

[AS PASSED BY THE NATIONAL ASSEMBLY]

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 have a consolidated law providing for solemnization of marriages by Hindu families and the matters connected therewith and incidental thereto:

And Whereas the Provincial Assemblies of Balochistan, Khyber Pakhtunkhwa and Punjab have passed Resolutions under Article 144 of the Constitution of the Islamic Republic of Pakistan to the effect that Majlis-e-Shoora (Parliament) may, by law, regulate solemnization of marriages by Hindu families and for matters connected therewith 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, 2016.

(2) It extends to the Islamabad Capital Territory and the Provinces of Balochistan, Khyber Pakhtunkhwa and Punjab.

(3) Subject to sub-section (2), it shall apply to those citizen of Pakistan 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 under the West Pakistan Family Courts Act, 1964(W.P. Act XXXV of 1964);

(b) "customs" and "customary rites" mean any tradition which is not unlawful and the same has been continuously and uniformly observed for a long time among Hindus in any local area, tribe, community, group or family;

- (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 or the Provincial Government as the case may be;
- (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) "*shaadiparat*" means certificate of marriage issued by the marriage registrar, which certifies the solemnization of Hindu marriage.

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

4. Conditions for a Hindu marriage.-A Hindu marriage shall be solemnized, if the following conditions are fulfilled, namely:-

- (a) at the time of the marriage, the parties are of sound mind and capable of giving a valid consent;
- (b) both the parties are not below the age of eighteen years;
- (c) the parties to the marriage are not within the degrees of prohibited relationship; and
- (d) neither party has a spouse living at the time of marriage:

Provided that condition in clause (d) shall not apply where a living female spouse cannot conceive a child and medically declared to be so.

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

6. Registration of Hindu marriages.- (1) The solemnization of every Hindu marriage shall be registered in accordance with the provisions of this Act. Such registration shall take place within a period of fifteen days of solemnization of Hindu marriage.

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

7. Appointment and functions of marriage registrar.-(1) The Government shall by notification in official Gazette, appoint one or such numbers of marriage registrars in the territory of a district or such other areas as would be convenient for Hindu population living in the said district or such other areas.

(2) For the purposes of registration of Hindu marriage, the marriage registrar or person duly authorized by him from amongst the local Hindu community in the manners as may be prescribed, shall be responsible to register the marriage. The parties to Hindu marriage shall give their particulars to the respective registrar or his authorized person for the purpose of entry thereof in *shadiparat*.

(3) The form of *shaudiparat*, the record to be preserved and maintained by the marriage registrar shall be such as may be prescribed. Until the rules are made, the *shaudiparat* annexed as Schedule A of this Act shall be used as *shaudiparat*.

(4) The marriage registrar shall prepare such number of copies as may be prescribed and unless the rules are made, he shall prepare three copies thereof. One copy each shall be given to the respective parties to marriage and one copy shall be kept in the office of 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 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 Hindu marriage, whether solemnized before or after commencement of this Act, may present a petition to the Court praying for a decree of 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, 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 to the marriage or their real parents, be declared null and void on the conditions specified in clauses (c) 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 may be subsequently 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 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, continued to live 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; 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 the 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. Termination 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 a husband or a wife, be terminated by decree of termination of marriage on the ground-

- (a) that the other party-
 - (i) has, after the solemnization of the marriage, treated the petitioner with cruelty;
or
 - (ii) 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

- (iii) has ceased to be Hindu by conversion to another religion; or
- (iv) 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

- (v) has been suffering from a virulent and incurable form of leprosy; or
 - (vi) has been suffering from venereal disease in a communicable form or HIV Aids; or
 - (vii) has renounced the world by entering any religious order; or
- (b) that 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 termination of her marriage on the grounds.-

- (a) in the case of any marriage solemnized before commencement of this Act, that the husband had married again before such commencement or that 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) that the husband has neglected or has failed to provide for her maintenance for a period of two years;
- (c) that the husband has been sentenced to imprisonment for a period of four years or upwards; or
- (d) that 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. Financial security of wife and children.-(1) If a wife is respondent in a petition for termination of the marriage by decree of termination, she may oppose the grant of decree on the ground that the termination of the marriage may result in grave financial hardship to her unless arrangements have been made to the satisfaction of the Court to eliminate such hardship:

Provided that nothing contained in this Act shall affect any right which she may have to her dower or any part thereof on the termination of marriage.

(2) The Court shall not pass a decree of termination unless the Court is satisfied that adequate provisions for the maintenance of children born out of the marriage has been made in commensuration with the financial capacity of the parties to the marriage.

14. Alternate relief in termination of marriage proceeding.- In any proceeding under this Act, on a petition for termination of marriage by decree of termination, except in so far as the petition is found on the grounds mentioned in sub-clauses (i), (ii), (iv) and (vii) 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 termination of marriage.

15. Termination of Hindu marriage by mutual consent.- (1) Subject to the provisions of this Act, a petition for termination of marriage by decree of termination 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 the decision by 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, 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 termination declaring the marriage to be terminated with effect from the date of the decree.

16. **Separated person may marry again.**- When a Hindu marriage has been annulled or terminated by a decree of nullity or decree of termination as the case may be 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 six months from final decision.

17. **Hindu widows are entitled to remarry.**- A Hindu widow shall have right to re-marry of her own will and consent after the death of her husband provided a period of six months has lapsed after the husband's death.

18. **Legitimacy of child born out 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.

19. **Validation of marriages.**-All Hindu marriages solemnized before commencement of this Act shall be deemed valid.

20. **Punishment of bigamy.**- Any Hindu marriage solemnized after commencement of this Act is void if at the date of such marriage either party had a spouse living and the provisions of section 494 and 495 of the Pakistan Penal Code, 1860 (Act XLV of 1860) shall apply accordingly.

21. **Punishment for contravention of certain other conditions for Hindu marriage.**- Every person who get his or her marriage solemnized under this Act in contravention of the conditions specified in clauses (b) or (c) 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.

22. **Court to which petition shall be presented.**- Every petition under this Act shall be presented to the Family Court and the provisions of-

- (a) the Family Courts Act, 1964 (XXXV of 1964) except proviso of sub-section (4) of section 10, sub-section (2) of section 14 and section 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.

23. **Penalty for violating the provisions of this Act.**-(1) Any person who contravenes the provisions of this Act or rules made there under regarding registration of Hindu marriage shall be punishable with simple imprisonment for a term which may extend to three months or with fine which may extend to one thousand rupees or with both.

(2) Any person who make statement or give particulars to be entered in the *shaadiparat*, which is false or has reason to believe to be false, shall be punished with a simple imprisonment which may extend to six month but not let than one month of a fine which may extend up to one hundred thousand or with both.

24. **Cognizance of offence under this Act.**- Notwithstanding anything contained in the Code of Criminal Procedure 1898 (Act V of 1898), all offences under this Act shall be non-cognizable and non-compoundable and the same shall be triable by a Magistrate First Class on a complaint in writing by a marriage registrar.

25. **Power to make rules.**-The 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 codify the law for regulating the marriages and termination thereof among Hindus family and the matter ancillary and incidental thereto. The Provision of the said Act has also been applied to irretrievable break down of Marriages in Hindus. This Act is applicable to all citizen of Pakistan who is Hindu by religion in any of its form.

The above Bill seeks to achieve the above mentioned objectives.

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