

[TO BE INTRODUCED IN THE NATIONAL ASSEMBLY]

A

BILL

to provide for the law relating to marriage among Hindus.

1. **Short title extent and comment.-** (1) This Act may be called the Hindu Marriage Act, 2011.
 - (2) It extends to the whole of Pakistan and applied also to Hindus domiciled in the territories to which this Act extends who are outside the said territories.
 - (3) It shall come into force at once.

2. **Application of Act**.- (1) This Act applies:
 - (a) to any person who is Hindu by religion in any of its forms or developments,
 - (b) to any person who is a Buddhist, Jaina or Sikh by religionExplanation: The following person are Hindus, Buddhist, Jainas or Sikhs by religion, as the case may be:-
 - (i) any child, legitimate or illegitimate, both of whose parents are Hindus, Buddhist, Jaina or Sikhs by religion;
 - (ii) any child, legitimate or illegitimate, one of whose parents is a Hindus, Buddhists, Jaina or Sikhs by religion and who is brought up as a member of tribe, community, group or family to which such parent belongs or

3. **Definitions**.- In this Act, unless the context otherwise requires:-
 - (a) Family court shall be having jurisdiction in respect of the matters dealt within this Act.
 - (b) **“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;
 - (c) **“uterine blood”**.- two persons are said to be related to each other by uterine blood when they are descended from a common ancestor but by different husbands;
 - (d) **“prescribed”** means prescribed by rules made under this Act;
 - (e)
 - (i) **“sapinda relationship”** with reference to any person extends as far as the third generation (inclusive) in the line of ascent through the mother, and the fifth (inclusive) in the line of ascent through the father, the line being traced upwards in each case from the person concerned, who is to be counted as the first generation;
 - (ii) two persons are said to be “sapindas” of each other if one is a lineal ascendant of the other within the limits of sapinda relationship, or if they have a common lineal ascendant who is within the limits of sapinda relationship with reference to each of them.

 - (f) **“degrees of prohibited relationship”**.- two persons are said to be within the “degrees of prohibited relationship”:-
 - (i) if one is a lineal ascendant of the other; or
 - (ii) if one was the wife or husband of a lineal ascendant or descendant of the other; or
 - (iii) if one was the wife of the brother or of the father’s or mother’s brother or of the grandfather’s or grandmother’s brother of the other; of
 - (iv) if the two are brother and sister, uncle and niece, aunt and nephew, or children or brother and sister or of two brothers or of two sisters.

Explanation. - For the purposes of clause (e) and (f) relationship includes.-

- (i) relationship by half or uterine blood as well as by full blood;
- (ii) illegitimate blood relationship as well as legitimate;
- (iii) relationship by adoption as well as by blood, and the terms of relationship ----- causes shall be construed accordingly.

4. **Overriding effect of Act.**- Save as otherwise expressly provided in this Act.-

- (a) any text, rule or interpretation of Hindu Law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;
- (b) any other law in force immediately before the commencement of this Act shall cease to have effect in so far as it is inconsistent with any of the provisions contained in this Act.

Hindu Marriages

5. **Conditions for a Hindu marriage.**- A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely:-

- (i) neither party has spouse living at the time of the marriage;
- (ii) at the time of the marriage, neither party.-
- (ii) (a) is a incapable of giving a valid consent to it in consequences of unsoundness of mind; or
- (ii) (b) 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
- (ii) (c) has been subject to recurrent attacks of insanity or epilepsy;
- (iii) the bridegroom has completed the age of twenty-one years and the bride the age of eighteen years at the time of marriage;
- (iv) the parties are not within the degrees of prohibited relationship.
- (v) the parties are not sapindas of each other.

6. **Ceremonies for a Hindu marriage.**- (1) A Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto.

(2) Where such rites and ceremonies include the saptapadi (that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire), the marriage becomes complete and binding when the seventh step is taken.

7. **Registration of Hindu marriages.**- (1) For the purpose of facilitating the proof of Hindu marriages, the Government may make rules providing that the parties to any such marriage may have the particulars relating to their marriage entered in such manner and subject to such conditions as may be prescribed in a Hindu Marriage Register kept for the purpose.

(2) Notwithstanding anything contained in sub-section (1), the Government may, if it is of opinion that it is necessary or expedient so to do, provide that the entering of the particulars referred to in sub-section (1) shall be compulsory whether in all cases or in such cases as may be specified, and where any such direction has been issued, any person contravening any rule made in this behalf shall be punishable with fine which may extend to one thousand Rupees.

(3) The Hindu Marriage Register shall at all reasonable times be open for inspection, and shall be admissible as evidence of the statement therein contained and certified extracts there from shall, on application, be given by the Registrar on payment to him of the prescribed fee.

(4) Notwithstanding anything contained in this section, the validity of any Hindu marriage shall in no way be affected by the omission to make the entry.

8. **Judicial separation**.- (1) Either party to a marriage, whether solemnized before or after the 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 11 and in the case of a wife also on any of the grounds specified in sub-section (2) thereof, as grounds on which a petition for divorce might have been presented.

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

Nullity of Marriage and Divorce

9. **Void marriages**:- Any marriage solemnized after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto against the other party, be so declared by a decree of nullify if it contravenes any one of the condition specified in clauses (i), (iv) and (v) of section 5.

10. **Voidable marriage**.- (1) Any marriage solemnized, whether before or after the commencement of this Act, shall be voidable and may be annulled by a decree of nullity on any of the following grounds, namely:-

- (a) that the marriage has not been consummated owing to the impotence of the respondent; or
- (b) that the marriage is in contravention of the condition specified in clause (ii) of section 5; or
- (c) that the consent of the petitioner was obtained by force or by fraud as to the nature of the ceremony or as to any material fact or circumstance concerning the respondent or
- (d) that 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 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 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 had ceased to operate or, as the case may be, the fraud has been discovered;

(b) on the ground specified in clause (d) of sub-section (1) shall be entertained unless the court is satisfied.-

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

- (ii) that proceedings have been instituted in the case of marriage solemnized before the commencement of this Act within one year of such commencement and in the case of marriages solemnized after such commencement within one year from the date of the marriage; and
- (iii) that marital intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of the existence of the said ground.

11. **Divorce**.- (1) Any marriage solemnized whether before or after the commencement of this Act may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party.-

- (i) has, after the solemnization of the marriage, had voluntary sexual intercourse with any person than his or her spouse:-
- (ii) has, after the 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; 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, (a) the expression “mental disorder” means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder of disability of mind and includes schizophrenia;

(b) the expression “psychopathic disorder” means a persistent disorder or disability of mind (whether or not including sub-normality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the other party, and whether or not it 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
- (viii) has renounced the world by entering any religious order; years of more by those persons who ----- have heard of it, had that party been alive.

Explanation.- In this sub-section, the expression “desertion” means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the willful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expression shall be construed accordingly; or

- (x) 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
- (xi) that there has been no restitution of conjugal rights as between the parties to the marriage for a period of one year or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.

- (2) A wife may also present a petition for the dissolution of her marriage by a decree of divorce on the ground.-
- (i) in the case of any marriage solemnized before the commencement of this Act, that the husband had married again before such commencement or that an other 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 case the other wife is alive at the time of the presentation of the petition; or

(ii) that the husband has, since the solemnization of the marriage, been guilty of rape, sodomy or bestiality; and [5 of 1898], decree or order, as the case may be, has been, passed against the husband awarding maintenance to the wife notwithstanding that 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;

(iii) that her marriage (whether consummated or not) was solemnized before she attained the age of fifteen years and she has repudiated the marriage after attaining that age but before attaining the age of eighteen years.

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

12. **Alternate relief in divorce proceeding.**- In any proceeding under this Act, on a petition for dissolution of marriage by a decree of divorce, except in so far as the petition is founded on the grounds mentioned in clauses (ii)(iii)(v) (viii) and (ix) of sub-section (1) of section 11, 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.

13. **Divorce by mutual consent.**- (1) Subject to the provisions of this Act a petition for dissolution of marriage by a decree of divorce may be presented to the family court by both the parties to a marriage together whether such marriage was solemnized before or after the 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 that they have mutually agreed that the marriage should be dissolved.

(2) On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in sub-section (1) and nor than eighteen months after 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 divorce declaring the marriage to be dissolved with effect from the date of the decree.

14. No petition for divorce to be presented within one year of marriage.- (1) Notwithstanding anything contained in this Act, it shall not be competent for any court to entertain any petition for dissolution of a marriage by a decree of divorce, unless at the date of the presentation of the petition one year has elapsed since that date of the marriage.

15. **Divorced persons when may marry again.**- When a marriage has been dissolved by a decree of divorce and the time for appealing has expired without an appeal having been presented or an appeal has been present but has been dismissed it shall be lawful for either party to the marriage to marry again after expiry of three months from final decision.

16. **Legitimacy of children of void and voidable marriage.**- (1) Notwithstanding that a marriage is null and void under section 9, 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 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 marriage under section 10, 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 dissolved instead of being annulled, shall be deemed to be their legitimate child notwithstanding the decree of nullity. ----- 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 10, any rights in or to the property of any person, other than the parents, if 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 this not being the legitimate child on his parents.

17. **Punishment of bigamy.**- Any marriage between two Hindus solemnized after the commencement at this Act is void if at the date of such marriage either party had a husband or wife living; and the provisions of section 494 and 495 of the Penal Code (45 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 (iii), (iv) and (v) of section 5 shall be punishable;

(a) in the case of a contravention of the condition specified in clause (iii) of section 5, with simple imprisonment which may extend to fifteen days, or with fine which may extend to one thousand rupees, or with both;

(b) in the case of a contravention of the condition specified in clause (iv) or clause (v) of section 5, with simple imprisonment which may extend to one month, or with fine which may extend to two thousand rupees, or with both.

Jurisdiction and procedure

19. **Court to which petition shall be presented.**- Every petition under this Act shall be presented to the Family court and the provisions of Family Courts Act XXXV of 1964 excepting Section 14(2) 17, 21 and 23 and West Pakistan Family Court Rules 1965 excepting proviso to Rule 6 (b) shall mutatis mutandis apply to the proceedings under this Act.

STATEMENT OF OBJECTS AND REASONS

The object of this Bill is to Provide a special form of marriage and divorce among Hindus. The Provision of the said Act has also been applied to irretrievable break down of Marriages in Hindus.

This Act is applicable to every person who is Hindu by religion in any of its form or to any person who is Budhist, Jam or Sikh by religion or to any person who is not a Muslim, Christian, Parsi or Jew by religion.

The above Bill seeks to achieve the above mentioned objectives.

Sd/-
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Member-in-Charge