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भारत सरकार
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GOVERNMENT OF INDIA
MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS



सत्यमेव जयते

भारत संहिता

(जिल्द 10)

कालानुक्रम रूप में अनिरसित केन्द्रीय अधिनियमों का संकलन
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INDIA CODE
(VOLUME X)

Being a compilation of unrepealed Central Acts arranged chronologically

(As on the 1st October, 2000)

THE PARSI MARRIAGE AND DIVORCE ACT, 1936

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THE PARSI MARRIAGE AND DIVORCE ACT, 1936¹

ACT No. 3 OF 1936¹

[23rd April, 1936.]

An Act to amend the law relating to marriage and divorce among Parsis.

WHEREAS it is expedient to amend the law relating to marriage and divorce among Parsis; it is hereby enacted as follows:—

I.—PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called the Parsi Marriage and Divorce Act, 1936.

(2) ²[It extends to the whole of India except the State of Jammu and Kashmir]:

Provided that the Central Government may, in respect of ³[territories which, immediately before the 1st November, 1956, were comprised in Part B States] by notification in the Official Gazette, direct that the provisions of this Act relating to the constitution and powers of Parsi Matrimonial Courts and to appeals from the decisions and orders of such Courts shall apply with such modifications as may be specified in the notification:

⁴[Provided further 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 date⁵ as the Central Government may, by notification in the Official Gazette, appoint.

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

(1) "Chief Justice" includes senior Judge;

(2) "Court" means a Court constituted under this Act;

(3) to "desert" together with its grammatical variations and cognate expressions, means to desert the other party to a marriage without reasonable cause and without the consent, or against the will, of such party;

(4) "grievous hurt" means—

(a) emasculation;

(b) permanent privation of the sight of either eye;

(c) permanent privation of the hearing of either ear;

(d) privation of any member or joint;

(e) destruction or permanent impairing of the powers of any member or joint;

(f) permanent disfiguration of the head or face; or

(g) any hurt which endangers life;

(5) "husband" means a Parsi husband;

1. This Act has been extended to—

(i) Berar by the Berar Laws Act, 1941 (4 of 1941), and

(ii) Dadra or Nagar Haveli by Reg. 6 of 1963, s. 2 and Sch. I (1-7-1965).

2. Subs. by Act 3 of 1951, s. 3 and Sch., for certain words.

3. Subs. by the Adaptation of Laws (No. 3) Order, 1956, for "Part B States".

4. Ins. by Act 26 of 1968, s. 3 and Sch. I.

5. 22nd June, 1936; see Gazette of India, 1936, Pt. I, p 621.

Parsi Marriage and Divorce Act, 1936
(I.—Preliminary. II.—Marriages between Parsis.)

(6) "marriage" means a marriage between Parsis whether contracted before or after the commencement of this Act;

(7) a "Parsi" means a Parsi Zoroastrian;

(8) "priest" means a Parsi priest and includes Dastur and Mobed; and

(9) "wife" means a Parsi wife.

II.—MARRIAGES BETWEEN PARSIS

3. Requisites to validity of Parsi marriages.—¹[(1)] No marriage shall be valid if—

(a) the contracting parties are related to each other in any of the degrees of consanguinity or affinity set forth in Schedule I; or

(b) such marriage is not solemnized according to the Parsi form of ceremony called "Ashirvad" by a priest in the presence of two Parsi witnesses other than such priest; or

²[(c) in the case of any Parsi (whether such Parsi has changed his or her religion or domicile or not) who, if a male, has not completed twenty-one years of age, and if a female, has not completed eighteen years of age.]

³[(2) Notwithstanding that a marriage is invalid under any of the provisions of sub-section (1), any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate.]

4. Remarriage when unlawful.—(1) No Parsi (whether such Parsi has changed his or her religion or domicile or not) shall contract any marriage under this Act or any other law in the lifetime of his or her wife or husband, whether a Parsi or not, except after his or her lawful divorce from such wife or husband or after his or her marriage with such wife or husband has lawfully been declared null and void or dissolved, and, if the marriage was contracted with such wife or husband under the Parsi Marriage and Divorce Act, 1865⁴ (1 of 1865), or under this Act, except after a divorce, declaration or dissolution as aforesaid under either of the said Acts.

(2) Every marriage contracted contrary to the provisions of sub-section (1) shall be void.

5. Punishment of bigamy.—Every Parsi who during the lifetime of his or her wife or husband, whether a Parsi or not, contracts a marriage without having been lawfully divorced from such wife or husband, or without his or her marriage with such wife or husband having legally been declared null and void or dissolved, shall be subject to the penalties provided in sections 494 and 495 of the Indian Penal Code (45 of 1860) for the offence of marrying again during the lifetime of a husband or wife.

6. Certificate and registry of marriage.—Every marriage contracted under this Act shall, immediately on the solemnization thereof, be certified by the officiating priest in the form contained in Schedule II. The certificate shall be signed by the said priest, the contracting parties⁵ and two witnesses present at the marriage and the said priest shall thereupon send such certificate together with a fee of two rupees to be paid by the husband to the Registrar of the place at which such marriage is solemnized. The Registrar on receipt of the certificate and fee shall enter the certificate in a register to be kept by him for that purpose and shall be entitled to retain the fee.

7. Appointment of Registrar.—For the purposes of this Act a Registrar shall be appointed. Within the local limits of the ordinary original civil jurisdiction of a High Court, the Registrar shall be appointed by the Chief Justice of such Court, and without such limits, by the State Government.

1. S. 3 renumbered as sub-section (1) thereof by Act 5 of 1988, s. 2 (w.e.f. 15-4-1988).

2. Subs. by s. 2, *ibid.*, for cl. (c) (w.e.f. 15-4-1988).

3. Ins. by s. 2, *ibid.* (w.e.f. 15-4-1988).

4. Rep. by Act 3 of 1936, s. 53.

5. Certain words omitted by Act 5 of 1988, s. 3. (w.e.f. 15-4-1988).

Every Registrar so appointed may be removed by the Chief Justice or State Government appointing him.

8. Marriage register to be open for public inspection.—The register of marriages mentioned in section 6 shall, at all reasonable times, be open for inspection, and certified extracts therefrom shall, on application, be given by the Registrar on payment to him by the applicant of two rupees for each such extract. Every such register shall be evidence of the truth of the statements therein contained.

9. Copy of certificate to be sent to Registrar-General of Births, Deaths and Marriages.—Every Registrar, except the Registrar appointed by the Chief Justice of the High Court of Judicature at Bombay, shall, at such intervals as the State Government by which he was appointed from time to time directs, send to the Registrar-General of Births, Deaths and Marriages for the territories administered by such State Government a true copy certified by him in such form as such State Government from time to time prescribes of all certificates entered by him in the said register of marriages since the last of such intervals.

10. Registration of divorces.—When a Court passes a decree for divorce, nullity or dissolution, the Court shall send a copy of the decree for registration to the Registrar of Marriages within its jurisdiction appointed under section 7; the Registrar shall enter the same in a register to be kept by him for the purpose, and the provisions of Part II applicable to the Registrars and registers of marriages shall be applicable, so far as may be, to the Registrars and registers of divorces and decrees of nullity and dissolution.

11. Penalty for solemnizing marriage contrary to section 4.—Any priest knowingly and wilfully solemnizing any marriage contrary to and in violation of section 4 shall, on conviction thereof, be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two hundred rupees, or with both.

12. Penalty for priest's neglect of requirements of section 6.—Any priest neglecting to comply with any of the requisitions affecting him contained in section 6 shall, on conviction thereof, be punished for every such offence with simple imprisonment for a term which may extend to three months, or with fine which may extend to one hundred rupees, or with both.

13. Penalty for omitting to subscribe and attest certificate.—Every other person required by section 6 to subscribe or attest the said certificate who shall wilfully omit or neglect so to do, shall, on conviction thereof, be punished for every such offence with a fine not exceeding one hundred rupees.

14. Penalty for making, etc., false certificate.—Every person making or signing or attesting any such certificate containing a statement which is false, and which he either knows or believes to be false, shall be punished with simple imprisonment for a term which may extend to three months, or with fine which may extend to one hundred rupees, or with both; and if the act amounts to forgery as defined in the Indian Penal Code (45 of 1860), then such person shall also be liable, on conviction thereof, to the penalties provided in section 466 of the said Code.

15. Penalty for failing to register certificate.—Any Registrar failing to enter the said certificate pursuant to section 6 shall be punished with simple imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

16. Penalty for secreting, destroying or altering register.—Any person secreting, destroying, or dishonestly or fraudulently altering the said register in any part thereof, shall be punished with imprisonment of either description as defined in the Indian Penal Code (45 of 1860) for a term which may extend to two years or if he be a Registrar, for a term which may extend to five years and shall also be liable to fine which may extend to five hundred rupees.

17. Formal irregularity not to invalidate marriage.—No marriage contracted under this Act shall be deemed to be invalid solely by reason of the fact that it was not certified under section 6, or that the certificate was not sent to the Registrar, or that the certificate was defective, irregular or incorrect.

III.—PARSI MATRIMONIAL COURTS

18. **Constitution of Special Courts under the Act.**—For the purpose of hearing suits under this Act, a Special Court shall be constituted in each of the Presidency-towns of Calcutta, Madras and Bombay, and in such other places in the territories of the several State Governments as such Governments respectively shall think fit.

19. **Parsi Chief Matrimonial Courts.**—The Court so constituted in each of the Presidency-towns shall be entitled the Parsi Chief Matrimonial Court of Calcutta, Madras or Bombay, as the case may be. The local limits of the jurisdiction of a Parsi Chief Matrimonial Court shall be coterminous with the local limits of the ordinary original civil jurisdiction of the High Court. The Chief Justice of the High Court, or such other Judge of the same Court as the Chief Justice shall from time to time appoint shall be the Judge of such Matrimonial Court, and, in the trial of cases under this Act, he shall be aided ¹[by five delegates, except in regard to—

- (a) interlocutory applications and proceedings;
- (b) alimony and maintenance, both permanent as well as *pendente lite*;
- (c) custody, maintenance and education of children; and
- (d) all matters and proceedings other than the regular hearing of cases].

20. **Parsi District Matrimonial Courts.**—Every Court so constituted at a place other than a Presidency-town shall be entitled the Parsi District Matrimonial Court of such place. Subject to the provisions contained in section 21, the local limits of the jurisdiction of such Court shall be coterminous with the limits of the district in which it is held. The Judge of the principal Court of original civil jurisdiction at such place shall be the Judge of such Matrimonial Court, and in the trial of cases under this Act he shall be aided ¹[by five delegates, except in regard to—

- (a) interlocutory applications and proceedings;
- (b) alimony and maintenance, both permanent as well as *pendente lite*;
- (c) custody, maintenance and education of children; and
- (d) all matters and proceedings other than the regular hearing of cases].

21. **Power to alter territorial jurisdiction of District Courts.**—The State Government may from time to time alter the local limits of the jurisdiction of any Parsi District Matrimonial Court, and may include within such limits any number of districts under its government.

22. **Certain districts to be within jurisdiction of the Chief Matrimonial Court.**—Any district which the State Government, on account of the fewness of its parsi inhabitants, shall deem it inexpedient to include within the jurisdiction of any District Matrimonial Court, shall be included within the jurisdiction of the Parsi Chief Matrimonial Court for the territories under such State Government where there is such a Court.

23. **Court seals.**—A seal shall be made for every Court constituted under this Act, and all decrees and orders and copies of decrees and orders of such Court shall be sealed with such seal, which shall be kept in the custody of the presiding Judge.

24. **Appointment of delegates.**—(1) The State Governments shall, in the Presidency-towns and districts subject to their respective Governments, respectively appoint persons to be delegates to aid in the adjudication of cases arising under this Act, after giving the local parsis an opportunity of expressing their opinion in such manner as the respective Governments may think fit.

(2) The persons so appointed shall be Parsis, their names shall be published in the Official Gazette and their number shall, within the local limits of the ordinary original civil jurisdiction of a High Court, be not more than thirty, and in districts beyond such limits, not more than twenty.

1. Subs. by Act 5 of 1988, s. 4, for "by seven delegates" (w.e.f. 15-4-1988).

III.—PARSI MATRIMONIAL COURTS.

25. Power to appoint new delegates.—The appointment of a delegate shall be for ten years; but he shall be eligible for reappointment for the like term or terms. Whenever a delegate shall die, or have completed his term of office, or be desirous of relinquishing his office, or refuse or become incapable or unfit to act, or cease to be a Parsi, or be convicted of an offence under the Indian Penal Code (45 of 1860) or other law for the time being in force ¹[involving moral turpitude], or be adjudged insolvent, then and so often the State Government may appoint any person being a Parsi to be a delegate in his stead; and the name of the person so appointed shall be published in the Official Gazette.

26. Delegates to be deemed public servants.—All delegates appointed under this Act shall be considered to be public servants within the meaning of the Indian Penal Code (45 of 1860).

27. Selection of delegates under sections 19 and 20 to be from those appointed under section 24.—The delegates selected under sections 19 and 20 to aid in the adjudication of suits under this Act, shall be taken under the orders of the presiding Judge of the Court in due rotation from the delegates appointed by the State Government under section 24:

Provided that each party to the suit may, without cause assigned, challenge any ²[two] of the delegates attending the Court before such delegates are selected and no delegate so challenged shall be selected.

28. Practitioners in Matrimonial Courts.—All legal practitioners entitled to practise in a High Court shall be entitled to practise in any Court constituted under this Act, and all legal practitioners entitled to practise in a District Court shall be entitled to practise in any Parsi District Matrimonial Court constituted under this Act.

29. Court in which suits to be brought.—(1) All suits instituted under this Act shall be brought in the Court within the limits of whose jurisdiction the defendant resides at the time of the institution of the suit ³[or where the marriage under this Act was solemnized].

(2) When the defendant shall at such time have left ⁴[the territories to which this Act extends] such suit shall be brought in the Court at the place where the plaintiff and defendant last resided together.

(3) In any case, whether the defendant resides in ⁴[the territories to which this Act extends] or not, such suit may be brought in the Court at the place where the plaintiff resides or at the place where the plaintiff and the defendant last resided together, if such Court, after recording its reasons in writing, grants leave so to do.

IV.—MATRIMONIAL SUITS

30. Suits for nullity.—In any case in which consummation of the marriage is from natural causes impossible, such marriage may, at the instance of either party thereto, be declared to be null and void.

31. Suits for dissolution.—If a husband or wife shall have been continually absent from his or her wife or husband for the space of seven years, and shall not have been heard of as being alive within that time by those persons who would have naturally heard of him or her, had he or she been alive, the marriage of such husband or wife may, at the instance of either party thereto, be dissolved.

32. Grounds for divorce.—Any married person may sue for divorce on any one or more of the following grounds, namely:—

(a) that the marriage has not been consummated within one year after its solemnization owing to the wilful refusal of the defendant to consummate it;

1. Ins. by Act 5 of 1988, s. 5 (w.e.f. 15-4-1988).

2. Subs. by s. 6, *ibid.*, for "three" (w.e.f. 15-4-1988).

3. Added by s. 7, *ibid.* (w.e.f. 15-4-1988).

4. Subs. by Act 3 of 1951; s. 3 and Sch., for "Part A States and Part C States".

(b) that the defendant at the time of the marriage was of unsound mind and has been habitually so up to the date of the suit:

Provided that divorce shall not be granted on this ground, unless the plaintiff (1) was ignorant of the fact at the time of the marriage, and (2) has filed the suit within three years from the date of the marriage;

¹[(*bb*) that the defendant has been incurably of unsound mind for a period of two years or upwards immediately preceding the filing of the suit or has been suffering continuously or intermittently from mental disorder of such kind and to such an extent that the plaintiff cannot reasonably be expected to live with the defendant.

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 subnormality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the defendant, and whether or not it requires or is susceptible to medical treatment;]

(c) that the defendant was at the time of marriage pregnant by some person other than the plaintiff:

Provided that divorce shall not be granted on this ground, unless (1) the plaintiff was at the time of the marriage ignorant of the fact alleged, (2) the suit has been filed within two years of the date of marriage, and (3) marital intercourse has not taken place after the plaintiff came to know of the fact;

(d) that the defendant has since the marriage committed adultery or fornication or bigamy or rape or an unnatural offence:

Provided that divorce shall not be granted on this ground, if the suit has been filed more than two years after the plaintiff came to know of the fact;

¹[(*dd*) that the defendant has since the solemnization of the marriage treated the plaintiff with cruelty or has behaved in such a way as to render it in the judgment of the Court improper to compel the plaintiff to live with the defendant:

Provided that in every suit for divorce on this ground it shall be in the discretion of the Court whether it should grant a decree for divorce or for judicial separation only;]

(e) that the defendant has since the marriage voluntarily caused grievous hurt to the plaintiff or has infected the plaintiff with venereal disease or, where the defendant is the husband, has compelled the wife to submit herself to prostitution:

Provided that divorce shall not be granted on this ground, if the suit has been filed more than two years (i) after the infliction of the grievous hurt, or (ii) after the plaintiff came to know of the infection, or (iii) after the last act of compulsory prostitution;

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

Provided that divorce shall not be granted on this ground, unless the defendant has prior to the filing of the suit undergone at least one year's imprisonment out of the said period;

(g) that the defendant has deserted the plaintiff for at least ²[two years];

1. Ins. by Act 5 of 1988, s. 8 (w.e.f. 15-4-1988).

2. Subs. by s. 8, *ibid.*, for “three years” (w.e.f. 15-4-1988).

(h) that ^{1***} an order has been passed against the defendant by a Magistrate awarding separate maintenance to the plaintiff, and the parties have not had marital intercourse for ²[one year] or more since such decree or order;

3*

(j) that the defendant has ceased to be a Parsi ⁴[by conversion to another religion];

Provided that divorce shall not be granted on this ground if the suit has been filed more than two years after the plaintiff came to know of the fact.

⁵[32A. Non-resumption of cohabitation or restitution of conjugal rights within one year in pursuance of a decree to be ground for divorce.—(1) Either party to a marriage, whether solemnized before or after the commencement of the Parsi Marriage and Divorce (Amendment) Act, 1988 (5 of 1988), may sue for divorce also 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) No decree for divorce shall be granted under sub-section (1) if the plaintiff has failed or neglected to comply with an order for maintenance passed against him under section 40 of this Act or section 488 of the Code of Criminal Procedure, 1898 (5 of 1898) or section 125 of the Code of Criminal Procedure, 1973 (2 of 1974).

32B. Divorce by mutual consent.—(1) Subject to the provisions of this Act, a suit for divorce may be filed by both the parties to a marriage together, whether such marriage was solemnized before or after the commencement of the Parsi Marriage and Divorce (Amendment) Act, 1988 (5 of 1988), 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;

Provided that no suit under this sub-section shall be filed unless at the date of the filing of the suit one year has lapsed since the date of the marriage.

(2) 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 under this Act and the averments in the plaint are true and that the consent of either party to the suit was not obtained by force or fraud, pass a decree declaring the marriage to be dissolved with effect from the date of the decree.]

33. Joining of co-defendant.—In every such suit for divorce on the ground of adultery, the plaintiff shall, unless the Court shall otherwise order, make the person with whom the adultery is alleged to have been committed a co-defendant, and in any such suit by the husband the Court may order the adulterer to pay the whole or any part of the cost of the proceedings.

34. Suits for judicial separation.—Any married person may sue for judicial separation on any of the grounds for which such person could have filed a suit for divorce ^{6* * *}.

1. Certain words omitted by Act 5 of 1988, s. 8 (w.e.f. 15-4-1988).

2. Subs. by s. 8, *ibid.*, for "three years" (w.e.f. 15-4-1988).

3. Cl. (j) omitted by s. 8, *ibid.* (w.e.f. 15-4-1988).

4. Ins. by s. 8, *ibid.* (w.e.f. 15-4-1988).

5. Ins. by s. 9, *ibid.* (w.e.f. 15-4-1988).

6. Certain words omitted by s. 10, *ibid.* (w.e.f. 15-4-1988).

Parsi Marriage and Divorce Act, 1934
(IV.—*Mairimomial Suits.*)

35. Decrees in certain suits.—In any suit under section 30, 31, 32, ¹[32A] or 34, whether defended or not, if the Court be satisfied that any of the grounds set forth in those sections for granting relief exist, that none of the grounds therein set forth for withholding relief exist and that—

- (a) the act or omissions set forth in the plaint has not been condoned;
- (b) the husband and wife are not colluding together;
- (c) the plaintiff has not connived at or been accessory to the said act or omission;
- (d) (save where a definite period of limitation is provided by this Act) there has been no unnecessary or improper delay in instituting the suit; and
- (e) there is no other legal ground why relief should not be granted;

then and in such case, but not otherwise, the Court shall decree such relief accordingly.

36. Suit for restitution of conjugal rights.—Where a husband shall have deserted or without lawful cause ceased to cohabit with his wife, or where a wife shall have deserted or without lawful cause ceased to cohabit with her husband, the party so deserted or with whom cohabitation shall have so ceased may sue for the restitution of his or her conjugal rights and the Court, if satisfied of the truth of the allegations contained in the plaint, and that there is no just ground why relief should not be granted, may proceed to decree such restitution of conjugal rights accordingly.

37. Counter claim by defendant for any relief.— In any suit under this Act, the defendant may make a counter claim for any relief he or she may be entitled to under this Act.

²[38. Documentary evidence.— Notwithstanding anything contained in any other law for the time being in force, no document shall be inadmissible in evidence in any proceeding at the trial of a suit under this Act on the ground that it is not duly stamped or registered.]

³[39. Alimony *pendente lite*.— Where in any suit 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 suit, it may, on the application of the wife or the husband, order the defendant to pay to the plaintiff, the expenses of the suit, and such weekly or monthly sum, during the suit, as, having regard to the plaintiff's own income and the income of the defendant, it may seem to the Court to be reasonable.

40. 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 an application made to it for the purpose by either the wife or the husband, order that the defendant shall pay to the plaintiff 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 plaintiff as having regard to the defendant's own income and other property, if any, the income and other property of the plaintiff, 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 movable or immovable property of the defendant.

(2) The Court if it is satisfied that there is 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) The Court if it 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 had sexual intercourse with any woman outside wedlock, 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.]

1. Ins. by Act 5 of 1988, s. 11 (w.e.f. 15-4-1988).

2. Subs. by s. 12, *ibid.*, for s. 38 (w.e.f. 15-4-1988).

3. Subs. by s. 13, *ibid.*, for ss. 39 and 40 (w.e.f. 15-4-1988).

41. Payment of alimony to wife or to her trustee.—In all cases in which the Court shall make 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 ¹[or to a guardian appointed by the Court], and may impose any terms or restrictions which to the Court may seem expedient, and may from time to time appoint a new trustee ¹[or guardian,] if for any reason it shall appear to the Court expedient so to do.

42. Disposal of joint property.— In any suit under this Act the Court may make such provisions in the final decree as it may deem just and proper with respect to property presented at or about the time of marriage which may belong jointly to both the husband and wife.

²[**43. Suits to be heard *in camera* and may not be printed or published.**— (1) Every suit filed under this Act shall be tried *in camera* and it shall not be lawful for any person to print or publish any matter in relation to any such case except a judgment of the 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.]

44. Validity of trial.— Notwithstanding anything contained in section 19 or section 20 where in the case of a trial in a Parsi Matrimonial Court not less than ³[three] delegates have attended throughout the proceedings, the trial shall not be invalid by reason of the absence during any part thereof of the other delegates.

45. Provisions of Civil Procedure Code to apply to suits under the Act.— The provisions of the Code of Civil Procedure, 1908 (5 of 1908), shall, so far as the same may be applicable, apply to proceedings in suits instituted under this Act including proceedings in execution and orders subsequent to decree:

⁴[Provided that the presiding Judge shall read out to the delegates the relevant sections of this Act, and may, if he considers it necessary so to do, explain the same:

Provided further that a *verbatim* record shall be made of what the presiding Judge reads out or explains to the delegates.]

46. Determination of questions of law and procedure and of fact.— In suits under this Act all questions of law and procedure shall be determined by the presiding Judge; but the decision on the facts shall be the decision of the majority of the delegates before whom the case is tried:

Provided that, where such delegates are equally divided in opinion, the decision on the facts shall be the decision of the presiding Judge.

47. Appeal to High Court.—⁵[(1)] An appeal shall lie to the High Court from—

(a) the decision of any Court established under this Act, whether a Chief Matrimonial Court or District Matrimonial Court, on the ground of the decision being contrary to some law or usage having the force of law, or of a substantial error or defect in the procedure or investigation of the case which may have produced error or defect in the decision of the case upon the merits, and on no other ground; and

(b) the granting of leave by any such Court under sub-section (3) of section 29:

Provided that such appeal shall be instituted within three calendar months after the decision appealed from shall have been pronounced.

1. Ins. by Act 5 of 1988, s. 14 (w.e.f. 15-4-1988).

2. Subs. by s. 15, *ibid.*, for s. 43 (w.e.f. 15-4-1988).

3. Subs. by s. 16, *ibid.*, for "five" (w.e.f. 15-4-1988).

4. Added by s. 17, *ibid.* (w.e.f. 15-4-1988).

5. S. 47 re-numbered as sub-section (1) thereof by Act 5 of 1988, s. 18 (w.e.f. 15-4-1988).

[(2) Every appeal under sub-section (1) shall be heard by a Bench of two Judges of the High Court.]

48. Liberty of parties to marry again.—When the time ^{2***} limited for appealing against any decree granting a divorce of annulling or dissolving a marriage shall have expired, and no appeal shall have been presented against such decree, or when any such appeal shall have been dismissed, or when in the result of any appeal a divorce has been granted or a marriage has been declared to be annulled or dissolved, but not sooner, it shall be lawful for the respective parties thereto to marry again ^{3***}.

V.—CHILDREN OF THE PARTIES

49. Custody of children.—In any suit under this Act, the Court may from time to time pass such interim orders and make such provisions in the final decree as it may deem just and proper with respect to the custody, maintenance and education of the children under the age of ⁴[eighteen years], the marriage of whose parents is the subject of such suit, and may, after the final decree upon application, by petition for this 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 final decree or by interim orders in case the suit for obtaining such decree were still pending.

50. Settlement of wife's property for benefit of children.—In any case in which the Court shall pronounce a decree of divorce or judicial separation for adultery of the wife, if it shall be made to appear to the Court that the wife is entitled to any property either in possession or reversion, the Court may order such settlement as it shall think reasonable to be made of any part of such property, not exceeding one-half thereof, for the benefit of the children of the marriage or any of them.

VI.—MISCELLANEOUS

51. Superintendence of High Court.—The High Court shall have superintendence over all Courts constituted under this Act subject to its appellate jurisdiction in the same manner as it has over other Courts under ⁵[article 227 of the Constitution] and all the provisions of ⁶[that article] shall apply to such Courts.

52. Applicability of provisions of the Act.—(1) The provisions of this Act shall apply to all suits to which the same are applicable whether the circumstances relied on occurred before or after the passing of this Act, and whether any decree or order referred to was passed under this Act or under the law in force before the passing of this Act, and where any proceedings are pending in any Court at the time of the commencement of this Act, the Court shall allow such amendment of the pleadings as may be necessary as the result of the coming into operation of this Act.

(2) A Parsi who has contracted a marriage under the Parsi Marriage and Divorce Act, 1865⁷ (15 of 1865), or under this Act even though such Parsi may change his or her religion or domicile, so long as his or her wife or husband is alive and so long as such Parsi has not been lawfully divorced from such wife or husband or such marriage has not lawfully been declared null and void or dissolved under the decree of a competent Court under either of the said Acts, shall remain bound by the provisions of this Act.

1. Ins. by Act 5 of 1988, s. 18 (w.e.f. 15-4-1988).

2. The word "hereby" omitted by s. 19, *ibid.* (w.e.f. 15-4-1988).

3. Certain words omitted by s. 19, *ibid.* (w.e.f. 15-4-1988).

4. Subs. by s. 20, *ibid.*, for "sixteen years" (w.e.f. 15-4-1988).

5. Subs. by the A.O. 1950, for "section 107 of the Government of India Act".

6. Subs. by Act 36 of 1957, s. 3 and the Second Sch., for "that section".

7. Rep. by Act 15 of 1865, s. 53.

53. [Repeal.] *Rep. by the Repealing and Amending Act, 1937 (20 of 1937), s. 3 and the Second Sch.*

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SCHEDULE I
(See section 3)

Table of prohibited degrees of consanguinity and affinity

A man shall not marry his—

1. Paternal grand-father's mother.
2. Paternal grand-mother's mother.
3. Maternal grand-father's mother.
4. Maternal grand-mother's mother.
5. Paternal grand-mother.
6. Paternal grand-father's wife.
7. Maternal grand-mother.
8. Maternal grand-father's wife.
9. Mother or step-mother.
10. Father's sister or step-sister.
11. Mother's sister or step-sister.
12. Sister or step-sister.
13. Brother's daughter or step-brother's daughter, or any direct lineal descendant of a brother or step-brother.
14. Sister's daughter or step-sister's daughter, or any direct lineal descendant of a sister or step-sister.
15. Daughter or step-daughter, or any direct lineal descendant of either.
16. Son's daughter or step-son's daughter, or any direct lineal descendant of a son or step-son.
17. Wife of son or step-son, or of any direct lineal descendant of a son or step-son.
18. Wife of daughter's son or of step-daughter's son, or of any direct lineal descendant of a daughter or step-daughter.
19. Mother of daughter's husband.
20. Mother of son's wife.
21. Mother of wife's paternal grand-father.
22. Mother of wife's paternal grand-mother.
23. Mother of wife's maternal grand-father.
24. Mother of wife's maternal grand-mother.
25. Wife's paternal grand-mother.
26. Wife's maternal grand-mother.
27. Wife's mother or step-mother.
28. Wife's father's sister.
29. Wife's mother's sister.
30. Father's brother's wife.
31. Mother's brother's wife.
32. Brother's son's wife.
33. Sister's son's wife.

A woman shall not marry her—

1. Paternal grand-father's father.
2. Paternal grand-mother's father.
3. Maternal grand-father's father.
4. Maternal grand-mother's father.
5. Paternal grand-father.

6. Paternal grand-mother's husband.
7. Maternal grand-father.
8. Maternal grand-mother's husband.
9. Father or step-father.
10. Father's brother or step-brother.
11. Mother's brother or step-brother.
12. Brother or step-brother.
13. Brother's son or step-brother's son, or any direct lineal descendant of a brother or step-brother.
14. Sister's son or step-sister's son, or any direct lineal descendant of a sister or step-sister.
15. Son or step-son, or any direct lineal descendant of either.
16. Daughter's son or step-daughter's son, or any direct lineal descendant of a daughter or step-daughter.
17. Husband of daughter or step-daughter, or of any direct lineal descendant of a daughter or step-daughter.
18. Husband of son's daughter or of step-son's daughter, or of any direct lineal descendant of a son or step-son.
19. Father of daughter's husband.
20. Father of son's wife.
21. Father of husband's paternal grand-father.
22. Father of husband's paternal grand-mother.
23. Father of husband's maternal grand-father.
24. Father of husband's maternal grand-mother.
25. Husband's paternal grand-father.
26. Husband's maternal grand-father.
27. Husband's father or step-father.
28. Brother of husband's father.
29. Brother of husband's mother.
30. Husband's brother's son, or his direct lineal descendant.
31. Husband's sister's son, or his direct lineal descendant.
32. Brother's daughter's husband.
33. Sister's daughter's husband.

NOTE.—In the above table the words "brother" and "sister" denote brother and sister of the whole as well as half blood. Relationship by step means relationship by marriages.

Parsi Marriage and Divorce Act, 1936
(Schedule II.)

SCHEDULE II

(See section 6)

Certificate of Marriage

Date and place of marriage.

Names of the husband and wife.

Condition at the time of marriage.

Rank or profession.

Age.

Residence.

Names of the fathers or guardians.

Rank or profession.

Signature of the officiating priest.

Signatures of the contracting parties.

Signatures of the fathers or guardians of the
contracting parties under 21 years of age.

Signatures of witnesses.

Parsi Marriage and Divorce Act, 1936
STATEMENT OF OBJECTS AND REASONS

The Parsi Marriage and Divorce Act at present in force was passed in 1865. Since then circumstances have greatly altered and to some extent there has also been a change in the sentiments and views of the Parsi community. Hence a necessity for some change in the law has been felt for years. The Parsi Central Association took up the question in 1923 and appointed a Sub-Committee to suggest amendments. The Sub-Committee submitted a report which the Association got printed and circulated for opinion to most other Parsi associations as well as prominent members of the community both in Bombay and outside. Many suggestions were made, and among them by the Trustees of the Bombay Parsi Panchayet who had the advantage of seeing the suggestions of others. The Central Association adopted the suggestions of the Panchayet Trustees and reprinted the whole and again circulated it. Fresh suggestions were thereupon made in the press, on the platform, by associations and individuals. These were fully considered by the Trustees as well as the Association and the present draft is the result. On the whole it represents the views of the great majority of the community, and has been approved by leading Parsis like Sir Dinshaw E. Wacha and the late Rt. Hon. Sir Dinshaw F. Mulla.

EXPLANATION OF THE CLAUSES OF THE BILL.

In drafting this Bill as far as possible the arrangement and language of the Act of 1865 have been adhered to, many of its sections being reproduced verbatim, and a statement is given in the Appendix showing the corresponding sections of the two. The principal changes and reasons for the same are noted in brief below.

Clause 2.—This corresponds to the present section 2, but the definitions of Number, Section, British India, Local Government and High Court have been dropped as they occur in the General Clauses Act, 1897, which will become applicable to this new Act. The definition of Desertion has been adopted from the English Matrimonial Causes Bill.

Clause 3.—This corresponds to the present section 3, the only change made in which is in the table of prohibited degrees of relationship. The new table is based on clear principles in accordance with Parsi religion and custom, and is more concise and at the same time more comprehensive than the present one.

Clause 4.—This corresponds to the present section 4. The alteration is made to suit altered circumstances. The present law provides for the dissolution of a previous Parsi marriage only before contracting a new one, as in 1865 it was not contemplated that a Parsi could contract any other than a Parsi marriage under the Parsi law. At present cases of such other marriages are fairly common. Such a marriage while subsisting ought to be a bar to a marriage under Parsi law, exactly as it would be to a Christian marriage or one under the Special Marriage Act, and there is little doubt that a Court would take the same view even at present under the general law. The alteration puts the matter beyond doubt.

Clause 10.—This is a new provision for the registration of divorces.

Clause 14.—This corresponds to the present section 12. The latter makes all the signatories guilty of forgery if any the slightest detail, whether material or not, be incorrect, e.g., if the age of a party be given as 35 instead of 37. The use of the words “does not know to be true” makes even a person acting in good faith on information apparently reliable guilty if his information happens to be incorrect. The alteration is intended to remedy these defects.

Clause 17.—This new clause lays down general principles on which most discreet judges would act and have acted. (See *Peshotam ver. Mchrbai* I.L.R. 13 Bom. 302, and *Avabai ver. Khodadad* I.L.R. 45 Bom. 146).

Clause 19.—This corresponds to the present section 16, and the only change made is the reduction in the number of Delegates necessary for hearing a case from 11 to 7. As the total number is 30, and cases sometimes continue for days, the reduction is required for the relief of the Delegates.

Clause 24.—This corresponds to the present section 21. The addition of the provision about giving the local Parsis an opportunity of expressing their opinion is in accordance with present practice, so that there will be no change in it.

Clause 29.—This corresponds to the present section 26. The last paragraph has been added chiefly to provide for cases where the husband deserts his wife and goes about from place to place. Judges have been given the power to prevent abuse of this privilege.

Clause 32.—This corresponds to the present section 31, and it is in this that the largest amount of alteration has been made in accordance with the present sentiments and views of the community. The sexes have been put on an equality as respects adultery. Several new grounds for divorce have been added. The time within which suits should be field has been defined instead of leaving the parties in doubt as the wording of the present section 32 leaves them. The reasons for most of the additions will be evident, but some remarks as respects some of the sub-clauses will not be out of place.

Sub-clause (b).—This replaces the present section 27 which is dropped. The declaration of nullity makes the children, if born, illegitimate which is most undesirable. Hence it has been made a ground of divorce.

Sub-clauses (g) and (h).—Wilful desertion for 3 years, or such conduct as compels the plaintiff to live apart for that period, is a grave violation of the marriage tie, and the aggrieved party should have the choice of putting an end to it.

Sub-clause (i).—Separation for 3 years or more secures the elimination of temporary causes such as anger, excitement, temptation, etc. It can only be due to some lasting cause and must mean practically permanent separation. In such a case it would be best that the parties be divorced with a chance of leading a happier life with some other partner in a legitimate manner, instead of leading an immoral life as sometimes happens, or at least an unhappy one as is often the case.

Clause 33.—It is the same as the last paragraph of present section 30.

Clause 34.—It corresponds to the present section 31. The present section allows only the wife to sue for separation, but this clause following the English law allows either party to do so, for proper reasons. It follows the English Matrimonial Causes Bill in allowing a suit for separation on the same grounds as a suit for divorce.

Clause 35.—It corresponds to the present section 32. Among the reasons for refusal to grant relief delay and collusion are not specifically mentioned. Delay is definitely provided for in the relevant sub-clauses of clause 33. Collusion in the sense of consent of both parties to the commission of the act which forms the substantial ground for divorce, such as adultery, is also definitely provided against. Collusion in the sense of a conspiracy between the parties to mislead the Court as to the material facts is provided against in the very words of this clause. The Court has to be satisfied that the grounds for granting relief exist, and it would be quite open to the Judge and Delegates who would be intelligent and experienced members of the community to disbelieve the evidence: this is the position even at present.

Clause 36.—It corresponds to the present section 36, of which the last paragraph has been dropped. A decree under this section should be left to be executed under the Code of Civil Procedure like other decrees of the same kind.

Clause 37.—This is a new provision to facilitate procedure.

Clause 39.—This corresponds to the present section 33. The provision as to alimony during suit has been extended to all suits under the Act, as there is no good reason to limit it only to suits for divorce, and judicial separation.

Clause 40.—It corresponds to the present section 34. As in the preceding clause the provision has been extended to all suits under the Act. A further change has been made in the wording of the first two lines to make explicit what is implied in the word "on". The proviso as to the wife's remaining chaste and unmarried is reasonable. The alteration in the last four lines is to facilitate procedure. It is improper to compel the wife to file a separate suit when she can obtain the same relief more easily in execution. The second paragraph allowing variation in the order has been added to clear up doubts as there have been conflicting decisions on this point.

Clause 42.—This is new. According to Parsi custom recognised in many cases by the Courts certain presents at the time of marriage become the joint property of the husband and wife. A definite order as to the disposal of such joint property is desirable when they separate.

Clause 44.—This corresponds to the present section 39. The number of Delegates who must be present throughout has been reduced as the total number sitting at first has been reduced under clause 19.

Clause 45.—This corresponds to the present section 40. The amendment is formal.

Part VI of the present Act including sections 46 to 50 has been dropped, as it has become unnecessary in view of the provisions of section 25 of the General Clauses Act, 1897, Chapter III and sections 386 to 388 of the Code of Criminal Procedure, and sections 63 to 70 of the Indian Penal Code.

Clause 51.—This corresponds to the present section 51. This clause not only includes the power to make rules and regulations given to the High Court under the present section, but also other powers, such as the power to call for reports and transfer cases, which serves as a wholesome check on subordinate Courts.

The present section 52 has been dropped in view of the provisions of the General Clauses Act, 1897.

Clause 52.—This is new. Sub-clause (a) is in accord with the general desire of the community. Sub-clause (b) gives to Magistrates powers which are already exercised in practice. As these orders are subject to revision by the High Court, and are also liable to be varied or cancelled by a competent Civil Court under section 489 of the Code of Criminal Procedure as modified by Act XVIII of 1923 there is little likelihood of permanent injustice in any case.

Clause 53.—This is a new clause. The second part of it makes the new Act applicable to pending cases. The first part involves a principle which would probably be applied by Courts without express enactment, but it seems best to leave no doubt in the matter.

Clause 54.—This is a new clause meant to ensure parental control over a Parsi minor, who might otherwise try to evade the provisions of clause 3 as to age and parental consent by alleging that he or she had changed his or her religion or domicile. Probably even now the Courts would enforce such a rule, but it is best to make sure.

Clause 55.—This is a new clause which accords to a monogamous Parsi marriage the same protection that is accorded to a Christian marriage as also to a marriage under the Special Marriage Act. It prevents another marriage under any other law while the Parsi marriage subsists.

It is supplementary to clause 5, as perhaps it may be argued that the word "marriage" therein applies only to a Parsi marriage. At the same time there is very little doubt that a Parsi who contracted such other marriage would be convicted of bigamy under the general law. The present clause is intended to leave no doubt.

Clause 56.—This relates to the extent of the Act. When the present Act was enacted in 1865 it was declared to be in force in the whole of British India under section 53. That section was repealed by Act XV of 1874 and the Act of 1865 was declared to be in force in the whole of British India except the Scheduled Districts, and by Act XIV of 1874 it was declared to be in force in a large number of specified Scheduled Districts. It is now proposed to extend it to the whole of British India. The additional provision for its extension to marriages outside British India is meant chiefly to meet the difficulties that have arisen as respects Parsi marriages in Cantonments which although under British jurisdiction are legally outside British India.

BOMBAY;

The 15th June, 1934.

PHIROZE SETHNA.

APPENDIX

Comparative Table of sections of Act XV of 1865 and of the New Act

Section of Act XV of 1865	Section of the New Act
1	1
2	2
3	3
4	4
5	5
6	6
7	7
8	8
8A	9
...	10
9	11
10	12
11	13
	14
	15
	16
	17
	18
	19

खंड 53—यह नया खंड है। इसका दूसरा भाग नए अधिनियम को लंबित मामलों को लागू करता है। पहले भाग में वह सिद्धान्त अन्तर्वलित है जिसे न्यायालयों द्वारा अभिव्यक्त अधिनियमिति के बिना अधिसंभाव्य रूप से लागू किया जाएगा, किन्तु यह प्रतीत होता है कि इस विषय में कोई संदेह छोड़ना ठीक नहीं है।

खंड 54—यह नया खंड है जिससे पारसी अवयस्क पर पैतृक नियंत्रण सुनिश्चित करना अभिप्रेत है जो यह अभिकथन करते हुए आयु और पैतृक सहमति के बारे में खंड 3 के उपबंधों से बचने का अन्यथा प्रयास कर सकता है कि उसने अपना धर्म या अधिवास परिवर्तित कर लिया है। अधिसंभाव्य रूप से अब भी न्यायालय उक्त नियम प्रवृत्त करेगा, किन्तु इसे सुनिश्चित करना सबसे अच्छा है।

खंड 55—यह नया खंड है जो एकविवाही पारसी विवाह को वैसा ही संरक्षण प्रदान करता है जैसा कि किसी क्रिश्चियन विवाह और विशेष विवाह अधिनियम के अधीन किसी विवाह के बारे में भी प्रदान किया जाता है। यह किसी अन्य विधि के अधीन किसी अन्य विवाह को, पारसी विवाह के अस्तित्व में रहने के दौरान निवारित करता है।

यह खंड 5 का अनुपूरक है, क्योंकि संभवतः यह तर्क दिया जा सकता है कि उसमें "विवाह" शब्द केवल पारसी विवाह को लागू होता है। साथ ही, इसमें बहुत कम संदेह है कि ऐसे पारसी, जिसने ऐसे अन्य विवाह की संविदा की है, साधारण विधि के अधीन द्विविवाह के लिए सिद्धदोष ठहराया जाएगा। वर्तमान खंड कोई भी संदेह नहीं रहने देने के लिए आशयित है।

खंड 56— यह अधिनियम के विस्तार से संबंधित है। जब वर्तमान अधिनियम, 1865 में अधिनियमित किया गया था तो धारा 53 के अधीन इसका प्रवर्तन संपूर्ण ब्रिटिश भारत में घोषित किया गया था। वह धारा 1874 के अधिनियम 15 द्वारा निरसित कर दी गई थी और 1865 का अधिनियम, अनुसूचित जिलों को छोड़कर संपूर्ण ब्रिटिश भारत पर प्रवृत्त होने के रूप में घोषित किया गया था और 1874 के अधिनियम 14 द्वारा इसे अधिक संख्या में विनिर्दिष्ट अनुसूचित जिलों में प्रवृत्त होने के रूप में घोषित किया गया था। अब इसका विस्तार संपूर्ण ब्रिटिश भारत पर करने का प्रस्ताव है। ब्रिटिश भारत के बाहर विवाहों पर इसके विस्तार के लिए अतिरिक्त उपबंध से मुख्यतः ऐसी कठिनाइयों को दूर करने के लिए अभिप्रेत है जो छावनियों में यद्यपि ब्रिटिश अधिकारिता के अधीन हैं किन्तु विधिक रूप से ब्रिटिश भारत के बाहर हैं, पारसी विवाहों के बारे में उत्पन्न हों।

परिशिष्ट

1865 के अधिनियम 15 और नए अधिनियम की धाराओं की तुलनात्मक सारणी

1865 के अधिनियम 15	नए अधिनियम की धारा	1865 के अधिनियम 15	नए अधिनियम की धारा
1	1	26	29
2	2	27	32(b)
3	3	28	30
4	4	29	31
5	5	30	32
6	6	30	33
7	7	31	34
8	8	32	35
8A	9	33	39
..	10	34	40
9	11	35	41
10	12	36	36
11	13	..	37
12	14	37	38
13	15	..	42
14	16	38	43
..	17	39	44
15	18	40	45
16	19	41	46

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असाधारण
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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

RAJYA SABHA

The following Bills were introduced in the Rajya Sabha on the 24th July, 2001:—

I

BILL No. XLVI OF 2001

A Bill further to amend the Indian Divorce Act, 1869, the Parsi Marriage and Divorce Act, 1936, the Special Marriage Act, 1954 and the Hindu Marriage Act, 1955.

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

CHAPTER I

PRELIMINARY

1. This Act may be called the Marriage Laws (Amendment) Act, 2001.

Short title

CHAPTER II

AMENDMENTS TO THE INDIAN DIVORCE ACT, 1869

4 of 1869.

2. In section 36 of the Indian Divorce Act, 1869 (hereafter in this Chapter referred to as the Divorce Act),—

Amendment of section 36.

(a) for the words "the wife may present a petition for alimony pending the suit", the words "the wife may present a petition for expenses of the proceedings and alimony pending the suit" shall be substituted;

(b) for the words "for payment to the wife of alimony pending the suit", the words "for payment to the wife of the expenses of the proceedings and alimony pending the suit" shall be substituted;

(c) after the proviso, the following proviso shall be inserted, namely:—

“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.”.

Amendment of section 41.

3. In section 41 of the Divorce Act, the following proviso shall be inserted, namely:—

“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.”.

CHAPTER III

AMENDMENTS TO THE PARSİ MARRIAGE AND DIVORCE ACT, 1936

Amendment of section 39.

4. In section 39 of the Parsi Marriage and Divorce Act, 1936 (hereafter in this Chapter referred to as the Parsi Marriage and Divorce Act), the following proviso shall be inserted, namely:—

3 of 1936.

“Provided that the application for the payment of the expenses of the suit and such weekly or monthly sum during the suit, 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.”.

Amendment of section 49.

5. In section 49 of the Parsi Marriage and Divorce Act, the following proviso shall be inserted, namely:—

“Provided that the application with respect to the maintenance and education of such children during the suit shall, as far as possible, be disposed of within sixty days from the date of service of notice on the respondent.”.

CHAPTER IV

AMENDMENTS TO THE SPECIAL MARRIAGE ACT, 1954

Amendment of section 36.

6. In section 36 of the Special Marriage Act, 1954 (hereafter in this Chapter referred to as the Special Marriage Act), the following proviso shall be inserted, namely:—

43 of 1954.

“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.”.

Amendment of section 38.

7. In section 38 of the Special Marriage Act, the following proviso shall be inserted, namely:—

“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.”.

CHAPTER V

AMENDMENTS TO THE HINDU MARRIAGE ACT, 1955

Amendment of section 24.

8. In section 24 of the Hindu Marriage Act, 1955 (hereafter in this Chapter referred to as the Hindu Marriage Act), the following proviso shall be inserted, namely:—

25 of 1955.

“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.”.

Amendment of section 26.

9. In section 26 of the Hindu Marriage Act, the following proviso shall be inserted, namely:—

“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.”.

STATEMENT OF OBJECTS AND REASONS

The Law Commission of India in its 27th, 54th and 129th Reports and the Committee on Subordinate Legislation (11th Lok Sabha) had recommended that the tendency to obtain the adjournments on frivolous grounds in the cases pending in courts should be curbed. The Malimath Committee also recommended that remedial measures should be taken immediately for speedy disposal of the cases pending in courts.

2. Sections 36 and 41 of the Indian Divorce Act, 1869, sections 39 and 49 of the Parsi Marriage and Divorce Act, 1936, sections 36 and 38 of the Special Marriage Act, 1954 and sections 24 and 26 of the Hindu Marriage Act, 1955 do not contain any time limit for disposal of applications for alimony *pendente lite* or the maintenance and education of minor children. More than 670 cases are understood to be pending in various High Courts under section 24 of the Hindu Marriage Act, 1955.

3. As part of the judicial reforms process, it is proposed to make necessary amendments in the enactments mentioned in paragraph 2 with a view to making provisions that an application for alimony *pendente lite* or the maintenance and education of minor children shall be disposed of within sixty days from the date of service of notice on the respondent.

4. The Bill seeks to achieve the above object.

ARUN JAITLEY.