not willing reconcile, it is not only the husband who is at fault in case the wife denies him his conjugal rights.-A.B.Bakre v.B.S. Bakre AIR 1991 Bom 165

Leaving home by the husband intending thereby terminating cohabitation permanently that conduct would amount to desertion on the part of husband. But, where the husband claims restitution of conjugal rights after a big gap of seven years, there is justification when the wife does not accompany her.-G. Ramakrishna Pillai v.j.Vijaya Kumari Amma AIR 1990

Ker 55.

Where the husband makes the allegation of unchastity so that she is returned to her matrimonial home, and the allegation is not found to be baseless, it was held that this has to be considered along with the persistent refusal of the wife to stay with the husband. In the instant case, the petition moved by the wife for restitution of conjugal rights was not granted.-Ammini.V Kuttappan 1990(1) HLR 454

In case there is no proper explanation as regards delay in filling the petition of restitution of conjugal rights, application should be regarded as unnecessary and improper- G. . Ramakrishna Pillai v. J.Vijaya Kumari Amma AIR 1990 Ker 55.

10. Judicial separation

¹[(1) Either party to a marriage, whether solemnized before or after the commencement of this Act, may present a petition praying for a decree for judicial separation on any of 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 statements made in such petition, rescind the decree if it considers it just and reasonable to do so.

COMMENTS

Where the wife deprived her company for two and a half years and for this there was no fault on the part of husband it was held that it indicated the disruption of marriage and it would be ridiculous to allow marriage to survive.- Ratneshwar Misra v.Prem lata Devi1987 (1) HLR 255.

Petty domestic quarrels, cause being the presence of mother in law in the family, cannot be treated as mental cruelty.-Yashoda Dai.v.K.B.Kalavkar AIR1992 Kar 368.

In spite of the fact that both the husband and wife are living under the same roof, there may be a case of desertion when there is positive evidence exhibiting neglect, indifference or overt acts of estrangement on the part of one.-T.k. Chatterjee v.Kamala Chatterjee AIR1989 Cal. 74.

Chapter IV

Nullity of marriage and divorce

11. Void marriage

Any marriage solemnized after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto ⁵[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.

COMMENTS

The expression “either party thereto” as used section 11 means only the actual parties, to the marriage. The expression does not include any third party.-Suresh Kumar v. Smt Asha Rani 1993 (1) HLR21 .Where the decree of nullity has been granted by the High Court, question does not arise of the marriage being again declared a nullity by confirming the decree passed by the District Judge.-Thomas Cherian v.Nisha Thomas AIR1993 Ker 19

12. Void able marriages

(1) Any marriage solemnized, whether before of after the commencement of this Act, shall be voidable and maybe annulled by a decree of nullity on any of the following grounds, namely.-

¹[(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

(b) that the consent of the petitioner, or where the consent of he guardian in marriage of the petitioner ²[was required under section 5 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 ³[or by fraud as to the nature of the ceremony or as to any material fact or circumstance 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 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 special in clause (d) of sub-section (1) shall be entertained unless the court is satisfied-

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

(ii) that proceedings have been instituted in the case of a marriage solemnized before the commencement of this Act within one year of such commencement and in the case of marriage solemnized 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 ⁴[the said ground]

COMMENTS

Where the petition for annulment of marriage is filed after 8 years of marriage, such a petition would be barred by time-Sarlabai V.Komal Singh AIR 1991 MP 358. Selection of bride with total knowledge as regards her defects would serve as estoppel from arguing that marriage was tainted with fraud.-Ruby Roy v. Sudarsan Roy 1988 Cal.210.

Where mental disorder of the wife was the ground for obtaining divorce, there cannot be a challenge to the grant of alimony on the ground that mental disorder was in existence prior to the marriage and therefore the marriage was voidable under s. 12(1)(b) -Mukesh Mathur V.Veena Mathur AIR 1989 Raj 97.

Where the annulment is sought on the ground of fraud, details which the professional match makers supply bear no relevancy as the parties are at liberty to verify the facts.-Deepayan Chatterjee V.Papiya Chatterjee 1990 (1)HLR 113

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 decree of divorce on the ground that the other party-

(i) ¹[has after the solemnized 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

1[(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 of 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.;

(iv) has 2[***] been suffering from a virulent and incurable form of leprosy.

(v) has 2[***] 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, 3[***]

1[*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 constructed accordingly.]

2[(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 3[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 3[one year] or upwards after the passing

of a decree for restitution of conjugal rights in a proceeding to which they were parties.]

(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 ⁴[bestiality; or].

⁵[(iii) that in a suit under section 18 of 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).

COMMENTS

It is not requirements that there must be a direct proof of adultery. There would not be any justification in expecting direct evidence and where such an evidence is presented before the court, must be suspected and the evidence is apt to be disbelieved.- Sanjukta Pradhan V. Laxmi Narayan Pradhan AIR 1991 Orissa 39

Cruelty may depend upon the type of life the parties are habitual of, their economic and social conditions, cultural and human values to which they attach importance may also lead to the conclusion, whether the instance falls within the expression “cruelty”.-Narayanan V. Sri Devi AIR 1990 Ker 151.

Where the wife threatens to commit suicide, it would amount to mental cruelty caused to the

husband. Ranga Rao V.Vijaylaxmi 1990 (1) HLR 601.

Where the wife refuses to have sexual intercourse and there is no reason for such refusal, that would amount to cruelty subjected to husband.- Radhey Shyam v.Kusum 1990 (2) HLR 230

Petty quarrels between husband and wife cannot be so serious as amounting to cruelty and entitling husband to move for divorce.- Tapan Chakravarty v. Anjali Chakravarty AIR 1993 Cal.10

Where the husband staying with a lady not his relative and the wife for this reason unwilling to stay with the husband and willing only when the lady is ousted from the home wife will not be guilty of cruelty as given same to the husband to take divorce on the ground of desertion or cruelty.-M.M.. Manna v.Chitra Manna AIR 1993 Cal 33.

Where there is an absolute denial of the obligation of marriage that would amount to desertion.-Sukumar Mukherjee V.Tripoti Mukherjee AIR 1992 Pat.32

It is the petitioner who has to establish desertion for 2 years and that there was no cause for desertion. Where the conduct of the one is such as forcing other to stay away, that would not amount to desertion as a ground of divorce.-Eloskhi Chakraborty V.S.K. Chakraborty AIR 1991 Cal 176

There may be instances indicating short tempered nature and somewhat erratic behaviour, but this alleged mental disorder cannot be such a kind as making for husband living with the wife impossible.-N.M.Jagesha AIR 1991 Bom 259

1 [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 insofar 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 to do having regard to the circumstances of the case, pass instead a decree for judicial separation.

13B. Divorce by mutual consent

(1) Subject to the provision 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 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 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]

COMMENTS

Where a petition for divorce is moved under s. 13 the same can be converted into a petition under s. 13B provided it is duly signed by both the parties and thereby giving issue to a divorce on the ground of mutual consent.-Kuljit Kaur v. Harjit Singh 1989(2)HLR 72.

Where one of the parties has withdrawn the consent then the petition moved and section 13B has to be dismissed.-Gautam Basu v. Nina Basu 1990(2)HLR 496

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 1[before one year has elapsed] since the date of marriage on the ground that the case is one of exceptional hardship to the petitioner or of exceptional depravity on the part of 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 mis- representation 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 1[expiry of one year] from the date of the marriage or may dismiss the petition without prejudice to any petition which may be brought after 1 [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 1[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 ¹[said one year].

COMMENTS

In case there is the leave granted to institute divorce proceedings within one year of marriage, and there was no raising of objection by either of the parties and the trial continued the parties are not at liberty to raise objection, stating as granting of leave improper.-Deepayan Chatterjee V. Pipiya Chatterjee 1990(1)HLR 413

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.

¹[* * *]

¹ Substituted by Act 68 of 1976, w.e.f. 27-5-1976

² Words “or epilepsy” omitted by Marriage Laws (Amendment) Act, 1999, w.e.f. 29-12-1999

³ Substituted by Act 2 of 1978 for “eighteen years” w.e.f. 1-10-1978

⁴ Substituted by Act 2 of 1978 “fifteen years” w.e.f. 1-10-1978.

⁵ Clause (vi) omitted by Act 2 of 1978, w.e.f. 1-10-1978

¹ The brackets & figure “(1)” omitted by Act 68 of 1976

² Inserted by Act 68 of 1976, w.e.f. 27-5-1976

³ Sub-s.(2) omitted by Act 68 of 1976, w.e.f. 27-5-1976.

¹ Substituted by Act 1976 w.e.f. 27-5-1976.

⁵ Inserted by Act 68 of 1976 w.e.f. 27.5.1976

¹ Substituted by Act 68 of 1976 w.e.f. 27-5-1976.

² Substituted by Act 2 of the 1978 for word “is required under section 5 “ w.e.f. 1-10-1978.

³ Substituted by Act 68 of 1976 for words “or fraud”, w.e.f. 27-5-1976.

⁴ Substituted by Act 68 of 1976 for words “the grounds for a decree”

¹ Substituted by Act 68 of 1976, for the former clause

1 Substituted by Act 68 of 1976 for the former clause.

2 Certain words omitted by Act 68 Of 1976.

2 Certain words omitted by Act 68 Of 1976

3 Word “or” at the end of clause (vii) and clauses(viii) & (ix) omitted by Act 44 of 1964.

1 Inserted by Act 68 of 1976, w.e.f. 27-5-1976.

2 Inserted by Act 44 of 1964

3 Substituted by Act 68 of 1976, for words “ two years”, w.e.f. 27-5-1976

4 Substituted by Act 68 of 1976 for word “ bestiality”, w.e.f. 27-5-1976

5 Inserted by Act 68 of 1976, w.e.f. 27-5-1976.

1 Inserted by Act 68 of 1976, w.e.f. 27-5-1976

1 Inserted by Act 68 of 1976, w.e.f. 27-5-1976

1 Substituted by Act 68 of 1976, for certain words, w.e.f. 27-5-1976.

1 Inserted by Act 68 of 1976, w.e.f. 27-5-1976

1 Proviso omitted by Act 68 of 1976.

2**[16 Legitimacy of children of void and void able marriages**

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

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

(3) Notwithstanding 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 parent, in any case where, what 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].

COMMENTS

The rights that this section confers upon illegitimate children is only as regards the property left by their parents.-Yagarlamudi Sujata V. Krishan Prasad AIR 1992 SC 293

17. Punishment of bigamy

Any marriage between two Hindus solemnized after 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 marriage of himself or herself to be solemnized under this Act in contravention of the conditions specified in clauses (iii), (iv) **3**[and (v)] of section 5

shall be punishable-

- (a) in the case of a contravention of the condition specified in clause (iii) of section 5, with simple imprisonment which may extend to fifteen days, or with fine which may extend to one thousand 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; ⁴
[***] ⁵ [***]

Chapter V

Jurisdiction and procedure

¹[19. Court to which petition shall be presented

Every petition under this Act shall be presented to the District Court within the local limits of whose ordinary original civil jurisdiction-

- (i) the marriage was solemnized; or
- (ii) the respondent, at the time of the presentation of the petition, resides or
- (iii) the parties to the marriage last resided together, or
- (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, ²[and, except in a petition under section 11, shall also state] that there is no collusion between the petitioner and the other party to the marriage.

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

21 Application of Act 5 of 1908

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

3 **[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 Courts 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 clauses (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.

COMMENTS

Where the lady is poor, feeling hard to attend divorce proceeding and also her life in

danger, it was taken to be a fit case for the transfer of the proceedings.-Heere Tripathi V. N.P. Tripathi 1993 (1)DMC115

21B Special provision relating to trial and disposal of petitions under this 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 endeavor 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 endeavor shall be made to conclude the hearing within three months from the date of service of notice of appeal on the respondent.

21C Documentary evidence

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

¹[22 Proceedings to be in camera and may not be printed or published

- (1) Every proceeding under this Act shall be conducted in camera and it shall not be lawful for any person to print or publish any matter in relation to any such proceeding except a judgement of 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 previous contained in sub section(1), he shall be punishable with fine which may extend to one thousand rupees.]

23 Decree in proceedings

- (1) In any proceeding under this Act, whether defended or not, if the court is satisfied that-
 - (a) any of the grounds for granting relief exists and the petitioner ²

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

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

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

(c) ³[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 endeavor to bring about a reconciliation between the parties:

⁴[PROVIDED that nothing contained in this sub-section shall apply to any proceeding wherein relief is sought on any of the grounds specified in clause (ii), clause (iii), clause (iv), clause (v), clause (vi) or clause (vii) of sub-section (1) of section 13.]

⁴ [(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 reports.

(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.]

COMMENTS

The parties entitled to be given a hearing in matrimonial matters are the husband or the wife or the co-respondent. Matrimonial jurisdiction is special controlled by the Hindu Marriage Act-.P.C.Bhashin V.Sunita AIR 1990 Delhi 320

Rule 9 of the order 9 of the Code of Civil Procedure is having its applicability in case the proceedings are under Hindu Marriage Act-C.Sarla v. Nalinapshan AIR 1991 Ker 362

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 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 such on that ground].

24

Maintenance pendente lite and expenses of proceedings

Where in any proceedings 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 proceedings, and monthly during the proceedings such sum as, having regard to the petitioner's own income and the respondent, it may seem to the court to be reasonable.

COMMENTS

The expression "husband and wife" as finds place under s.24 does not require a rigid interpretation. Besides the inclusion of legally married wife and husband, the expression also includes the person claiming to be a wife or husband.- Laxhmibai v Ayodhya Prasad

AIR 1991 MP 47

In the case for one reason or the other the proceedings are protracted and the applicant is not the least responsible for, the applicant cannot lose the right for getting maintenance pendente lite from the date of application.- Indira Gangole v. S.K. Gangole AIR 1992 MP 73

In case there is an order of maintenance pendente lite passed, it cannot be appealed against for it is just an order interlocutory and never a judgement.- S.H.Gupta.v.P.S.Gupta. AIR 1991 Bom.423.

Where there is no obstacle in the matter of earning granting of maintenance to one who is skilled does not fall within the purview of the scheme of the Act. Simple fact of business closed down, does not indicate no source of income .-Kanchan v. Kamalendra AIR 1992 BOM 493

Expenditure done on the travelling so as to attend the court where is a big distance from the residence and the court is also included in the court of litigation, and in case some assistance is required by the applicant lady or some male companion, it is necessary that the respondent must pay travelling expenses of both of them besides same dearness allowance.-S .D. Naik v. D.K. Naik 1993 (1)DMC 112

25 Permanent alimony and maintenance

(1) any court exercising jurisdiction under this Act may at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall ¹[***] pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant ²[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 a 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 remarried 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, ¹[it may at the instance of the other party very modify or resind any such any order in such manner as the court may the just.]

COMMENTS

Were matrimonial relief is refused the order of refusal amounts to a decree for all purposes including for appeal as under s.20 of the Act.-M.K.Jain. v.L.M.Jain AIR 1991 Bom 440.

Sec. 11 of the Code of Civil Procedure or the principles of res judicata or the doctrine of estoppel is of no avail against the wife so as to defeat her claim for the higher ratio of maintenance allowance.- R.S.Rastogi.v.Vinay Rastogi AIR 1991 All. 255.

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 there 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 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 very any such orders and provisions previously made.

COMMENTS

It is the District Judge who is appropriate and not the High Court to take a decision upon the custody of the minor children.-K.C.Das v. Kusam Das AIR 1991 Gau. 54.

27 **Disposal of property**

In any proceeding under this Act, the court may make such provisions in the decree as the 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 wife.

COMMENTS

There can be the passing of the order not to remove the ornaments placed in the locker in

the joint names and to be operated by both the husband and wife for there can be the presumption raised that the ornaments are belonging to both.- B.K.Sinha v. Rekha Sinha AIR 1992 Pat 173. Where the property presented at about the time of marriage is alleged to be a joint belonging of both the husband and wife, that the section comes to application.-Subash Lata.v.V.N.Khanna AIR 1992 Del 14.

2 **[28 Appeals from decrees and orders**

(1) All decree 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 proceedings under this Act under section 25 or section 26 shall, subject to the provision or 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 decision of the court given in exercise of its original civil jurisdiction.

(3) There shall be not appeal under this section on the subject of costs only.

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

COMMENTS

Where there is the passing of the interim orders either under s. 24 or 25 or 26 of the Act such order is not appealable as per the language used in s. 28 (2) of the Act.- S.H.Gupta v. P.S. Gupta AIR 1991 Bom 423.

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 exercise of its original civil jurisdiction for the time being are enforced.]

Chapter VI **Saving and Repeal**

29 Saving

(1) A marriage solemnized between Hindus before the commencement of this

Act, which is otherwise valid, shall not be deemed to be invalid or ever to have been invalid by reason only of the fact that the parties thereto belonged to the same gotra or pravara or belonged to different religions, castes or sub divisions of the same caste.

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

(3) Nothing contained in this Act shall affect any proceedings 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 proceedings 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 provision contained in the Special Marriage Act, 1954, (43 of 1954) with respect to marriages between Hindus solemnized under that Act, whether before or after commencement of this act.

30 Repeal

[Repealed by Repealing and Amending Act, 1960 (58 of 1960) w.e.f. 26-12-1960]

² Substituted by Act 68 of 1976 for section 16

³ Substituted by Act 2 of 1978 for “(v) and (vi) w.e.f. 1-10-1978.

⁴ Word “and” omitted by Act 2 of 1978 w.e.f. 1-10-1978

⁵ clause © omitted by Act 2 of 1978 w.e.f. 1-10-1978

¹ Substituted by Act 68 of 1976, w.e.f. 27-5-1976.

² Substituted by Act 68 of 1976 for words “and shall also state”, w.e.f. 27-5-1976.

³ Inserted by Act 68 of 1976, w.e.f. 27-5-1976

¹ Substituted by Act 68 of 1976 w.e.f. 27-5-1976.

² Inserted by Act 68 of 1976, w.e.f. 27-5-1976.

¹ Certain words omitted by Act 68 of 1976, w.e.f. 27-5-1976

² Inserted by Act 68 of 1976, w.e.f. 27-5-1976.

³ Substituted by Act 68 of 1976 for word “the petition”, w.e.f 27-5-1976.

⁴ Inserted by Act 68 of 1976, w.e.f 27-5-1976

⁴ Inserted by Act 68 of 1976, w.e.f. 27-5-1976.

⁴ inserted by Act 68 of 1976, w.e.f. 27-5-1976.

¹ Words “ while the applicant remains unmarried” omitted by Act 38 of 1976.

² Substituted by Act 68 of 1976 for certain words

¹ Substituted by Act 68 of 1976

² Substituted by Act 68 of 1976.