

A

BILL

to provide for solemnization of marriages by Hindu families and for matters ancillary and incidental thereto

WHEREAS, it is constitutional obligation that the State shall protect the marriage, the family, the mother and the child and also safeguard the legitimate rights and interests of minorities;

AND WHEREAS, it is expedient to codify law providing for solemnization of marriages by Hindu families and the matters ancillary and incidental thereto;

It is hereby enacted as follows:—

1. **Short title, extent, application and commencement.**—(1) This Act may be called the Hindu Marriage Act, 2015.

(2) It extends to the Islamabad Capital Territory.

(3) It shall apply to all persons who profess Hindu religion in any of its forms.

(4) It shall come into force at once.

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

(a) “Court” means a Family Court as defined in the Family Courts Act, 1964 (W.P. Act XXXV of 1964);

(b) “customs” and “customary rites” mean any tradition which having been continuously and uniformly observed for a long time among Hindus in any local area, tribe, community, group or family;

Provided that the customs and customary rites are certain and not unreasonable or opposed to morality;

(c) “degrees of prohibited relationship” means any prohibited relationship as per laws, religion and customs having force of law relating to Hindu persons;

(d) “Government” means the Federal Government;

- (e) "Hindu marriage" means the union of Hindu male and Hindu female solemnized under this Act and includes the marriage solemnized before commencement of this Act in accordance with the law, religion and customs having force of law relating to Hindu persons;
- (f) "marriage register" means register of marriages maintained by marriage registrar as may be prescribed;
- (g) "marriage registrar" means a person authorized and appointed by the Government to register Hindu marriages under this Act;
- (h) "prescribed" means prescribed by rules made under this Act; and
- (i) "*shaadi parai*" means certificate of marriage issued by marriage registrar, which certifies solemnization of Hindu marriage.

3. **Overriding effect.**— The provisions of this Act shall have effect notwithstanding any other law for the time being in force and any custom or usage.

4. **Conditions for a Hindu marriage.**— A Hindu marriage shall be solemnized under this Act, if the following conditions are fulfilled, namely:—

- (a) neither party has spouse living at the time of the marriage;
- (b) at the time of the marriage, either party—
 - (i) is capable of giving valid consent of it in consequences of soundness of mind;
 - (ii) though incapable of giving valid consent, yet has not been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage; or
 - (iii) has not been subject to recurrent attacks of insanity;
- (c) both the parties are not below the age of eighteen years according to the Gregorian Calendar; and
- (d) the parties to the marriage are not within the degrees of prohibited relationship.

5. **Ceremonies for Hindu marriage.**—A Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto.

6. **Registration of Hindu marriages.**—(1) For the purpose of this Act, the parties to the Hindu marriage shall get the particulars relating to their marriage entered in a marriage register in such manner and subject to such conditions as may be prescribed.

(2) Notwithstanding anything contained in sub-section (1), the Government may, by notification in the official Gazette and if it is of opinion that it is necessary so to do, exempt in a prescribed manner certain cases from application of all or any of the provisions of this Act.

(3) The marriage register shall be open for inspection and shall be admissible as evidence of the statement therein contained and certified extracts therefrom shall, on application, be given by the marriage registrar on payment of such fee as may be prescribed.

(4) Notwithstanding anything contained in this section, validity of any Hindu marriage shall not be affected by omission to make entry in marriage register.

7. Appointment and functions of marriage registrar.—(1) The Government shall, by notification in the official Gazette and as may be prescribed, appoint one or such number of marriage registrars as would be convenient for Hindu population living in Islamabad.

(2) For the purposes of registration of Hindu marriage under this Act, the marriage registrar or a person authorized by him shall be responsible to register the marriage as may be prescribed.

(3) The parties intending to be married shall make to the marriage registrar an application for registration of marriage on the given place, date and time as may be prescribed.

(4) Each Hindu marriage not solemnized in presence of marriage registrar or a person authorized by him shall, for purposes of registration of the marriage under this Act, be reported to him by the person who has solemnized such marriage.

(5) Any person who contravenes any provisions of this Act or the rules made thereunder shall be punishable with fine which may extend to one hundred thousand rupees.

(6) The form of *shaadi parat* and record to be preserved and maintained by marriage registrar shall be such as may be prescribed.

(7) The marriage registrar shall prepare such number of copies of *shaadi parat* for such purpose as may be prescribed by rules and unless the rules are made he shall prepare three copies thereof, one copy whereof shall be given to each of the respective parties to the marriage and one copy shall be kept in office of the marriage registrar as a public record.

8. Restitution of conjugal rights.—When either a husband or a wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may, by a petition to the Court, apply for restitution of conjugal rights and the Court, on being

satisfied of truth of statements made in such petition and that there is no legal ground why the application should not be granted, may decree restitution of the conjugal rights.

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.

9. Judicial separation.—(1) Either party to a Hindu marriage, whether solemnized before or after commencement of this Act, may present a petition praying for a decree for judicial separation on any of the grounds specified in sub-section (1) of section 12 and in the case of a wife also on any of the grounds specified in sub-section (2) thereof.

(2) Where a decree of judicial separation has been passed, it shall no longer be obligatory for the petitioner to cohabit with the respondent, but the Court may, on the application of both the parties and on being satisfied of truth of statements made in such petition, rescind the decree if it considers it just and reasonable to do so.

10. Void marriages.—Any Hindu marriage solemnized after commencement of this Act may, on a petition to the Court presented by either party thereto against the other party, be declared null and void on any one of the conditions specified in clauses (a) and (d) of section 4.

11. Voidable marriage.—(1) Any Hindu marriage solemnized, whether before or after commencement of this Act, may be declared voidable and annulled by a decree of nullity passed by the Court, if—

- (a) the marriage has not been consummated owing to impotence of the respondent; or
- (b) the marriage has been solemnized in contravention of the condition specified in clause (b) of section 4; or
- (c) consent of the petitioner was obtained by force, coercion or by fraud as to the nature of the ceremony or as to any material fact or circumstance concerning the respondent; or
- (d) the respondent was at the time of the marriage pregnant by some person other than the petitioner.

(2) Notwithstanding anything contained in sub-section (1), no petition for annulling a Hindu marriage—

- (A) on the ground specified in clause (c) of sub-section (1) shall be entertained, if—
 - (i) the petition is presented more than one year after the force or coercion had ceased to operate or, as the case may be, the fraud had been discovered; or

- (ii) the petitioner has, with his or her full consent, lived with the other party to the marriage as husband or wife after the force or coercion had ceased to operate or, as the case may be, the fraud has been discovered; and
- (B) on the ground specified in clause (d) of sub-section (1) shall be entertained unless the Court is satisfied that—
- (i) the petitioner was, at the time of the marriage, ignorant of the facts alleged; and
 - (ii) the proceedings have been instituted, in the case of marriage solemnized,—
 - (a) before commencement of this Act, within one year of such commencement; and
 - (b) after such commencement, within one year from the date of the marriage.

12. Annulment of Hindu marriage.—(1) Any Hindu marriage solemnized whether before or after commencement of this Act may, on a petition presented to the Court by either the husband or the wife, be terminated by a decree of annulment of marriage on the ground that—

- (a) the other party—
 - (i) has, after solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse; or
 - (ii) has, after solemnization of the marriage, treated the petitioner with cruelty; or
 - (iii) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition.

Explanation.—In this clause, the expression “desertion” means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party and includes the willful neglect of the petitioner by the other party to the marriage; or
- (iv) has ceased to be Hindu by conversion to another religion; or
- (v) 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, the expression “mental disorder” means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind including schizophrenia and the expression “psychopathic disorder” means a persistent disorder or disability of mind (whether or not including sub-normality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the other party and whether or not it requires or is susceptible to medical treatment; or

- (vi) has been suffering from a virulent and incurable form of leprosy; or
- (vii) has been suffering from venereal disease in a communicable form or HIV Aids; or
- (viii) has renounced the world by entering any religious order; or
- (b) there has been no resumption of cohabitation as between the parties to the ~~marriage for a period~~ of more than one year after the ~~passing of a decree~~ for judicial separation or order of restitution of conjugal rights passed by the Court.

(2) A wife may also present a petition for the termination of her marriage by a decree of annulment of marriage on the ground that—

- (a) in the case of any marriage solemnized before commencement of this Act, the husband had married again before such commencement or another wife of the husband married before such commencement was alive at the time of the solemnization of the marriage of the petitioner:

Provided that in either case the other wife is alive at the time of the presentation of the petition; or

- (b) the husband has, since the solemnization of the marriage, been guilty of rape, sodomy or bestiality and 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 more; or
- (c) her marriage, whether consummated or not, was solemnized before she attained the age of eighteen years and she has repudiated the marriage before attaining that age.

Explanation.—This clause applies whether the marriage was solemnized before or after commencement of this Act.

13. Alternate relief in annulment of marriage proceedings.—In any proceedings under this Act, on a petition for annulment of marriage by a decree of annulment, except in so far as the petition is found on the grounds mentioned in sub-clauses (ii), (iii), (v) and (viii) of clause (a) and clause (b) of sub-section (1) of section 12, the Court may, if it considers it just so to do having regard to the circumstances of the case, pass a decree for judicial separation instead of decree for annulment of marriage.

14. Annulment of marriage by mutual consent.—(1) Subject to the provisions of this Act, a petition for termination of marriage by a decree of annulment may be presented to the Court by both the parties to a marriage together, whether such marriage was solemnized before or after commencement of this Act, 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 they have mutually agreed that the marriage should be terminated.

(2) On motion of both the parties made not earlier than six months after the date of presentation of the petition referred to in sub-section (1) and not later than eighteen months after the said date, the Court shall, on being satisfied after hearing the parties and after making such inquiry as it thinks fit that a marriage has been solemnized and that the averments in the petition are true, pass a decree of annulment declaring the marriage to be terminated with effect from the date of the decree.

15. Divorced persons when may marry again.—When a Hindu marriage has been terminated by a decree of annulment and the time for appeal has expired or an appeal has been preferred but has been dismissed, it shall be lawful for either party to the marriage so terminated to marry again after expiry of three months from final decision.

16. Legitimacy of children of void and voidable Hindu marriage.—(1) Notwithstanding that a Hindu marriage is null and void under section 10, 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 commencement of this Act 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 Hindu marriage under section 11, any child begotten or conceived before the decree is made, who would have been the legitimate child of the parties to the marriage if at the date of the decree it had been terminated instead of being annulled, shall be deemed to be their legitimate child notwithstanding the decree of nullity.

17. Punishment of bigamy.—Any Hindu marriage solemnized after commencement of this Act shall be void if at the date of such marriage either party had a spouse living and the provisions of sections 494 and 495 of the Pakistan Penal Code (Act XLV of 1860) shall apply accordingly.

18. Punishment for contravention of certain other conditions for Hindu marriage.—Every person who procures a marriage of himself or herself to be

solemnized under this Act in contravention of the conditions specified in clauses (c) or (d) of section 4 shall be punishable with simple imprisonment which may extend to six months but not less than three months or with fine which may extend to five thousand rupees or with both.

19. **Application of provisions of the Family Court Act, 1964.** (W.P. Act XXXV of 1964).—Every petition under this Act shall be presented to the Family Court and the provisions of—

- (a) the Family Courts Act, 1964 (W.P. Act XXXV of 1964); except proviso to sub-section (4) of section 10, sub-section (2) of section 14 and sections 21 and 23 thereof; and
- (b) the West Pakistan Family Court Rules, 1965, except proviso to clause (b) of rule 6 thereof.

shall *mutatis mutandis* apply to the proceedings under this Act.

20. **Power to make rules.**—The Federal Government may, by notification in the official Gazette, make rules to carry out purposes of this Act.

STATEMENT OF OBJECTS AND REASONS

The object of this Bill is to provide a special form of marriage and its annulment among Hindus. A large number of Hindu community particularly women does not have basic documentation to prove their material status/ identity. They are also deprived of legal rights such as inheritance, remarriage, separation, adoption of children and annulment of marriage etc. they also face problems while traveling outside of country. This legislation will institutionalize the marriage and marriage related legal rights thereof.

2. This Act is applicable to every person who is Hindu by his/her religion in any of its form.

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