

# The Special Marriage Act, 1954

[Act 43 of 1954]

with

Case Law



Book No..... 14

Page No..... 331

**With  
complete  
legislative  
history**

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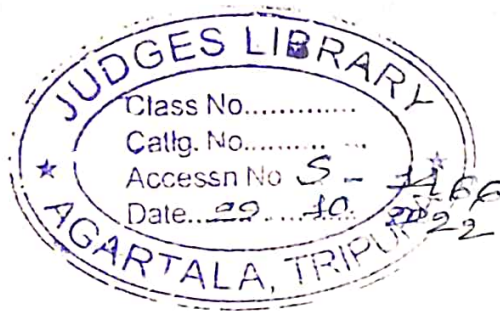
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# The Special Marriage Act, 1954

[Act 43 of 1954]<sup>1</sup>

[9th October, 1954]

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

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

**Statement of Objects and Reasons.**—This Bill revises and seeks to replace the Special Marriage Act of 1872 so as to provide a special form of marriage which can be taken advantage of by any person in India and by all Indian nationals in foreign countries irrespective of the faith which either party to the marriage may profess. The parties may observe any ceremonies for the solemnisation of their marriage, but certain formalities are prescribed before the marriage can be registered by the Marriage Officers. For the benefit of Indian citizens abroad, the Bill provides for the appointment of Diplomatic and Consular Officers as Marriage Officers for solemnising and registering marriages between citizens, of India in a foreign country.

2. Provision is also sought to be made for permitting persons who are already married under other forms of marriage to register their marriages under this Act and thereby avail themselves of these provisions.

3. The bill is drafted generally on the lines of the existing Special Marriage Act of 1872 and the notes on clauses attached hereto explain some of the changes made in the Bill in greater detail.

**Statement of Objects and Reasons Amending Act 32 of 1963.**—Under the Special Marriage Act, 1954, marriage can take place between two persons who are not within the degrees of prohibited relationship. Ordinarily, such marriage takes place between persons professing different faiths or belonging to different communities or groups and the question of prohibited degrees between the parties does not normally arise. There may however, be some cases where marriage is solemnised under the Special Marriage Act between persons professing same faith and belonging to the same group or family. In such a case, marriage, cannot take place between the parties who are within the degrees of prohibited relationship.

2. Under the Hindu Law also, marriage is normally prohibited between persons who are within the degrees of prohibited relationship or who are sapindas of each other. But in some parts of India and in some tribes and communities there is a well-recognised custom which permits marriage between persons within the degree of prohibited relationship. In the Hindu Marriage Act, 1955, a specific provision was, therefore, inserted to save such custom. In the Special Marriage Act, however, marriage between persons within the degrees of prohibited relationship is totally prohibited and no exception has been made on grounds of custom or usage as in the Hindu Marriage Act. It is, therefore, considered necessary that specific provision should be inserted in the Special Marriage Act to permit marriage between persons within the degrees of prohibited relationship, if there is a well-recognised custom applicable to one of the parties under which such marriage permissible, hence, the Bill.

**Statement of Objects and Reasons Amending Act 68 of 1976.**—The Hindu Marriage Act, 1955 (25 of 1955), became law on the 11th May, 1955. It applies to all Hindus, Buddhists, Jains or

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1. The Act has been extended to Dadra and Nagar Haveli by Regn. 6 of 1963, S. 2 and Sch. I and to Pondicherry by Regn. 7 of 1963, S. 3 and Sch. I.



Sikhs. It applies also to all other persons who are not Muslims, Christians, Parsis or Jews unless they establish that they were not governed by Hindu Law, custom or usage prior to the Act.

Since the passing of the Hindu Marriage Act, various suggestions for amending the same as well as the Special Marriage Act, 1954, were received from some Members of Parliament and the general public. The Special Marriage Act, 1954, being a civil law applicable to all, has necessarily to keep pace with any reform of matrimonial laws. The law commission was requested to examine the matter and they have presented the Fifty-ninth Report which contains the recommendations. The Bill seeks to amend both the Acts aforesaid so as to implement, with necessary modifications, the recommendations contained in that Report. The Committee on Status of Women in India have generally supported the amendments proposed by the Law Commission and suggested, inter alia, the incorporation of a suitable provision for mutual consent in the Hindu Marriage Act more or less on the lines of a provision in that behalf in Section 28 of the Special Marriage Act. It is, however, felt that when once the parties have chosen to move the court for divorce by mutual consent it is not necessary to make them wait for a further period of one year to obtain relief. This period of waiting is, therefore proposed to be reduced from one year to six months. The committee has further suggested that having regard to the frequent violations of the provisions of the Child Marriage Restraint Act, it is necessary to provide in the Hindu Marriage Act a suitable provision conferring the right of repudiation on girls who are subject to such marriages, whether the marriage was consummated or not. The right of repudiation is proposed to be conferred on such girls subject to their exercising the same before attaining the age of 18 years. To avoid multiplicity of litigation and consequent delay, it is also proposed to apply the amended law in relation to all pending proceedings under the relevant Acts. Notes on clauses appended to the Bill indicate the changes proposed to the statutes. The objects of the legislation are mainly, (1) to liberalise the provision relating to divorce; (2) to enable expeditious disposal of proceedings under the Act; and (3) to remove certain anomalies and handicaps that have come to light after the passing of the Acts.

The Bill seeks to achieve the abovementioned purposes.

## CHAPTER I

### PRELIMINARY

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

(2) It extends to the whole of India <sup>2</sup>[\* \* \*], and applies also to citizens of India domiciled in the territories to which this Act extends who are <sup>3</sup>[in the State of Jammu and Kashmir].

(3) It shall come into force on such date<sup>4</sup> as the Central Government may, by notification in the Official Gazette, appoint.

**CASE LAW ► Commencement and Extent.**—According to Section 1(3) of the 1954 Act, the repealing of the previous Act and the coming into force of the new Act are necessarily to take place on the same day. Therefore, the new Act comes into force on the 1st January, 1955 and the old Act was repealed with effect from the same date. Thus there is no vacuum between the repeal of the Old Act and commencement of the New Act, *Alamelu Ainmal v. Yesodha Ammal*, (1989) 1 LW 310.

2. The words "except the State of Jammu and Kashmir" omitted by Act 34 of 2019, Ss. 95, 96 & Sch. V (w.e.f. 31-10-2019).

3. Subs. by Act 33 of 1969, S. 29 for "outside the said territories".

4. 1st January, 1955 [Vide SRO 3606, dt. 17th December, 1954, Gaz. of India, Extraordinary, 1954, Pt. II, S. 3, p. 2463.]

April 15, 2021 appointed as the date on which the Special Marriage Act, 1954 shall come into force in the State of Sikkim. [Vide S.O. 1629(E), dated 15-4-2021]



► **Applicability.**—Where the marriage was solemnised as per the Christian rites and registered under the Indian Christian Marriage Act, a petition invoking the provisions of Special Marriage Act for dissolution of their marriage is not maintainable. Both the parties are required to invoke the provisions of Indian Divorce Act, *Sri Prakash Martin Tegur v. Smt. Joyce Samuel*, ILR 2013 KAR 793 : (2013) 1 Kant LJ 646.

Where the solemnisation and registration of marriage between the parties is under the Foreign Marriage Act, the provisions of Special Marriage Act would apply under Section 18(1) of the Foreign Marriage Act for grant of matrimonial reliefs, *Minoti Anand v. Subash Anand*, (2011) 2 Mah LJ 812 : AIR 2011 Bom 61 : (2011) 5 Bom CR 624.

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

(a) <sup>5</sup>[\* \* \*]

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

*Explanation I.*—Relationship includes,—

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

(b) illegitimate blood relationship as well as legitimate;

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

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

*Explanation II.*—“Full blood” and “half blood”—two persons are said to be related to each other by full blood when they are descended from a common ancestor by the same wife and by half blood when they are descended from a common ancestor but by different wives.

*Explanation III.*—“Uterine blood”—two persons are said to be related to each other by uterine blood when they are descended from a common ancestress but by different husbands.

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

(c) <sup>6</sup>[\* \* \*]

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

<sup>7</sup>[(e) “district court” means, in any area for which there is a city civil court, that court, and in any other area, the principal civil court of original jurisdiction, and includes any other civil court which 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;]

5. Cl. (a) omitted by Act 33 of 1969, S. 29. Prior to omission it read as:

“(a) consular officer” means a consul-general, consul, vice-consul, pro-consul or consular agent;”

6. Cl. (c) omitted by Act 33 of 1969, S. 29. Prior to omission it read as:

“(c) “diplomatic officer” means an ambassador, envoy, minister, charge d’ affaires, high commissioner, commissioner or other diplomatic representative, or a counsellor or secretary of an embassy, legation or high commission;”

7. Subs. by Act 68 of 1976.

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

<sup>8</sup>[(g) "State Government" in relation to a Union territory, means the administrator thereof.]

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

<sup>9</sup>[(2) For the purposes of this Act, in its application to citizens of India domiciled in the territories to which this Act extends who are in the State of Jammu and Kashmir, the Central Government may, by notification in the Official Gazette specify such officers of the Central Government as it may think fit to be the Marriage Officers for the State or any part thereof.]

**CASE LAW ► Retirement Age of Marriage Officers.**—In case of change in Rules of retirement age of marriage officers appointed under this Act, when a particular age was prescribed under the Rules, any such reduction or increase in retirement age would lead to transitional adjustments and will be considered to be valid, *Nitya Ranjan Guha v. State of WB*, (2010) 15 SCC 661.

## CHAPTER II

### SOLEMNIZATION OF SPECIAL MARRIAGES

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

(a) neither party has a spouse living;

<sup>10</sup>[(b) neither party—

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

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

(iii) has been subject to recurrent attacks of insanity <sup>11</sup>[\* \* \*];]

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

<sup>12</sup>[(d) the parties are not within the degrees of prohibited relationship:

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

8. Subs. by the Adaptation of Laws (No. 3) Order, 1956, for the original cl. (g).

9. Subs. by Act 33 of 1969, S. 29, for sub-section (2).

10. Subs. by Act 68 of 1976.

11. The words "or epilepsy" omitted by Act 39 of 1999, S. 3.

12. Subs. by Act 32 of 1963, S. 2, for cl. (d).



<sup>13</sup>[(e) where the marriage is solemnized in the State of Jammu and Kashmir, both parties are citizens of India domiciled in the territories to which this Act extends.]

<sup>14</sup>[*Explanation*.—In this section, “custom”, in relation to a person belonging to any tribe, community, group or family, means any rule which the State Government may, by notification in the Official Gazette, specify in this behalf as applicable to members of that tribe, community, group or family:

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

- (i) that such rule has been continuously and uniformly observed for a long time among those members;
- (ii) that such rule is certain and not unreasonable or opposed to public policy; and
- (iii) that such rule, if applicable only to a family, has not been discontinued by the family.]

**CASE LAW ► Solemnization of Marriage.**—Section 4 of the Indian Christian Marriage Act, 1872 applies to a marriage between persons, one or both of whom is/are Christians and any such marriage solemnised otherwise than in accordance with the provisions of this Act is void. Under Section 4 of the Special Marriage Act, 1952, a marriage between ‘any two persons’ may be solemnised under this Act ‘notwithstanding anything contained in any other law for the time being in force relating to the solemnisation of marriages’. Thus, though a marriage solemnised under the provisions of the Special Marriage Act, 1954 even between two Christians will be valid, however, the same, would be void under the Indian Christian Marriage Act, 1872. If a marriage is solemnised between the parties under the Indian Christian Marriage Act, it will have different consequences regarding relief or divorce etc. than if solemnised under the Special Marriage Act, 1954 between the same parties, *Jordan Diengdoh v. Swaranjeet Singh Chopra*, ILR (1984) 2 Del 14.

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

**CASE LAW ► Notice regarding Marriage.**—Solemnization of marriage under the Special Marriage Act does not provide for sending notices to the respective residential addresses of the parties to the intended marriage or service through the SHO, or visit by him. It merely requires pasting of the notice at the office notice board by the SDM. In absence of any legal compulsion for sending notices to residential addresses in case of solemnization of the marriage, in terms of Sections 4 and 5, any such dispatch can well amount to breach of the right to privacy, *Pranav Kumar Mishra v. Govt. of NCT of Delhi*, WP(C) 748/2009 (Del HC).

**6. Marriage Notice Book and publication.**—(1) The Marriage Officer shall keep all notices given under Section 5 with the records of his office and shall

13. Subs. by Act 33 of 1969, S. 29, for cl. (e).

14. Ins. by Act 32 of 1963, S. 2.





also forthwith enter a true copy of every such notice in a book prescribed for that purpose, to be called the Marriage Notice Book, and such book shall be open for inspection at all reasonable times, without fee, by any person desirous of inspecting the same.

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

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

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

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

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

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

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

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

- (a) summoning and enforcing the attendance of witnesses and examining them on oath;



- (b) discovery and inspection;
- (c) compelling the production of documents;
- (d) reception of evidence of affidavits; and
- (e) issuing commissions for the examination of witnesses;

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

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

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

**10. Procedure on receipt of objection by Marriage Officer abroad.**—Where an objection is made under Section 7 to a Marriage Officer <sup>15</sup>[in the State of Jammu and Kashmir in respect of an intended marriage in the State], and the Marriage Officer, after making such inquiry into the matter as he thinks fit, entertains a doubt in respect thereof, he shall not solemnize the marriage but shall transmit the record with such statement respecting the matter as he thinks fit to the Central Government, and the Central Government, after making such inquiry into the matter and after obtaining such advice as it thinks fit, shall give its decision thereon in writing to the Marriage Officer who shall act in conformity with the decision of the Central Government.

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

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

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

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

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15. Subs. by Act 33 of 1969, S. 29.



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

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

**CASE LAW ▶ Proof of Marriage.**—Mere production of marriage certificate issued under Section 13 of the Special Marriage Act is not sufficient for Courts to render a complete and effective decision with regard to the marital status of parties especially in a collateral proceeding for maintenance. In the absence of any valid decree of nullity or the necessary declaration the court will have to proceed on the footing that the relationship between the parties is one of marriage and not in the nature of marriage, *Deoki Panjhiyara v. Shashi Bhushan Narayan Azad*, (2013) 2 SCC 137.

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

### CHAPTER III

### REGISTRATION OF MARRIAGES CELEBRATED IN OTHER FORMS

**15. Registration of marriages celebrated in other forms.**—Any marriage celebrated, whether before or after the commencement of this Act, other than a marriage solemnized under the<sup>16</sup> Special Marriage Act, 1872 (3 of 1872) or under this Act, may be registered under this Chapter by a Marriage Officer in the territories to which this Act extends if the following conditions are fulfilled, namely—

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

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16. Repealed by this Act, S. 51.



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.

**CASE LAW ▶ Courts, Jurisdiction/Approach/Powers of.**—Under Section 9 CPC the High Court is empowered to try all civil suits unless there is a bar expressed or implied. The Special Marriage Act gives no jurisdiction to the Court for declaring the marriage between two persons as nullity when the same is not solemnised in accordance with the Act, *Ranjana Mazumdar v. Keshab Chandra Mazumdar*, (1975) 2 CHN (N) 28.

▶ **Registration of Marriage.**—The presence of parents is not a requisite condition for the registration of marriage if the conditions specified in Section 15 of the Act are satisfied, *Gagandeep Kaur v. State of Punjab*, (2013) 3 RCR (Civil) 196.

On the date of application for registration of marriage, if all other requirements of law including age are satisfied then the registration of marriage ought not to be refused on any ground except for the ones which are specified in Section 15 of the Special Marriage Act, 1954, *Mandeep Kaur v. State of Punjab*, (2013) 129 AIC 379.

Marriages of all persons who are citizens of India belonging to various religions should be made compulsorily registerable in their respective states, where the marriage is solemnised. If the marriage is registered, it also provides evidence of the marriage having taken place and would provide a rebuttable presumption of the marriage having taken place. Though, the registration itself cannot be a proof of valid marriage per se, and would not be a determinative factor regarding validity of a marriage, yet it has a great evidentiary value in the matters of custody of children, right of children born from the wedlock of the two persons whose marriage is registered and the age of parties to the marriage. As a natural consequence, the effect of non-registration would be that, the presumption which is available from registration of marriages would be denied to a person whose marriage is not registered, *Seema v. Ashwani Kumar*, (2006) 2 SCC 578.

▶ **Solemnization of Marriage.**—There is no prohibition under the Special Marriage Act, 1954 read with Foreign Marriage Act, 1969 on a marriage between an Indian with a foreign national. Any two persons in India, where one of them or both of them are foreigners or both of them are Indians can enter into a form of marriage provided under the provisions of the Act, *Vatsala v. Sub Registrar & Marriage Officer*, (1981) 1 Kant LJ 294.

**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.



**CASE LAW ► Registration of Marriage.**—A marriage may be celebrated between any two persons in the presence of Registrar, *Joyita Saha v. Rajesh Kumar Pandey*, AIR 2000 Cal 109.

**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.

**CASE LAW ► Interpretation.**—Section 18(1) makes certain provisions of the Act applicable not only to the marriages solemnized under the Act but also to, any other marriage solemnized in a foreign country between parties, of whom, one at least is a citizen of India, *A v. P*, 1982 Mah LJ 243 : (1982) 84 Bom LR 33.

#### 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 (21 of 1850), applies.

**21. Succession to property of parties married under Act.**—Notwithstanding any restrictions contained in the Indian Succession Act, 1925 (39 of 1925), with respect to its application to members of certain communities, succession to the property 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 Act shall have effect as if Chapter III of Part V (Special Rules for Parsi Section that Intestates) had been omitted therefrom.

**CASE LAW ▶ Applicability.**—Where marriage is registered under the provisions of the Special Marriage Act, 1954, the provisions of the Hindu Succession Act, 1956 would not apply to the properties succession which is regulated by the provisions of the Succession Act, 1925. In view of Section 21 of Special Marriage Act read with Section 33 of the Indian Succession Act, succession of such parties would be governed by the provisions of Indian Succession Act, 1925 as per share described under Section 33, *Archana Arun Palav v. Jennifer Michael*, (2013) 5 Mah LJ 916 (Bom).

▶ **Succession.**—Section 21 of the Special Marriage Act, 1954, guarantees to the issue of the person whose marriage has been solemnised under the Special Marriage Act, a collateral statutory right of succession to the estate of the latter in case he dies intestate. It does not in any way impair or alter the joint family structure between an assessee and his son. Nor does it affect the discretion vested in a Hindu assessee to treat his properties by taking into his fold his Hindu sons so as to constitute joint family properties, *CWT v. R. Sridharan*, (1976) 4 SCC 489.

Section 5 of the Hindu Succession Act effectively means that as regards succession in case of marriage between a Hindu and a Christian even if the son is legitimate and can be deemed to be a Hindu, his rights to succeed to the estate of his father, on intestacy, have to be governed by the provisions of the Special Marriage Act, 1954. But, this would not in any way injunct a Hindu parent from treating a legitimate son of his born in lawful wedlock as per the provisions of the Special Marriage Act, 1954, as an undivided member of the Hindu Joint family, *R. Sridharan v. CWT*, (1970) 83 LW 326 (Mad)(DB).

<sup>17</sup>[**21-A. Special provision in certain cases.**—Where the marriage is solemnized under this Act of any person who professes the Hindu, Buddhist, Sikh or Jaina religion with a person who professes the Hindu, Buddhist, Sikh or Jaina religion, Section 19 and Section 21 shall not apply and so much of Section 20 as creates a disability shall also not apply.]

## CHAPTER V

### RESTITUTION OF CONJUGAL RIGHTS AND JUDICIAL SEPARATION

**22. Restitution of conjugal rights.**—When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply by petition to the district court for restitution of conjugal rights, and the court, on being satisfied of the truth of the statements made in such petition, and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.

<sup>18</sup>[**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.]

17. Ins. by Act 68 of 1976.

18. Ins. by Act 68 of 1976.

**CASE LAW ► Restitution of Conjugal Rights.**—Decree for restitution of conjugal rights can be passed even if the husband and wife have never cohabited after marriage and the marriage is not consummated, *Jinu P. Philip v. Annie Varghese*, (2008) 4 Mah LJ 866 : (2008) 4 Bom CR 824.

**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 <sup>19</sup>[in sub-section (1) <sup>20</sup>[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 <sup>21</sup>[and may, on a petition presented by either party thereto against the other party, be so declared] by a decree of nullity if—

- (i) any of the conditions specified in clauses (a), (b), (c) and (d) of Section 4 has not been fulfilled; or
- (ii) the respondent was impotent at the time of the marriage and at the time of the institution of the suit.

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

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.

**CASE LAW ► Void Marriage.**—A void marriage is no marriage. It is a marriage which does not exist from its beginning. In other words no legal consequences flow from a void marriage. It does not confer a status of husband and wife on the parties or status of legitimacy of children of such a marriage. Further,

19. Subs. by Act 29 of 1970, S. 2.

20. Ins. by Act 68 of 1976.

21. Subs. by Act 68 of 1976.



it does not give rise to any rights and obligations against each other as well as against the third person. It must be emphasized that it is not the decree of court which renders such a marriage void as the court merely declares the marriage to be null and void. In case a marriage is void, the Court can merely make a judicial declaration of that fact. Void marriage cannot either be approbated or ratified, *Nirmal Dass Bose v. Mamta Gulati*, AIR 1997 All 401 : 1997 All LJ 2280.

The relief under s. 24 of the Act is available to a spouse of the marriage and a third party, i.e., a person who is not a party to the marriage cannot file an application for a decree of nullity of marriage under the Act, *Prafulla Bala Biswas v. Ila Das*, (1997) 1 CHN 200 : (1996) 2 Cal LT 315.

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

- (i) the marriage has not been consummated owing to the wilful refusal of the respondent to consummate the marriage; or
- (ii) the respondent was at the time of the marriage pregnant by some person other than the petitioner; or
- (iii) the consent of either party to the marriage was obtained by coercion or fraud, as defined in the Indian Contract Act, 1872 (9 of 1872).

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

- (a) that the petitioner was at the time of the marriage ignorant of the facts alleged;
- (b) that proceedings were instituted within a year from the date of the marriage; and
- (c) that marital intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of the existence of the grounds for a decree:

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

- (a) proceedings have not been instituted within one year after the coercion had ceased or, as the case may be, the fraud had been discovered; or
- (b) the petitioner has with his or her free consent lived with the other party to the marriage as husband and wife after the coercion had ceased or, as the case may be, the fraud had been discovered.

**CASE LAW ► Limitation Act, Non-Applicability of.**—The provisions of the Limitation Act will not apply to any suit or any proceeding under any marriage law, *Supriya Chakraborty v. Champak Kumar Chakraborty*, (2000) 2 AP LJ 18 (DNC)(Cal).

**► Consent obtained by Fraud.**—If the consent for marriage is obtained by fraudulent misinterpretation to either party, it would be a sham marriage, a marriage only in name and hence void, *Jolly Das v. Tapan Ranjan Das*, (1994) 4 SCC 363.

Concealment of true age would constitute fraud attracting the operation of Section 25(iii) of the Special Marriage Act, 1954, *Gitika Bagchi v. Subhabrota Bagchi*, AIR 1996 Cal 246.



The meaning of 'fraud' as envisaged by Section 25(iii) of the Act, has its absolute moorings in the Indian Contract Act, 1872, *Gitika Bagchi v. Subhabrota Bagchi*, AIR 1996 Cal 246.

► **Nullity of Marriage.**—Non-consummation of marriage can be a ground for annulment of marriage, *Munmun Ghosh v. Tarun Kumar Malik*, (2010) 2 ICC 288 (Cal)(DB).

► **Courts, Jurisdiction/Approach/Powers of.**—Once it is held that the registration of any marriage was of no effect being in contravention of Section 15(a) and 15(d), the Matrimonial Court constituted under the provisions of the Special Marriage Act dealing with an application under Section 24 of the Act loses its jurisdiction to grant any relief even under Section 25 of the Act for the reason that no "deemed marriage" under the Act has been proved to be in existence in terms of Section 18. Section 25 of the said Act is only applicable to marriages solemnised under the Act. If the registration is declared to be of no effect, the Matrimonial Court under the Act is incapable of exercising its power under Section 25, *Amitava Bhattacharya v. Aparna Bhattacharya*, (2009) 2 CHN 79.

<sup>22</sup>[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 a voidable marriage under Section 25, any child begotten or conceived before the decree is made, who would have been the legitimate child of the parties to the marriage if at the date of the decree it has been dissolved instead of being annulled, shall be deemed to be their legitimate child notwithstanding the decree of nullity.

(3) Nothing contained in sub-section (1) 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.**—<sup>23</sup>[(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—

- <sup>24</sup>[(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

22. Subs. by Act 68 of 1976.

23. Renumbered by Act 29 of 1970, S. 3.

24. Subs. by Act 68 of 1976.



<sup>25</sup>[\* \* \*]

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

<sup>26</sup>[(e) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

*Explanation.*—In this clause,—

(a) the expression “mental disorder” means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia;

(b) the expression “psychopathic disorder” means a persistent disorder or disability of mind (whether or not including sub-normality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the respondent, and whether or not it requires or is susceptible to medical treatment; or

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

(g) <sup>27</sup>[\* \* \*]

(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 <sup>28</sup>[\* \* \*]

<sup>29</sup>[*Explanation.*—In this sub-section, the expression “desertion” means desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the wilful neglect of the petitioner by the other party to the marriage and its grammatical variations and cognate expressions shall be construed accordingly;]

<sup>30</sup>[\* \* \*]

<sup>31</sup>[\* \* \*]

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25. Omitted by Act 68 of 1976. Prior to omission it read as:

“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”

26. Subs. by Act 68 of 1976.

27. Omitted by Act 6 of 2019, S. 4 (w.e.f. 1-3-2019). Prior to omission it read as:

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

28. The word “or” omitted by Act 29 of 1970, S. 3.

29. Ins. by Act 68 of 1976.

30. Cls. (i) and (j) omitted by Act 29 of 1970, S. 3. Prior to omission they read as:

“(i) has not resumed cohabitation 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;”

31. Omitted by Act 68 of 1976. Prior to omission it read as:

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



<sup>32</sup>[(1-A) A wife may also present a petition for divorce to the district court on the ground,—

- (i) that her husband has, since the solemnization of the marriage, been guilty of rape, sodomy or bestiality;
- (ii) that in a suit under Section 18 of the Hindu Adoptions and Maintenance Act, 1956 (78 of 1956), or in a proceeding under Section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) (or under the corresponding Section 488 of the Code of Criminal Procedure, 1898) (5 of 1898), a decree or order, as the case may be, has been passed against the husband awarding maintenance to the wife notwithstanding that she was living apart and that since the passing of such decree or order, cohabitation between the parties has not been resumed for one year or upwards.]

<sup>33</sup>[(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.]

**CASE LAW ► Applicability.**—Merely because the marriage was not solemnised in accordance with the procedure laid down under Section 5 to 14 of the Foreign Marriage Act, the matrimonial reliefs cannot be denied to either parties under the Special Marriage Act, 1954, *Joyce Sumathi v. Robert Dickson Brodie*, (1982) 1 AP LJ 356 (HC).

**► Courts, Jurisdiction/Approach/Powers of.**—Matrimonial disputes have to be decided by courts in a pragmatic manner keeping in view the ground realities. For this purpose a host of factors have to be taken into consideration and the most important being whether the marriage can be saved and the husband and wife can live together happily and maintain a proper atmosphere at home for the upbringing of their offsprings, *Sujata Uday Patil v. Uday Madhukar Patil*, (2006) 13 SCC 272.

**► Transfer of Case.**—Transfer of proceedings can be allowed by taking into consideration the age, inconvenience and the difficulties in reaching the court where case has been instituted, *Sapna Agarwal v. Om Prakash Jalan*, (2008) 17 SCC 602.

**► Grounds for Divorce — Generally.**—A decree of divorce cannot be founded on mere trivialities and incompatibility, *T.K. Saravana Perumal v. Shishikana Perumal*, (1968) 81 LW 454 (Mad).

32. Ins. by Act 68 of 1976.

33. Ins. by Act 29 of 1970, S. 3.



► **Cruelty.**—"Cruelty" under matrimonial law consists of conduct so grave and weighty as to lead one to the conclusion that one of the spouse cannot reasonably be expected to live with the other spouse. It must be more serious than the ordinary wear and tear of married life, *Arlene Uday Heble v. Uday Laxman Heble*, (1995) 4 Bom CR 219 : 1995 AIHC 4598.

Cruelty is a mixed question of law and fact. Cruel treatment can be inferred from the entire course of conduct and incidents showing display of temperament, emotion and perversion by one spouse whereby one gives vent to his or her feelings, without intending to injure the other. Where there is proof of a deliberate course of conduct on the part of one, intended to hurt and humiliate the other spouse, and such a conduct is persisted cruelty can easily be inferred. Neither actual nor presumed intention to cause hurt to other spouse is a necessary element in cruelty, *Sujata Uday Patil v. Uday Madhukar Patil*, (2006) 13 SCC 272.

Demanding maintenance from husband and lodging of complaint at his work place before the employer, does not amounts to cruelty, *Ratna Banerjee v. Chandra Madhab Banerjee*, (2006) 4 ICC 45 (Cal) (DB).

Staying with the husband and not in his paternal house, does not amount to cruelty against husband, *Ratna Banerjee v. Chandra Madhab Banerjee*, (2006) 4 ICC 45 (Cal)(DB).

Every wife has the right to resist improper demands of the in-laws and in the process, if she protests against such unacceptable demands, she cannot be held to be guilty of showing disrespect to the in-laws, *Ratna Banerjee v. Chandra Madhab Banerjee*, (2006) 4 ICC 45 (Cal)(DB).

Cruelty must be of such a type which will satisfy the conscience of the Court that the relationship between the parties has deteriorated to such an extent that it has become impossible for them to live together without mental agony. The cruelty practiced may be in many forms and it must be productive of an apprehension in the mind of the other spouse that it is dangerous to live with the erring party. False and wild allegations, without any basis or foundation, made by the wife about the character of the husband so as to injure his reputation would definitely constitute cruelty and the husband would be entitled for decree of divorce against the wife on the ground of cruelty, *Avinash Eknath Nikalje v. Leela Avinash Nikalje*, (2003) 3 Mah LJ 450 : AIR 2003 Bom 244.

If the wife deserts her ailing husband for a long time, such act of the wife to an ailing husband constitutes cruelty under the law, *Atanu das v. Soma Das*, (2009) 3 CHN 492 (DB).

Baseless allegations of having extra marital relations made by the one spouse on the other would constitute cruelty, *Arlene Uday Heble v. Uday Laxman Heble*, (1995) 4 Bom CR 219 : 1995 AIHC 4598.

Simple trivialities which can truly be described as a reasonable wear and tear of married life cannot amount to cruelty. In many marriages each party can, if it so wills, discover many a cause for complaint but such grievances arise mostly from temperamental disharmony. Such disharmony or incompatibility is not cruelty and will not furnish a cause for the dissolution of marriage, *Dr. N.G. Dastane v. Mrs. S. Dastane*, (1975) 2 SCC 326: AIR 1975 SC 1534.

Mental cruelty means that conduct which inflicts upon the other party such mental pain and suffering as would make it possible for the injured party to live with the other, *Uma Talapatra v. Manabendra Talapatra*, (2005) 1 ICC 829 (Cal)(DB) : (2008) 4 CHN 488.

Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction supported by a legal tie. By refusing to sever that tie, the law in such cases does not serve the sanctity of marriage; on the contrary it shows scant



record for the feelings and emotions of the parties. In such situations, it may lead to mental cruelty, *Samar Ghosh v. Jaya Ghosh*, (2007) 4 SCC 511.

Consenting to file a petition for mutual divorce just after marriage and consecutively filing a missing report of husband who is away followed by a legal notice for institution of civil or criminal action against the husband, only an outcome of reasonable apprehension and anxiety on part of wife and hence, does not amount to cruelty towards husband, *Bibekananda Mukhopadhyay v. Supriya Chatterjee*, (2009) 16 SCC 324.

If unfounded or unsubstantiated allegations are made by the wife in an FIR resulting in arrest of the husband, causing him immense pain and anguish would construe cruelty on the part of the wife and the husband is entitled for a decree of divorce against the wife on such grounds, *Uma Talapatra v. Manabendra Talapatra*, (2005) 1 ICC 829 (Cal) (DB) : (2008) 4 CHN 488.

Termination of pregnancy against the wishes of husband does not entitle the husband to seek a decree for divorce on grounds of cruelty, *J.L. Nanda v. Veena Nanda*, 1988 Supp SCC 112.

► **Desertion.**—Mere separate residence by wife would not amount to desertion. Husband needs to prove animus deserendi. He is required to prove that without any reasonable cause and without his consent and against his wish, the wife has permanently deserted him. In case the wife proves that there was reasonable cause or justifiable reason to leave the company of the husband, then it cannot be said that she has deserted the husband, *Parbhat Shekuba Pawar v. Swati*, 2008 (1) AIR Bom R 531 : (2008) 1 Bom CR 827.

► **Irretrievable breakdown of marriage.**—The mere breakdown of the marriage, however irretrievable, is not, by itself and without more, any ground for dissolution of the marriage as yet under our matrimonial law. The breakdown, by itself, has not been made a ground of dissolution, but what would warrant such a dissolution are the parties failing to live together and living separately for one year and their mutual consent to dissolve the marriage, *Harendra Nath Burman v. Sm. Suprova Burman*, AIR 1989 Cal 120 : (1989) 1 Cal LT 104.

When a marriage has broken down without any possibility of chance to repair the same, then it should be dissolved without looking to the fault of the party, *Sukhomoy Bag v. Jaya Bag*, (1996) 1 CHN 210.

► **Mental illness.**—If the husband files an application that the wife is of unsound mind at a time when cross-examination of the wife was being done, it will be presumed that such a course was adopted only to avoid payment of alimony, *Soumitra Roy v. Munmun Roy*, (2011) 3 CHN 632 (Cal).

► **Physical Disorder/Venereal Disease/Impotency.**—Impotency of a spouse is not a ground for divorce recognised under the Special Marriage Act, *Sandip Kumar Dasgupta v. Dipanwita Dasgupta*, (2010) 4 CHN 30.

In a petition for divorce, on grounds of impotency of the husband, the initial onus lies upon the wife to show that the marriage was not consummated because of the sexual impotency of the husband and such impotency continued till the institution of the proceeding and if such onus is discharged by the wife, the burden of proof that the husband was not impotent both at the time of the marriage and till before the institution of the proceeding and the marriage was not consummated because of the unwillingness of the wife will lie upon the husband. However, the husband would not be precluded from leading any evidence in support of his case to establish that he was not sexually impotent at any point of time, more particularly at the time of the marriage and during the period before the institution of the proceeding, *Bhaswati Sarkar v. Angshuman Sarkar*, (2000) 2 CHN 373 : AIR 2000 Cal 210.



S. 28]

► **Mental cruelty.**—Long period of continuous separation and refusal to participate in divorce proceeding and forcing partners to stay in a dead marriage amounts to mental cruelty, *Sukhendu Das v. Rita Mukherjee*, (2017) 9 SCC 632.

<sup>34</sup>[**27-A. 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 ground mentioned in clause (h) of sub-section (1) of Section 27, the court may, if it considers it just so to do having regard to the circumstances of the case, pass instead a decree for judicial separation.]

**28. Divorce by mutual consent.**—(1) Subject to the provisions of this Act and to the rules made thereunder, a petition for divorce may be presented to the district court by both the parties together on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved.

(2) <sup>35</sup>[On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in sub-section (1) and not later than eighteen months] after the said date, if the petition is not withdrawn in the meantime, the district court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnized under this Act, and that the averments in the petition are true, pass a decree declaring the marriage to be dissolved with effect from the date of the decree.

**CASE LAW ► Interpretation.**—The 'living separately' for a period of one year should be immediately preceding the presentation of the petition. It is necessary that immediately preceding the presentation of petition, the parties must have been living separately. The expression 'living separately' connotes not living like husband and wife. It has no reference to the place of living. The parties may live under the same roof by force of circumstances, and yet they may not be living as husband and wife. The parties may be living in different houses and yet they could live as husband and wife. What seems to be necessary is that they have no desire to perform marital obligations and with that mental attitude they have been living separately for a period of one year immediately preceding the presentation of the petition. The expression 'have not been able to live together' indicates the concept of broken down marriage and that it would not be possible to reconcile themselves, *Sureshta Devi v. Om Prakash*, (1991) 2 SCC 25.

► **Divorce by mutual consent.**—The personal presence of the parties before the Court at the time of moving the joint petition for divorce for the second time under Section 28(2) of the Special Marriage Act, 1954 is not mandatory, as the parties can satisfy the Court even by affidavit that the ingredients contained in the said provision for passing a decree for divorce on mutual consent are fulfilled and thus the Court can be invited to pass a decree for divorce on mutual consent after being satisfied regarding the fulfillment of the ingredients contained in Section 28 of the said Act for passing a decree for divorce on mutual consent, *Deepak Sharma v. Vineeta Sharma*, (2008) 3 CHN 440.

34. Ins. by Act 68 of 1976.

35. Subs. by Act 68 of 1976.



Where the marriage is solemnized under Indian Christian Marriage Act, 1872, and not registered under the Special Marriage Act of 1954, a petition for divorce by mutual consent under Section 28 of the Special Marriage Act is not maintainable. Even if Section 28 of the Act is given a liberal interpretation, the mandatory requirement cannot be done away that the marriage must have been solemnised under the Act, *Stephen Joshus v. J.D. Kapoor*, (1995) 33 DRJ 258 : (1995) 58 DLT 57.

Apprehensions regarding consequences of divorce are not relevant in giving consent under Section 28. The Court should be satisfied that the parties were dissolving their marriage without any pressure or ill will, *Rachna Mittal v. Lt. Kuldeepak Mittal*, 1995 Supp (3) SCC 414.

**29. Restriction on petitions for divorce during first three years after marriage.**—(1) No petition for divorce shall be presented to the district court <sup>36</sup>[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 <sup>37</sup>[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 <sup>38</sup>[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 <sup>39</sup>[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 <sup>40</sup>[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 <sup>41</sup>[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, <sup>42</sup>[\* \* \*], either party to the marriage may marry again.

36. Subs. by Act 68 of 1976.

37. Subs. by Act 68 of 1976.

38. Subs. by Act 68 of 1976.

39. Subs. by Act 68 of 1976.

40. Subs. by Act 68 of 1976.

41. Subs. by Act 68 of 1976.

42. The words "and one year has elapsed thereafter but not sooner" omitted by Act 68 of 1976.



## CHAPTER VII JURISDICTION AND PROCEDURE

**31. Court to which petition should be made.**—<sup>43</sup>[(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 the presentation of the petition resides; or
- (iii) the parties to the marriage last resided together; or
- <sup>44</sup>[(iii-a) in case the wife is the petitioner, where she is residing on the date of presentation of the petition; or]
- (iv) the petitioner is residing at the time of the presentation of the petition, in a case where the respondent is at that time residing outside the territories to which this Act extends, or has not been heard of as being alive for a period of seven years by those who would naturally have heard of him if he 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.

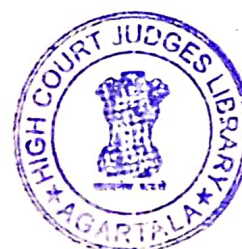
**CASE LAW ► Courts, Jurisdiction/Approach/Powers of.**—If territorial jurisdiction is raised as a preliminary issue under Section 9-A of the CPC, then the Court shall frame that issue and hear it as preliminary issue before proceeding in the matter. It depends on the Court to record the evidence if it is required. It is not mandatory for the Court to record the evidence to decide the issue of territorial jurisdiction while deciding the preliminary issue. In view of Section 31(iii-a) a latitude is given to the wife to present a petition where she resides. Therefore, whatever the address provided by the wife, if it is within the jurisdiction of that Court and in support of that address if an affidavit is filed, then on that basis the Court can entertain the petition and decide the preliminary issue, *Shekhar Harchand Indra v. Sangeeta Shekhar Indra*, (2012) 4 Mah LJ 461 : (2013) 4 Bom CR 695.

The Family Court has jurisdiction to deal with the matters under the Special Marriage Act. While deciding the matter, the Family Court is only expected to look into personal law of the parties, *Navin Chander Advani v. Leena*, (2005) 4 Bom CR 48 : AIR 2005 Bom 277.

**32. Contents and verification of petitions.**—(1) Every petition under Chapter V or Chapter VI shall state, as distinctly as the nature of the case permits, the facts on which the claim to relief is founded, and shall also state that there is no collusion between the petitioner and the other party to the marriage.

43. Subs. by Act 68 of 1976.

44. Ins. by Act 50 of 2003, S. 2.





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

<sup>45</sup>[33. Proceedings to be in camera and may not be printed or published.—(1) Every proceeding under this Act shall be conducted in camera and it shall not be lawful for any person to print or publish any matter in relation to any such proceeding except a judgment of the High Court or of the Supreme Court printed or published with the previous permission of the Court.

(2) If any person prints or publishes any matter in contravention of the provisions contained in sub-section (1), he shall be punishable with fine which may extend to one thousand rupees.]

**34. Duty of court in passing decrees.**—(1) In any proceeding under Chapter V or VI, whether defended or not, if the court is satisfied that,—

- (a) any of the grounds for granting relief exists; and
- <sup>46</sup>[(b) where the petition is founded on the ground specified in clause (a) of sub-section (1) of Section 27, the petitioner has not in any manner been accessory to or connived at or condoned the act of sexual intercourse referred to therein], or, where the ground of the petition is cruelty, the petitioner has not in any manner condoned the cruelty; and
- (c) when divorce is sought on the ground of mutual consent, such consent has not been obtained by force, fraud or undue influence; and
- (d) the petition is not presented or prosecuted in collusion with the respondent; and
- (e) there has not been any unnecessary or improper delay in instituting the proceeding; and
- (f) there is no other legal ground why the relief should not be granted; then, and in such a case, but not otherwise, the court shall decree such relief accordingly.

(2) Before proceeding to grant any relief under this Act it shall be the duty of the court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about a reconciliation between the parties:

<sup>47</sup>[Provided that nothing contained in this sub-section shall apply to any proceeding wherein relief is sought on any of the grounds specified in clause (c), clause (e), clause (f), clause (g) and clause (h) of sub-section (1) of Section 27.]

<sup>48</sup>[(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

45. Subs. by Act 68 of 1976.

46. Subs. by Act 68 of 1976.

47. Ins. by Act 68 of 1976.

48. Ins. by Act 68 of 1976.



nominated by the court if the parties fail to name any person, with directions to report to the court as to whether reconciliation can be and has been, effected and the court shall in disposing of the proceeding have due regard to the report.

(4) In every case where a marriage is dissolved by a decree of divorce, the court passing the decree shall give a copy thereof free of cost to each of the parties.]

<sup>49</sup>[**35. Relief for respondent in divorce and other proceedings.**—In any proceeding for divorce or judicial separation or restitution of conjugal rights, the respondent may not only oppose the relief sought on the ground of petitioner's adultery, cruelty or desertion, but also make a counter-claim for any relief under this Act on that ground, and if the petitioner's adultery, cruelty or desertion is proved, the court may give to the respondent any relief under this Act to which he or she would have been entitled if he or she had presented a petition seeking such relief on that ground.]

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

<sup>50</sup>[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.]

**CASE LAW ► Maintenance/Alimony.**—The right to claim maintenance does not extinguish and/or evaporate by condonation on the reason of restoration or the marital obligation or consummation and/or cohabitation by the parties during the pendency of proceeding of divorce. However, the maintenance would not be paid for period during which both the parties lived together because one party has maintained the other during this period and should not be vexed twice, *Jayanti Basu v. Partha Basu*, (2012) 4 CHN 380 (Cal).

Husband would be liable to pay maintenance to his wife, if he was earning at the time when the suit was filed. His resignation from service at later stage would not debar the wife from claiming alimony, *Bandana Kayal Alias Singh v. Arun Kumar Singh*, (1989) 1 Cal LJ 503.

No set formula can be laid for fixing the amount of maintenance. It has, in the very nature of things, to depend on the facts and circumstances of each case. Some scope for leverage can, however, be always there. The court has to consider the status of the parties, their respective needs, the capacity of the husband to pay having regard to his reasonable expenses for his own maintenance and of those he is obliged under the law and statutory but involuntary payments or deductions. The amount of maintenance fixed for the wife should be such as she can live in reasonable comfort considering her status and the mode of life she was used to when she lived with her husband and also that she does not feel handicapped in the prosecution of her case. At the same time, the amount so fixed cannot be excessive or extortionate, *Jayanti Basu v. Partha Basu*, (2011) 4 ICC 590 : (2012) 114 AIC 414 : (2012) 1 Cal LJ 296 : (2012) 4 CHN 380.

49. Subs. by Act 68 of 1976.

50. Ins. by Act 49 of 2001, S. 6.



Alimony given to the wife should not cover more than 1/3 rd of the net income of the husband, *Mayurakshi Basu v. Sandeep Basu*, (2013) 1 ICC 391.

**37. Permanent alimony and maintenance.**—(1) Any court exercising jurisdiction under Chapter V or Chapter VI may, at the time of passing any decree or at any time subsequent to the decree, on application made to it for the purpose, order that the husband shall secure to the wife for her maintenance and support, if necessary, by a charge on the husband's property, such gross sum or such monthly or periodical payment of money for a term not exceeding her life, as, having regard to her own property, if any, her husband's property and ability<sup>51</sup> [the conduct of the parties and other circumstances of the case], it may seem to the court to be just.

(2) If the district court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may, at the instance of either party, vary, modify or rescind any such order in such manner as it may seem to the court to be just.

(3) If the district court is satisfied that the wife in whose favour an order has been made under this section has remarried or is not leading a chaste life,<sup>52</sup> [it may, at the instance of the husband vary, modify or rescind any such order and in such manner as the court may deem just.]

**CASE LAW ► Maintenance/Alimony.**—Decree for alimony and maintenance is not extinguished on the death of the husband and is executable against the deceased husband's estate in the hands of his heirs, *Aruna Basu Mullick v. Dorothea Mitra*, (1983) 3 SCC 522.

An application for interim alimony pendente lite can itself be treated as an application for grant of maintenance under Section 37 of the said Act and that application need not be in writing and can be orally made, *Ramchandra Anand Suryavanshi v. Kalindi Ramchandra Suryavanshi*, AIR 1991 Bom 315 : (1991) 2 Bom CR 307 : (1991) 93 Bom LR 567.

**38. Custody of children.**—In any proceeding under Chapter V or Chapter VI the district court may, from time to time, pass such interim orders and make such provisions in the decree as it may seem to it to be just and proper with respect to the custody, maintenance and education of minor children, consistently with their wishes wherever possible, and may, after the decree, upon application by petition for the purpose, make, revoke, suspend or vary, from time to time, all such orders and provisions with respect to the custody, maintenance and education of such children as might have been made by such decree or interim orders in case the proceeding for obtaining such decree were still pending:

<sup>53</sup>[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.]

51. Subs. by Act 68 of 1976.

52. Subs. by Act 68 of 1976.

53. Ins. by Act 49 of 2001, S. 7.



**CASE LAW ► Custody of Child.**—Humanitarian approach is necessary for solving disputes regarding child custody. The right of father to see his child (in the custody of the mother) at regular intervals cannot be ignored, *Bimlendu Kumar Chatterjee v. Dipa Chatterjee*, (2001) 8 SCC 5.

Children should not be relegated to the position of chattels and parental rights should be relegated to the background keeping in view the welfare of the child, *Uma Talapatra v. Manabendra Talapatra*, (1995) 1 CHN 451.

<sup>54</sup>[**39. Appeals from decrees and orders.**—(1) All decrees made by the court in any proceeding under Chapter V or Chapter VI shall, subject to the provisions of sub-section (3), be appealable as decrees of the court made in the exercise of its original civil jurisdiction and such appeal shall lie to the court to which appeals ordinarily lie from the decisions of the court given in the exercise of its original civil jurisdiction.

(2) Orders made by the court in any proceeding under this Act, under Section 37 or Section 38 shall, subject to the provisions of sub-section (3), be appealable if they are not interim orders, and every such appeal shall lie to the court to which appeals ordinarily lie from the decisions of the court given in the exercise of its original civil jurisdiction.

(3) There shall be no appeal under this section on the subject of costs only.

(4) Every appeal under this section shall be preferred within a period of <sup>55</sup>[ninety] days from the date of the decree or order.

<sup>56</sup>[**39-A. Enforcement of decrees and orders.**—All decrees and orders made by the court in any proceeding under Chapter V or Chapter VI shall be enforced in the like manner as the decrees and orders of the court made in the exercise of its original civil jurisdiction for the time being are enforced.]

**40. Application of Act 5 of 1908.**—Subject to the other provisions contained in the Act, and to such rules as the High Court may make in this behalf, all proceedings under this Act shall be regulated, as far as may be, by the Code of Civil Procedure, 1908 (5 of 1908).

<sup>57</sup>[**40-A. Power to transfer petitions in certain cases.**—(1) Where—

- (a) a petition under this Act has been presented to the district court having jurisdiction by a party to the marriage praying for a decree for judicial separation under Section 23 or for a decree of divorce under Section 27; and
- (b) another petition under this Act has been presented thereafter by the other party to the marriage praying for decree for judicial separation under Section 23, or for decree of divorce under Section 27 on any ground

54. Subs. by Act 68 of 1976.

55. Subs. for "thirty" by Act 50 of 2003, S. 3.

Provided that nothing in this section shall apply to a decree or order in which the time for appealing has expired under the Special Marriage Act or the Hindu Marriage Act at the commencement of this Act.

56. Ins. by Act 68 of 1976.

57. Ins. by Act 68 of 1976.



whether in the same district court or in a different district court, in the same State or in a different State,  
the petition shall be dealt with as specified in sub-section (2).

(2) In a case where sub-section (1) applies,—

- (a) if the petitions are presented to the same district court, both the petitions shall be tried and heard together by that district court;
- (b) if the petitions are presented to different district courts, the petition presented later shall be transferred to the district court in which the earlier petition was presented and both the petitions shall be heard and disposed of together by the district court in which the earlier petition was presented.

(3) In a case where clause (b) of sub-section (2) applies, the court or the Government, as the case may be, competent under the Code of Civil Procedure, 1908 (5 of 1908), to transfer any suit or proceeding from the district court in which the later petition has been presented to the district court in which the earlier petition is pending, shall exercise its powers to transfer such later petition as if it had been empowered so to do under the said Code.

**CASE LAW ► Interpretation.**—Under Section 40-A of the said Act, if both the parties present separate applications in the same district Court, those applications should be heard together. In the event, however, the applications are presented in different district Courts, in such a situation the trial will be held before the Court where the first application has been filed, *Cheryl Ann Peterson v. Eric Jacob Peterson*, (2003) 2 CHN 499 : (2003) 1 Cal LJ 680.

**40-B. Special provisions relating to trial and disposal of petitions under the Act.**—(1) The trial of a petition under this Act shall, so far as is practicable consistently with the interests of justice in respect of the trial, be continued from day to day until its conclusion, unless the court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded.

(2) Every petition under this Act shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date of service of notice of the petition on the respondent.

(3) Every appeal under this Act shall be heard as expeditiously as possible, and endeavour shall be made to conclude the hearing within three months from the date of service of notice of appeal on the respondent.

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

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



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

- (a) the impleading by the petitioner of the adulterer as a co-respondent on a petition for divorce on the ground of adultery, and the circumstances in which the petitioner may be excused from doing so;
- (b) the awarding of damages against any such co-respondent;
- (c) the intervention in any proceeding under Chapter V or Chapter VI by any person not already a party thereto;
- (d) the form and contents of petitions for nullity of marriage or for divorce and the payment of costs incurred by parties to such petitions; and
- (e) any other matter for which no provision or no sufficient provision is made in this Act, and for which provision is made in the Indian Divorce Act, 1869 (4 of 1869).

## CHAPTER VIII

### MISCELLANEOUS

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

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

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

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

**CASE LAW ► Consequences of False Declaration.**—Filing of false declaration before Registrar of marriage for registration of marriage under Special marriage Act would be punishable under Section 199, 193 IPC read with Section 45 of Special Marriage Act, *Tapendro Mullick v. Purnendro Mullick*, (1997) 2 CHN 184.

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

- (1) without publishing a notice regarding such marriage as required by Section 5, or



- (2) within thirty days of the publication of the notice of such marriage, or
- (3) in contravention of any other provision contained in this Act,

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

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

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

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

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

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

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

**50. Power to make rules.**—(1) The Central Government, in the case of <sup>58</sup>[\* \* \*] officers of the Central Government, and the State Government, in all other cases, may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

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

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

58. The words "diplomatic and consular officers and other" omitted by Act 37 of 1969, S. 29.

- (b) the manner in which a Marriage Officer may hold inquiries under this Act and the procedure therefor;
- (c) the form and manner in which any books required by or under this Act shall be maintained;
- (d) the fees that may be levied for the performance of any duty imposed upon a Marriage Officer under this Act;
- (e) the manner in which public notice shall be given under Section 16;
- (f) the form in which, and the intervals within which, copies of entries in the Marriage Certificate Book shall be sent in pursuance of Section 48;
- (g) any other matter which may be or requires to be prescribed.

<sup>59</sup>[(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

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

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

(2) Notwithstanding such repeal,—

- (a) all marriages duly solemnized under the Special Marriage Act, 1872 (3 of 1872), or any such corresponding law shall be deemed to have been solemnized under this Act;
- (b) all suits and proceedings in causes and matters matrimonial which, when this Act comes into operation, are pending in any court, shall be dealt with and decided by such court, so far as may be, as if they had been originally instituted therein under this Act.

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



**THE FIRST SCHEDULE**

[See Section 2(b) "Degrees of prohibited relationship"]

**PART I**

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

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

## PART II

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

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





**THE SECOND SCHEDULE**

(See Section 5)

**NOTICE OF INTENDED MARRIAGE**

To

Marriage Officer for the ..... District.

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

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

Witness our hands this ..... day of ..... 20 .

(Sd.) A.B.

(Sd.) C.D.

**THE THIRD SCHEDULE**

(See Section 11)

**DECLARATION TO BE MADE BY THE BRIDEGROOM**

I, A.B., hereby declare as follows:—

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

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

**DECLARATION TO BE MADE BY THE BRIDE**

I, C.D., hereby declare as follows:—

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

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

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

(Sd.) G.H.

(Sd.) I.J.

(Sd.) K.L.

} *Three witnesses*

Countersigned E.F.,

*Marriage Officer*

Dated ..... day of ..... 20 .

**THE FOURTH SCHEDULE***(See Section 13)***CERTIFICATE OF MARRIAGE**

I, E. F., hereby certify that on the ..... day of ..... 20 ....., A. B. and C.D.<sup>60</sup> appeared before me and that each of them, in my presence and in the presence of three witnesses who have signed hereunder, made the declarations required by Section 11 and that a marriage under this Act was solemnized between them in my presence.

(Sd.) E.F.,

*Marriage Officer for*

(Sd.) A.B.,

*Bridegroom*

(Sd.) C.D.,

*Bride*

(Sd.) G.H.

(Sd.) I.J.

(Sd.) K.L.

} *Three witnesses*

Dated the ..... day of ..... 20 .

**THE FIFTH SCHEDULE***(See Section 16)***CERTIFICATE OF MARRIAGE CELEBRATED IN OTHER FORMS**

I, E.F., hereby certify that A.B. and C.D.<sup>61</sup> appeared before me this ..... day of ..... 20 ..... and that each of them, in my presence and in the presence of three witnesses who have signed hereunder have declared that a ceremony of marriage has been performed between them and that they have been living together as husband and wife since the time of their marriage, and that in accordance with their desire to have their marriage registered under this Act, the said marriage has, this ... day of ..... 20 .... been registered under this Act, having effect as from .....

(Sd.) E.F.,

*Marriage Officer for*

(Sd.) A.B.,

---

60. Herein give particulars of the parties.

61. Herein give particulars of the parties.



(Sd.) C.D.,

(Sd.) G.H.

(Sd.) I.J.

(Sd.) K.L.

Three witnesses

Dated the ..... day of ..... 20 .  
\_\_\_\_\_