

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

(a) a ceremony of marriage has been performed between the parties and they have been living together as husband and wife ever since ;

(b) neither party has at the time of registration more than one spouse living ;

(c) neither party is an idiot or a lunatic at the time of registration ;

(d) the parties have completed the age of twenty-one years at the time of registration ;

(e) the parties are not within the degrees of prohibited relationship :

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

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

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

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

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

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

CHAPTER IV

CONSEQUENCES OF MARRIAGE UNDER THIS ACT

19. Effect of marriage on member of undivided family.—The marriage solemnized under this Act of any member of an undivided family who professes the Hindu, Buddhist, Sikh or Jaina 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 therefrom.

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.

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 section 27 [other than the grounds specified in clauses (i) and (j) thereof] 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 and may be so declared by a decree of nullity if—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26. Legitimacy of children of void and voidable marriages.—

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 :

Provided that nothing contained in this section shall be construed as conferring upon any child of a marriage which is declared to be null and void or annulled by a decree of nullity 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.—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 since the solemnization of the marriage committed adultery ; or

(b) has deserted the petitioner without cause for a period of at least three 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 (Act XLV of 1960) :

Provided that divorce shall not be granted on this ground, unless the respondent has prior to the presentation of the petition undergone at least three years' imprisonment out of the said period of seven years ; or

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

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

(f) has for a period of not less than three years immediately preceding the presentation of the petition been suffering from venereal disease in a communicable form, the disease not having been contracted from the petitioner ; or

(g) has for a period of not less than three years immediately preceding the presentation of the petition 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 respondent if the respondent had been alive ; or

(i) has not resumed co-habitation for a period of two years or upwards after the passing of a decree for judicial separation against the respondent ; or

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

and by the wife on the ground that her husband has, since the solemnization of the marriage, been guilty of rape, sodomy or bestiality.

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 one year 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