



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 Jain religion 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 (XXI of 1850) applies

21. Succession to property of parties married under Act.—

Notwithstanding any restrictions contained in the Indian Succession Act, 1925 (XXXIX of 1925), with respect to its application to members of certain communities, succession to the property of 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 section that Act shall have effect as if Chapter III of Part V (Special Rules for Parsi Intestates) had been omitted there from.

21 A. Special Provision in Certain Cases.-

Where the marriage solemnized under this Act of any person who professes the Hindu, Buddhist, Sikh or Jaina religion With 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When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply by petition to the district court for restitution of conjugal rights, and the court, on being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.

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excuse for withdrawal from the society, the burden of proving reasonable excuse shall be on the person who has withdrawn from the society

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 [in sub-section(1)][and sub-section(1-A) 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 [any 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 clause (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 clause (a) to (e) of section 15.

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 marriage.—

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 India Contract Act, 1872 (2 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 have ceased or, as the case may be 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.

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, 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 any marriage under section 24 or section 25, any child begotten before the decree is made who would have been the legitimate child of the parties to the marriage if it had been dissolved instead of being declared to be null and void or annulled by a decree of nullity shall be deemed to be their legitimate child notwithstanding the decree of nullity:

(3) Nothing contained in sub-section (1) and 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 his not being the legitimate child of his parents.

27. Divorce.—

[(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—

(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

(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):or

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

(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 other party, and whether or not it require or is susceptible to medical treatment; or]

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

(g) has 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

[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.]

[(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 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.]

[(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.]

[27A. 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 (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) 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 two years 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 [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 [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 [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 [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 [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 [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 appealing has expired without an appeal having been presented, or an appeal has been presented but has been dismissed, either party to the marriage may marry again.

Chapter VII Jurisdiction and Procedure

31. Court to which petition should be made.-

(1) 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 presentation of the petition resides; or
- (iii) the parties to the marriage last resided together; or
- (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 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 period of seven years by those who would naturally have heard of him if he was alive.]

- (2) Without prejudice to any jurisdiction exercisable by the court under sub-section (1), 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.

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