

# THE DIVORCE ACT

## CONTENTS

### I.—PRELIMINARY

1. Short title, Commencement of Act

2. Extent of Act

Extent of power to grant relief generally, and to make decrees of dissolution, or of nullity

3. Interpretation-clause

### II.— JURISDICTION

[Omitted]

[Omitted]

[Omitted]

[Omitted]

[Omitted]

[Omitted]

eM Nnans

### III.—DISSOLUTION OF MARRIAGE

10. When husband may petition for dissolution

When wife may petition for dissolution

Contents of petition

11. Adulterer to be co-respondent

12. Court to be satisfied of absence of collusion

13. Dismissal of petition

14. Power to Court to pronounce decree for dissolving marriage

Condonation

15. Relief in case of opposition on certain grounds

16. [Omitted]

17. [Omitted]

17A. [Omitted]

18.

20.

21.

22.

23,

24.

25.

26.

27.

28.

29.

30.

31.

32.

33,

34,

35.

#### IV.—NULLITY OF MARRIAGE

Petition for decree of nullity

Grounds of decree

[Omitted]

Children of annulled marriage

#### V.—JUDICIAL SEPARATION

Bar to decree for divorce a mensa et toro but judicial separation obtainable by husband or wife

Application for separation made by petition

Separated wife deemed spinster with respect to after acquired property

Separated wife deemed spinster for purposes of contract and suing

#### REVERSAL OF DECREE OF SEPARATION

Decrees of separation obtained during absence of husband or wife may be reversed

#### VI.— PROTECTION-ORDERS

Deserted wife may apply to Court for protection

Court may grant protection-order

Discharge or variation of orders

Liability of husband seizing wife's property after notice of order

Wife's legal position during continuance of order

#### VII.—RESTITUTION OF CONJUGAL RIGHTS

Petition for restitution of conjugal rights  
Answer to petition

#### VIII.—DAMAGES AND COSTS

Husband may claim damages from adulterer  
Power to order adulterer to pay costs  
Power to order litigious intervenor to pay costs

36.  
37.

38.

39,

40.

41.

42.

43.

44.

45.

46.

47.

48.

49.

50.

51.

52.

53.

54.

55.

56.

## IX.—ALIMONY

Alimony pendente lite

Power to order permanent alimony

Power to order monthly or weekly payments

Court may direct payment of alimony to wife or to her trustee

## X.—SETTLEMENTS

Power to order settlement of wife's property for benefit of husband and children

Settlement of damages

Inquiry into existence of ante-nuptial or post-nuptial settlements

## XI.—CUSTODY OF CHILDREN

Power to make orders as to custody of children in suit for separation

Power to make such orders after decree

Power to make orders as to custody of children in suits for dissolution or nullity

Power to make such orders after decree

## XII.—PROCEDURE

Code of Civil Procedure to apply

Forms of petitions and statements

Stamp on petition. Petition to state absence of collusion  
Statements to be verified

Suits on behalf of lunatics

Suits by minors

Service of petition

Mode of taking evidence

Competence of husband and wife to give evidence as to cruelty or desertion  
Power to close doors

Power to adjourn

Enforcement of and appeals from orders and decrees  
No appeals as to costs

[Omitted]

Page 3 of 26

57.  
58.  
59.

60.

61.  
62.

### XIII.—RE-MARRIAGE

Liberty to parties to marry again

English clergyman not compelled to solemnize marriages of persons divorced for adultery

English minister refusing to perform ceremony to permit use of his church

### XIV.—MISCELLANEOUS

Decree for separation or protection order valid as to persons dealing with wife before reversal

Indemnity of persons making payment to wife without notice of reversal of decree or protection-order

Bar of suit for criminal conversation

Power to make rules

### SCHEDULE OF FORMS

# THE DIVORCE ACT

ACT No. IV OF 1869

[26<sup>th</sup> February, 1869]

An Act to amend the law relating to Divorce and Matrimonial Causes ![\* \*]

Preamble. WHEREAS it is expedient to amend the law relating to the divorce of persons professing the Christian religion, and to confer upon certain Courts jurisdiction in matters matrimonial ; It is hereby enacted as follows :—

## I.—PRELIMINARY

1. Short title. Commencement of Act. This Act may be called the ![\*] Divorce Act, and shall come into operation on the first day of April, 1869.

2. Extent of Act. \*[This Act extends to the whole of Pakistan.]

Extent of power to grant relief generally, and to make decrees of dissolution, or of nullity. \*[Nothing hereinafter contained shall authorise any Court to grant any relief under this Act except where the petitioner “[or respondent] professes the Christian religion,

or to make decrees of dissolution of marriage except where the parties to the marriage are domiciled in '[Pakistan] at the time when the petition is presented,

S[or to make decrees of nullity of marriage except where the marriage if solemnized before the 15th day of August, 1947, has been solemnized in India and if solemnized on or after that date has been solemnized in Pakistan and the petitioner is resident in Pakistan at the time of presenting the petition.]

or to grant any relief under this Act, other than a decree of dissolution of marriage or of nullity of marriage, except where the petitioner resides in '[Pakistan] at the time of presenting the petition. ]

3. Interpretation-clause. In this Act, unless there be something repugnant in the subject or context,—

(2) ‘Court of Civil Judge’. “Court of Civil Judge” means, in the case of any petition under

this Act, the Court of the Civil Judge within the local limits of whose ordinary jurisdiction the husband and wife reside or last resided together ;

(3) ‘Court’. “Court” means the High Court, the District Court or the Court of Civil Judge, as the case may be ;]]

‘Omitted by A. O., 1949, Sch.

?Subs. by the Central Laws (Statute Reform) Ordinance, 1960 (Ordinance No. XXI of 1960), s. 3 and Sch  
3Subs. by Act No. XXV of 1926.

‘Ins. by Act No. XXX of 1927, s. 2.

Subs. by Act No. LVII of 1950, s. 2. (w. e. f. 15<sup>th</sup> day of August, 1947).

°Subs. by Act, 1975 (Act No. IV of 1976), s. 2.

7Omitted by the Federal Laws (Revision and Declaration) Ordinance, 1981 (Ordinance No. XXVII of 1981), s. 3, Sch. II



(5) "Minor children". "minor children" means, in the case of sons of '[Pakistani] fathers, boys who have not completed the age of sixteen years, and, in the case of daughters of '[Pakistani] fathers, girls who have not completed the age of thirteen years : in other cases it means unmarried children who have not completed the age of eighteen years :

(6) "Incestuous adultery". "incestuous adultery" means adultery committed by a husband with a woman with whom, if his wife were dead, he could not lawfully contract marriage by reason of her being within the prohibited degrees of consanguinity (whether natural or legal) or affinity :

(7) "Bigamy with adultery". "bigamy with adultery" means adultery with the same woman with whom the bigamy was committed :

29 66

(8) "Marriage with another woman". "marriage with another woman" means marriage of any person, being married, to any other person, during the life of the former wife, whether the second marriage shall have taken place within [Pakistan] or elsewhere :

(9) "Desertion." "desertion" implies an abandonment against the wish of the person charging it : and

(10) "Property." "property" includes, in the case of a wife, any property to which she is entitled for an estate in remainder or reversion, or as a trustee, executrix or administratrix ; and the date of the death of the testator or intestate shall be deemed to be the time at which any such wife becomes entitled as executrix or administratrix.

## IL—JURISDICTION

4. [Matrimonial Jurisdiction of High Courts to. be exercised subject to Act.] Omitted by the Divorce (Amdt.) Act, 1975 (IV of 1976), s. 3.

5. [Enforcement of decrees or orders made heretofore by Supreme or High Court.] Omitted by the Divorce (Amdt.) Act, 1975 (IV of 1976) s. 4.

6. [Pending suits.] Omitted by the Divorce (Amdt.) Act, 1975 (IV of 1976), s. 4.

7. [Court to act on principles of English Divorce Court.] Omitted by the Federal Laws (Revision and Declaration) Ordinance, 1981 (XXVII of 1981), s. 3 and II Sch.

8. [Extraordinary Jurisdiction of High Court.] Omitted by the Divorce (Amdt.) Act, 1975 IV of 1976), s. 6.

9. [Reference to High Court.] Omitted by the Divorce (Amdt.) Act, 1975 (IV of 1976), s.7.

"Subs. by Act, 1975 (Act No. IV of 1976), s. 2.

?Subs. by the Central Laws (Adaptation) Order, 1961 (President's Order No. 1 of 1961), Art. 2 and Sch.,

### III.—DISSOLUTION OF MARRIAGE

10. When husband may petition for dissolution. Any husband may present a petition to the [Court of Civil Judge] praying that his marriage may be dissolved on the ground that this wife has, since the solemnization thereof, been guilty of adultery.

When wife may petition for dissolution. Any wife may present a petition to the '[Court of Civil Judge] praying that her marriage may be dissolved on the ground that, since the solemnization thereof, her husband has exchanged his profession of Christianity for the profession of some other religion, and gone through a form of marriage with another woman ;

or has been guilty of incestuous adultery.

or of bigamy with adultery.

or of marriage with another woman with adultery.  
or of rape, sodomy or bestiality.

or of adultery coupled with such cruelty as without adultery would have entitled her to a divorce a mensa et toro.

or of adultery coupled with desertion, without reasonable excuse, for two years or upwards.

Contents of petition. Every such petition shall state, as distinctly as the nature of the case permits, the facts on which the claim to have such marriage dissolved is founded.

11. Adulterer to be co-respondent. Upon any such petition presented by a husband, the petitioner shall make the alleged adulterer a co-respondent to the said petition, unless he is excused from so doing on one of the following grounds, to be allowed by the Court :—

(1) that the respondent is leading the life of a prostitute, and that the petitioner knows of no person with whom the adultery has been committed ;

(2) that the name of the alleged adulterer is unknown to the petitioner although he has made due efforts to discover it ;

(3) that the alleged adulterer is dead.

12. Court to be satisfied of absence of collusion. Upon any such petition for the dissolution of a marriage, the Court shall satisfy itself, so far as it reasonably can, not only as to the facts alleged, but also whether or not the petitioner has been in any manner accessory to, or conniving at, the going through of the said form of marriage, or the adultery, or has condoned the same, and shall also inquire into any countercharge which may be made against the petitioner.

13. Dismissal of petition. In case the Court, on the evidence in relation to any such petition, is satisfied that the petitioner's case has not been proved, or is not satisfied that the alleged adultery has been committed,

or finds that the petitioner has, during the marriage, been accessory to, or conniving at, the going through of the said form of marriage, or the adultery of the other party to the marriage, or has condoned the adultery complained of,

or that the petition is presented or prosecuted in collusion with either of the respondents. then and in any of the said cases the Court shall dismiss the petition.

'Subs. and omitted by Act, 1975 (Act No. IV of 1976), ss. 8 and 9.



14. Power to Court to pronounce decree for dissolving marriage. In case the Court is satisfied on the evidence that the case of the petitioner has been proved,

and does not find that the petitioner has been in any manner accessory to, or conniving at, the going through of the said form of marriage, or the adultery of the other party to the marriage, or has condoned the adultery complained of,

or that the petition is presented or prosecuted in collusion with either of the respondents. the Court shall pronounce a decree declaring such marriage to be dissolved ![\* \* \*]

Provided that the Court shall not be bound to pronounce such decree if it finds that the petitioner has, during the marriage, been guilty of adultery,

or if the petitioner has, in the opinion of the Court, been guilty of unreasonable delay in presenting or prosecuting such petition,

or of cruelty towards the other party to the marriage,

or of having deserted or wilfully separated himself or herself from the other party before the adultery complained of, and without reasonable excuse.

or of such wilful neglect or misconduct of or towards the other party as has conduced to the adultery.

Condonation. No adultery shall be deemed to have been condoned within the meaning of this Act unless where conjugal co-habitation has been resumed or continued.

15. Relief in case of opposition on certain grounds. In any suit instituted for dissolution of marriage, if the respondent opposes the relief sought on the ground, in case of such a suit instituted by a husband, of his adultery, cruelty or desertion without reasonable excuse, or, in case of such a suit instituted by a wife, on the ground of her adultery and cruelty, the Court may in such suit give to the respondent, on his or her application, the same relief to which he or she would have been entitled in case he or she had presented a petition seeking such relief, and the respondent shall be competent to give evidence of or relating to such cruelty or desertion.

16. [Decrees for dissolution to be nisi.] Omitted by the Divorce (Amdt.) Act, 1975 UV of 1976), s. 11.

17. [Confirmation of decree for dissolution by District Judge.] Omitted by the Divorce (Amdt.) Act 1975 (IV of 1976), s. 11.

17A. [Appointment of officer to exercise duties of King's Proctor.] Omitted by the Divorce (Amdt.) Act. 1975 (IV of 1976), s. 11.

'Omitted by Act, 1975 (Act No. IV of 1976), s. 10.

#### IV.— NULLITY OF MARRIAGE

18. Petition for decree of nullity. Any husband or wife may present a petition to the '[Court of Civil Judge], praying that his or her marriage may be declared null and void.

19. Grounds of decrees. Such decree may be made on any of the following grounds :—

(1) that the respondent was impotent at the time of the marriage and at the time of the institution of the suit ;

(2) that the parties are within the prohibited degrees of consanguinity (whether natural or legal) or affinity ;

(3) that either party was a lunatic or idiot at the time of the marriage ;

(4) that the former husband or wife of either party was living at the time of the marriage, and the marriage with such former husband or wife was then in force.

Nothing in this section shall affect the jurisdiction of the '[Court] to make decrees of nullity of marriage on the ground that the consent of either party was obtained by force or fraud.

20. [Confirmation of District Judge's decree.] Omitted by the Divorce (Amdt.) Act, 1975. (IV of 1976), s. 14.

21. Children of annulled marriage. Where a marriage is annulled on the ground that a former husband or wife was living, and it is adjudged that the subsequent marriage was contracted in good faith and with the full belief of the parties that the former husband or wife was dead, or when a marriage is annulled on the ground of insanity, children begotten before the decree is made shall be specified in the decree, and shall be entitled to succeed, in the same manner as legitimate children, to the estate of the parent who at the time of the marriage was competent to contract.

#### V.—JUDICIAL SEPARATION

22. Bar to decree for divorce a mensa et toro but judicial separation obtainable by husband or wife. No decree shall hereafter be made for a divorce a mensa et toro, but the husband or wife may obtain a decree of judicial separation, on the ground of adultery, or cruelty, or desertion without reasonable excuse for two years or upwards, and such decree shall have the effect of a divorce a mensa et toro under the existing law, and such other legal effect as hereinafter mentioned.

23. Application for separation made by petition. Application for judicial separation on any one of the grounds aforesaid may be made by either husband or wife by petition to the '[Court of Civil Judge] 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.

24. Separated wife deemed spinster with respect to after-acquired property. In every case of a judicial separation under this Act, the wife shall, from the date of the sentence, and whilst the separation continues, be considered as unmarried with respect to property of every description which she may acquire, or which may come to or devolve upon her.

'Subs. by Act, 1975 (Act No. IV of 1976), ss. 12, 13 and 15.

Such property may be disposed of by her in all respects as an unmarried woman, and on her decease the same shall, in case she dies intestate, go as the same would have gone if her husband had been then dead :

Provided that, if any such wife again cohabits with her husband, all such property as she may be entitled to when such cohabitation takes place shall be held to her separate use, subject, however, to any agreement in writing made between herself and her husband whilst separate.

25. Separated wife deemed spinster for purposes of contract and suing. In every case of a judicial separation under this Act, the wife shall whilst so separated, be considered as an unmarried woman for the purposes of contract, and wrongs and injuries, and suing and being sued in any civil proceeding ; and her husband shall not be liable in respect of any contract, act or costs entered into, done, omitted or incurred by her during the separation :

Provided that where, upon any such judicial separation, alimony has been decreed or ordered to be paid to the wife, and the same is not duly paid by the husband, he shall be liable for necessities supplied for her use :

Provided also that nothing shall prevent the wife from joining, at any time during such separation, in the exercise of any joint power given to herself and her husband.

## REVERSAL OF DECREE OF SEPARATION

26. Decree of separation obtained during absence of husband or wife may be reversed. Any husband or wife, upon the application of whose wife or husband, as the case may be, a decree of judicial separation has been pronounced, may, at any time thereafter, present a petition to the Court by which the decree was pronounced, praying for a reversal of such decree, on the ground that it was obtained in his or her absence, and that there was reasonable excuse for the alleged desertion, where desertion was the ground of such decree.

The Court may, on being satisfied of the truth of the allegations of such petition, reverse the decree accordingly ; but such reversal shall not prejudice or affect the rights or remedies which any other person would have had, in case it had not been decreed, in respect of any debts, contracts or acts of the wife incurred, entered into or done between the times of the sentence of separation and of the reversal thereof.

## VI—PROTECTION-ORDERS

27. Deserted wife may apply to Court for protection. Any wife to whom section 4 of the Indian Succession Act, 1865,<sup>1</sup> (X of 1865), does not apply, may, when deserted by her husband, present a petition to the \*[Court of Civil Judge] at any time after such desertion, for an order to protect any property which she may have acquired or may acquire, and any property of which she may have become possessed or may become possessed after such desertion, against her husband or his creditors, or any person claiming under him.

28. Court may grant protection-order. The Court, if satisfied of the fact of such desertion, and that the same was without reasonable excuse, and that the wife is maintaining herself by her own industry or property, may make and give to the wife an order protecting her earnings and other property from her husband and all creditors and persons claiming under him. Every such order shall state the time at which the desertion commenced, and shall, as regards all persons dealing with the wife in reliance thereon, be conclusive as to such time.

<sup>1</sup>Succession Act, 1925 (Act No. XXXIX of 1925).

\*Subs. by Act, 1975 (Act No. IV of 1976), s. 15.



29. Discharge or variation of orders. The husband or any creditor of, or person claiming under him, may apply to the Court by which such order was made for the discharge or variation thereof, and the Court, if the desertion has ceased, or if for any other reason it think fit so to do, may discharge or vary the order accordingly.

30. Liability of husband seizing wife's property after notice of order. If the husband, or any creditor of, or person claiming under, the husband, seizes or continues to hold any property of the wife after notice of any such order, he shall be liable, at the suit of the wife (which she is hereby empowered to bring), to return or deliver to her the specific property, and also to pay her a sum equal to double its value.

31. Wife's legal position during continuance of order. So long as any such order of protection remains in force, the wife shall be and be deemed to have been, during such desertion of her, in the like position in all respects, with regard to property and contracts and suing and being sued, as she would be under this Act if she obtained a decree of judicial separation.

## VII.—RESTITUTION OF CONJUGAL RIGHTS

32. Petition for restitution of conjugal rights. When either the husband or the wife has, without reasonable excuse withdrawn from the society of the other, either wife or husband may apply, by petition to the '[Court of Civil Judge]', 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.

33. Answer to petition. Nothing shall be pleaded in answer to a petition for restitution of conjugal rights which would not be ground for a suit for judicial separation or for a decree of nullity of marriage.

## VIII.—DAMAGES AND COSTS

34. Husband may claim damages from adulterer. Any husband may, either in a petition for dissolution of marriage or for judicial separation, or in a petition to the '[Court of Civil Judge]' limited to such object only, claim damages from any person on the ground of his having committed adultery with the wife of such petitioner.

Such petition shall be served on the alleged adulterer and the wife unless the Court dispenses with such service, or directs some other service to be substituted.

The damages to be recovered on any such petition shall be ascertained by the said Court, although the respondents or either of them may not appear.

After the decision has been given, the Court may direct in what manner such damages shall be paid or applied.

35. Power to order adulterer to pay costs. Whenever in any petition presented by a husband, the alleged adulterer has been made a co-respondent, and the adultery has been established, the Court may order the co-respondent to pay the whole or any part of the cost of the proceedings :

Provided that the co-respondent shall not be ordered to pay the petitioner's cost —

'Subs. by Act, 1975 (Act No. IV of 1976), s. 15.



(1) if the respondent was, at the time of the adultery, living apart from her husband and leading the life of a prostitute, or

(2) if the co-respondent had not, at the time of the adultery, reason to believe the respondent to be a married woman.

#### IX.—ALIMONY

36. Alimony pendente lite. In any suit under this Act, whether it be instituted by a husband or a wife, and whether or not she has obtained an order of protection, the wife may present a petition for alimony pending the suit.

Such petition shall be served on the husband ; and the Court, on being satisfied of the truth of the statements therein contained, may make such order on the husband for payment to the wife of alimony pending the suit as it may deem just :

Provided that alimony pending the suit shall in no case exceed one-fifth of the husband's average net income for the three years next preceding the date of the order, and shall continue, in case of a decree for dissolution of marriage or of nullity of marriage, until the decree is made absolute or is confirmed, as the case may be.

37. Power to order permanent alimony.['\* i y \* \* \* \*']

lpe \* \* \* \* \*]

'The Court may, if it thinks fit, on. any decree declaring a marriage to be dissolved or on any decree of judicial separation obtained by the wife, order] that the husband shall, to the satisfaction of the Court, secure to the wife such gross sum of money, or such annual sum of money for any term not exceeding her own life, as having regard to her fortune (if any), to the ability of the husband, and to the conduct of the parties, it thinks reasonable, and for that purpose may cause a proper instrument to be executed by all necessary parties.

Power to order monthly or weekly payments. In every such case the Court may make an order on the husband for payment to the wife of such monthly or weekly sums for her maintenance and support as the Court may think reasonable :

Provided that if the husband afterwards from any cause becomes unable to make such payments, it shall be lawful for the Court to discharge or modify the order, or temporarily to suspend the same as to the whole or any part of the money so ordered to be paid, and again to revive the same order wholly or in part, as to the Court seems fit.

38. Court may direct payment of alimony to wife or to her trustee. In all cases in which the Court makes any decree or order for alimony it may direct the same to be paid either to the wife herself, or to any trustee on her behalf to be approved by the Court, and may impose any terms or restrictions which to the Court seem expedient, and may from time to time appoint a new trustee, if it appears to the Court expedient so to do.

'Omitted and subs. by Act, 1975 (Act No. IV of 1976), s. 16, 17 (a) and (b).

## X.—SETTLEMENTS

39. Power to order settlement of wife's property for benefit of husband and children.

Whenever the Court pronounces a decree of dissolution of marriage or judicial separation for adultery of the wife, if it is made to appear to the Court that the wife is entitled to any property, the Court may, if it think fit, order such settlement as it thinks reasonable to be made of such property or any part thereof, for the benefit of the husband, or of the children of the marriage, or of both.

Any instrument executed pursuant to any order of the Court at the time of or after the pronouncing of a decree of dissolution of marriage or judicial separation shall be deemed valid notwithstanding the existence of the disability of coverture at the time of the execution thereof.

Settlement of damages. The Court may direct that the whole or any part of the damages recovered under section 34 shall be settled for the benefit of the children of the marriage, or as a provision for the maintenance of the wife.

40. Inquiry into existence of ante-nuptial or post-nuptial settlements.

Ts \* \* \* \* \*]

"The Court, after making a decree for dissolution of marriage or a decree of nullity of marriage, may] inquire into the existence of ante-nuptial or post-nuptial settlements made on the parties whose marriage is the subject of the decree, and may make such orders, with reference to the application of the whole or a portion of the property settled, whether for the benefit of the husband or the wife, or of the children (if any) of the marriage, or of both children and parents, as to the Court seems fit :

Provided that the Court shall not make any order for the benefit of the parents or either of them at the expense of the children.

## XI.— CUSTODY OF CHILDREN

41. Power to make orders as to custody of children in suit for separation. In any suit for obtaining a judicial separation the Court may from time to time, before making its decree, make such interim orders, and may make such provision in the decree, as it deems proper with respect to the custody, maintenance and education of the minor children, the marriage of whose parents is the subject of such suit, and may, if it thinks fit, direct proceedings to be taken for placing such children under the protection of the said Court.

42. Power to make such orders after decree. The Court, after a decree of judicial separation, may upon application (by petition) for this purpose make, from time to time, all such orders and provision, with respect to the custody, maintenance and education of the minor children, the marriage of whose parents is the subject of the decree, or for placing such children under the protection of the said Court, as might have been made by such decree or by interim orders in case the proceedings for obtaining such decree were still pending.

'[43. Power to make orders as to custody of children in suits for dissolution or nullity.— In any suit for obtaining a dissolution of marriage or a decree of nullity of marriage, the Court may from time to time, before making its decree, make such interim orders, and may make such provision in the decree, as it deems proper with respect to the custody, maintenance and education of the minor children, the marriage of whose parents is the subject of the suit ; and may, if it thinks fit, direct proceedings to be taken for placing such children under the protection of the Court.]

'Omitted and subs. by Act, 1975 (Act No. IV of 1976), ss. 18 (a) and (b) and 19.



144, Power to make such orders after decree.—The Court, after a decree for dissolution of marriage or a decree of nullity of marriage, may, upon application by petition for the purpose, make from time to time all such orders and provision, with respect to the custody, maintenance and education of the minor children, the marriage of whose parents was the subject of the decree, or for placing such children under the protection of the Court, as might have been made by such decree or by such interim orders as aforesaid. ]

## XII.—PROCEDURE

45. Code of Civil Procedure to apply. Subject to the provisions herein contained, all proceedings under this Act between party and party shall be regulated by the Code of Civil Procedure”.

46. Forms of petitions and statements. The forms set forth in the Schedule to this Act, with such variation as the circumstances of each case require, may be used for the respective purposes mentioned in such schedule.

47. Stamp on petition. Petition to state absence of collusion. Every petition under this Act for a decree of dissolution of marriage or of nullity of marriage, or of judicial separation >[\* \* \*] shall 3[\* \* \*] state that there is not any collusion or connivance between the petitioner and the other party to the marriage ;

Statements to be verified. the statements contained in every petition under this Act shall be verified by the petitioner or some other competent person in manner required by law for the verification of plaints, and may at the hearing be referred to as evidence.

48. Suits on behalf of lunatics. When the husband or wife is a lunatic or idiot, any suit under this Act (other than a suit for restitution of conjugal rights) may be brought on his or her behalf by the committee or other person entitled to his or her custody.

49. Suits by minors. Where the petitioner is a minor, he or she shall sue by his or her next friend to be approved by the Court ; and no petition presented by a minor under this Act shall be filed until the next friend has undertaken in writing to be answerable for costs.

Such undertaking >[\* \* \*] shall be filed in Court, and the next friend shall thereupon be liable in the same manner and to the same extent as if he were a plaintiff in an ordinary suit.

50. Service of petition. Every petition under this Act shall be served on the party to be affected thereby, either within or without “[Pakistan], in such manner as the High Court by general or special order from time to time directs :

Provided that the Court may dispense with such service altogether in case it seems necessary or expedient so to do.

51. Mode of taking evidence. The witnesses in all proceedings before the Court, where their attendance can be had, shall be examined orally, and any party may offer himself or herself as a witness, and shall be examined and may be cross-examined and re-examined, like any other witness :

Provided that the parties shall be at liberty to verify their respective cases in whole or in part by affidavit, but so that the deponent in every such affidavit shall, on the application of the opposite party, or by direction of the Court, be subject to be cross examined by or on behalf of the opposite party orally, and after such cross-examination may be re-examined orally as aforesaid by or on behalf of the party by whom such affidavit was filed.

'Subs. by Act, 1975 (Act No. IV of 1976), s. 20.

Code of Civil Procedure Act, 1908 (V of 1908).

3Rep. by the Court-Fees Act, 1870 (VII of 1870), see now Art. 7 of Sch. II to that Act.

'Subs. by the Central Laws (Statute Reform) Ordinance, 1960 (Ordinance No. XXI of 1960), s.3 and Sch. II (w. e. f. the 14" Oc

52. Competence of husband and wife to give evidence as to cruelty or desertion. On any petition presented by a wife, praying that her marriage may be dissolved by reason of her husband having been guilty of adultery coupled with cruelty, or of adultery coupled with desertion without reasonable excuse, the husband and wife respectively shall be competent and compellable to give evidence of or relating to such cruelty or desertion.

53. Power to close doors. The whole or any part of any proceeding under this Act may be heard, if the Court thinks fit, with closed doors.

54. Power to adjourn. The Court may from time to time adjourn the hearing of any petition under this Act, and may require further evidence thereon if it sees fit so to do.

55. Enforcement of and appeal from orders and decrees. All decrees and orders made by the Court in any suit or proceeding under this Act shall be enforced and may be appealed from, in the like manner as the decrees and orders of the Court made in the exercise of its original civil jurisdiction are enforced and may be appealed from under the laws, rules and orders for the time being in force :

No appeals as to costs. Provided [\*] that there shall be no appeal on the subject of costs only.

56. [Appeal to Supreme Court.] Omitted by the Divorce (Amdt.) Act, 1975 (IV of 1976), s. 22.

### XIII.—\_RE-MARRIAGE

257. Liberty to parties to marry again.— After the expiry of six months from the date of a decree for the dissolution of a marriage, or, where an appeal has been presented against any such decree, after the dismissal of such appeal or the declaration of the marriage as dissolved as a result of such appeal, but not sooner, it shall be lawful for the parties to the marriage to marry again as if the prior marriage had been dissolved by death].

58. English clergyman not compelled to solemnize marriages of persons divorced for adultery. No clergyman in Holy Orders of the [\*] Church of England 3[\* \*] shall be compelled to solemnize the marriage of any person whose former marriage has been dissolved on the ground of his or her adultery, or shall be liable to any suit, penalty or censure for solemnizing or refusing to solemnize the marriage of any such person.

59. English minister refusing to perform ceremony to permit use of his church. When any minister of any church or chapel of the said 3[\*] Church refuses to perform such marriage service between any persons who, but for such refusal would be entitled to have the same service performed in such church or chapel, such minister shall permit any other minister in Holy Orders of the said Church entitled to officiate within the diocese in which such church or chapel is situate, to perform such marriage service in such church or chapel.

'The Court Fees Act, 1870 (Act No. 1870), Art. 7. Sch. II  
Omitted and subs. by Act, 1975 (Act No. IV of 1976), ss. 21 and 23.

\*Repealing by Act No. 12 of 1873.

#### XIV.—MISCELLANEOUS

60. Decree for separation or protection order valid as to persons dealing with wife before reversal. Every decree for judicial separation or order to protect property obtained by a wife under this Act shall, until reversed or discharged, be deemed valid, so far as necessary, for the protection of any person dealing with the wife.

No reversal, discharge or variation of such decree or order shall affect any rights or remedies which any person would otherwise have had in respect of any contracts or acts of the wife entered into or done between the dates of such decree or order and of the reversal, discharge or variation thereof.

Indemnity of persons making payment to wife without notice of reversal of decree or protection order. All persons who in reliance on any such decree or order make any payment to, or permit any transfer or act to be made or done by, the wife who has obtained the same shall, notwithstanding such decree or order may then have been reversed, discharged or varied, or the separation of the wife from her husband may have ceased, or at some time since the making of the decree or order been discontinued, be protected and indemnified as if, at the time of such payment, transfer or other act, such decree or order were valid and still subsisting without variation, and the separation had not ceased or been discontinued,

unless, at the time of the payment, transfer or other act, such persons had notice of the reversal, discharge or variation of the decree or order or of the cessation or discontinuance of the separation.

61. Bar of suit for criminal conversation. After this Act comes into operation, no person competent to present a petition under sections 2 and 10 shall maintain a suit for criminal conversation with his wife.

62. Power to make rules. The High Court shall make such rules under this Act as it may from time to time consider expedient, and may from time to time alter and add to the same :

Provided that such rules, alterations and additions are consistent with the provisions of this Act and the Code of Civil Procedure!.

All such rules, alterations and additions shall be published in the 7[official Gazette].

'The Code of Civil Procedure (Act No. V of 1908).

?Subs. by A. O., 1937.

## SCHEDULE OF FORMS

No. 1—PETITION BY HUSBAND FOR A DISSOLUTION OF MARRIAGE WITH DAMAGES AGAINST CO-RESPONDENT, BY REASON OF ADULTERY.  
(See sections 10 and 34)

In the '[\*] Court of

The day of 186.

The petition of A. B., of  
SHEWETH,

1. That your petitioner was on the day of , one thousand eight hundred and ,

lawfully married to C.B., then C. D., spinster, at

2. That from his said marriage, your petitioner lived and cohabited with his said wife at and at jin , and lastly at in , and that your petitioner and his said wife have had issue of their said marriage, five children, of whom two sons only survive, aged respectively twelve and fourteen years.

3. That during the three years immediately preceding the day of one thousand eight hundred and , X. Y. was constantly, with few exceptions, residing in the house of your petitioner at aforesaid, and that on divers occasions during the said period,

the dates of which are unknown to your petitioner, the said C.B. in your petitioner's said house committed adultery with the said \_X. Y.

4. That no collusion or connivance exists between me and my said wife for the purpose of obtaining a dissolution of our said marriage or for any other purpose.

Your petitioner, therefore, prays that this ![\*] Court will decree a dissolution of the said marriage, and that the said X. Y. do pay the sum of rupees 5,000 as damages by reason of his having committed adultery with your petitioner's said wife, such damages to be paid to your petitioner, or otherwise paid or applied as to this '[\*] Court seems fit.

(Signed) A.B.  
Form of Verification

I, A.B., the petitioner name in the above petition, do declare that what is stated therein is true to the best of my information and belief.

'Omitted by Act, 1975 (Act No. IV of 1976), s. 24.



No. 2.—RESPONDENT'S STATEMENT IN ANSWER TO No. 1.

In the Court of the day of

Between 4.B., petitioner,  
C.B., respondent, and

X.Y., co-respondent.

C. B., the respondent, by D.E., her attorney [or vakil], in answer to the petition of A.B., says that she denies that she has on divers or any occasions committed adultery with X. Y., as alleged in the third paragraph of the said petition.

Wherefore the respondent prays that this '[\*] Court will reject the said petition.

(Signed) CB.

No. 3.—CO-RESPONDENT'S STATEMENT IN ANSWER TO No.1

In the '[\*] Court of  
The day of

Between A.B., petitioner,  
C.B., respondent, and

X. Y., co-respondent.

X. Y., the co-respondent, in answer to the petition filed in this cause, saith that he denies that he committed adultery with the said C. B., as. alleged in the said petition.

Wherefore the said X. Y., prays that this '[\*] Court will reject the prayer of the said petitioner and order him to pay the costs of and incident to the said petition.

(Signed) X.Y.

'Omitted by Act, 1975 (Act No. IV of 1976), s. 24.

No. 4.—PETITION FOR DECREE OF NULLITY OF MARRIAGE

(See section 18)

In the ![\*] Court of

The day of ; 186.

The petition of AB., falsely called A.D.,

SHEWETH,

1. That on the , day of , one thousand eight hundred and , your

petitioner, then a spinster, eighteen years of age, was married in fact, though not in law, to C.D., then a bachelor of about thirty years of age, at [some place in ?[Pakistan]].

2. That from the said day of , one thousand eight hundred and ,  
, until the month of , one thousand eight hundred and  
your petitioner lived and cohabited with the said C.D., at divers places, and particularly at  
aforesaid.

3. That the said C. D., has never consummated the said pretended marriage by carnal  
copulation.

4. That at the time of the celebration of your petitioner's said pretended marriage, the said  
C.D. was, by reason of his impotency or malformation, legally incompetent to enter into the contract  
of marriage.

5. That there is no collusion or connivance between her and the said C.D. with respect to the  
subject of this suit.

Your petitioner therefore prays that this '[\*] Court will declare that the said marriage is null  
and void.

(Signed) AB.

'Omitted by Act, 1975 (Act No. IV of 1976), s. 24.

\*Subs. by the Central Laws (Statute Reform) Ordinance, 1960 (Ordinance No. XXI of 1960), s. 3, Sch. II (

No. 5.—PETITION BY WIFE FOR JUDICIAL SEPARATION ON THE GROUND OF HER

HUSBAND'S ADULTERY.

(See section 22)

In the '[\*] Court of

The day of 186.

The petition of C.B., of , the wife of A.B.

SHEWETH,

That on the day of , one thousand eight hundred and sixty ,

your petitioner, then C.D., was lawfully married to A.B., at the Church of , in the

2. That after her said marriage your petitioner cohabited with the said A.B. at and

at , and that your petitioner and her said husband have issue living of their said marriage,

three children, to wit, etc., etc.

3. That on divers occasions in or about the months of August, September and October, one thousand eight hundred and sixty , the said A. B., at aforesaid, committed adultery with E.F., who was then living in the service of the said A. B. and your petitioner at their said residence aforesaid.

4. That on divers occasions in the months of October, November and December, one thousand eight hundred and sixty , the said A. B., at aforesaid, committed adultery with G. H., who was then living in the service of the said A. B. and your petitioner at their said residence aforesaid.

5. That no collusion or connivance exists between your petitioner and the said A. B. with respect to the subject of the present suit.

Your petitioner therefore prays that this '[\*] Court will decree a judicial separation to your petitioner from her said husband by reason of his aforesaid adultery.

(Signed) C.B.

'Omitted by Act, 1975 (Act No. IV of 1976), s. 24.

No.—6. STATEMENT IN ANSWER TO No. 5

In the ![\*] Court of

B. against B.

The day of

The respondent, 4.B., by W. Y., his attorney [or vakil], saith,—

1. That he denies that he committed adultery with E.F., as in the third paragraph of the petition alleged.

2. That the petitioner condoned the said adultery with £.F., if any.

3. That he denies that he committed adultery with G.H., as in the fourth paragraph of the petition alleged.

4. That the petitioner condoned the said adultery with G. H., if any.

Wherefore this respondent prays that this '[\*] Court, will reject the prayer of the said petition.

(Signed) A.B.

No.7.—STATEMENT IN REPLY TO No. 6.

In the ![\*] Court of

B. against B.

The day of

The petitioner, C. B., by her attorney [or vakil], says,—

1. That she denies that she condoned the said adultery of the respondent with E. F., as in the second paragraph of the statement in answer alleged.

2. That even if she had condoned the said adultery, the same has been revived by the subsequent adultery of the respondent with G. H., as set forth in the fourth paragraph of the petition.

(Signed) CB.

'Omitted by Act, 1975 (Act No. IV of 1976), s. 24.

No. 8.—PETITION FOR A JUDICIAL SEPARATION BY REASON OF CRUELTY

(See section 22)  
In the [\*] Court of  
The day of , 186.

The petition of A. B. (wife of C. B.) of  
SHEWETH,

1. That on the day of , one thousand eight hundred and ,  
your petitioner, then A. D., spinster, was lawfully married to C. B., at

2. That from her said marriage, your petitioner lived and cohabited with her said husband at  
until the day of , one thousand eight hundred and , When

your petitioner separated from her said husband as hereinafter more particularly mentioned, and that  
your petitioner and her said husband have had no issue of their said marriage.

3. That from and shortly after your petitioner's said marriage, the said C. B., habitually  
conducted himself towards your petitioner with great harshness and cruelty, frequently abusing her in  
the coarsest and most insulting language, and beating her with his fists, with a cane, or with some  
other weapon.

4. That on an evening in or about the month of one thousand eight hundred and , the said C.  
B., in the highway and opposite to the house in which your petitioner and the said C. B. were then  
residing at aforesaid, endeavoured to knock your petitioner down, and was only prevented from so  
doing by the interference of F. D., your petitioner's brother.

5. That subsequently on the same evening, the said C. B., in his said house at aforesaid,  
struck your petitioner with his clenched fist a violent blow on her face.

6. That on one Friday night in the month of , one thousand eight hundred and \_\_, the  
said C. B., in , without provocation, threw a knife at your petitioner, thereby inflicting a  
severe wound on her right hand.

7. That on the afternoon of the day of , one thousand eight hundred and , your  
petitioner, by reason of the great and continued cruelty practised towards her by her said husband,  
with assistance withdrew from the house of her said husband to the house of her father at , that  
from and after the said day of , one thousand eight hundred and , your petitioner hath  
lived separate and apart from her said husband, and hath never returned to his house or to  
cohabitation with him.

8. That there is no collusion or connivance between your petitioner and her said husband with  
respect to the subject of the present suit.

'Omitted by Act, 1975 (Act No. IV of 1976), s. 24.

Your petitioner, therefore, prays that this '[\*] Court will decree a judicial separation between your petitioner and the said C. B., and also order that the said C.B. do pay the costs of and incident to these proceedings.

(Signed) A. B.

Form of Verification : see No. 1

No. 9.—STATEMENT IN ANSWER TO No. 8

In the '[\*] Court of

The day of

Between A. B., petitioner, and C. B., respondent.

C.B., the respondent, in answer to the petition filed in this cause, by W. J., his attorney /or

vakil], saith that he denies that he has been guilty of cruelty towards the said A. B.. as alleged in the said petition.

(Signed) CB.

No. 10.—PETITION FOR REVERSAL OF DECREE OF SEPARATION

(See section 24)

In the 7[\*] Court of

The day of , 186.

The petition of A. B., of

SHEWETH,

1. That your petitioner was on the day of lawfully married to.

2. That on the day of , this '[\*] Court, at the petition of , pronounced a

decree affecting the petitioner to the effect following, to wit,—

[Here set out the decree.]

3. That such decree was obtained in the absence of your petitioner, who was then residing at.

[State facts tending to show that the petitioner did not know of the proceedings ; and, further, that had he known he might have offered a sufficient defence].

'Omitted by Act No. 1975 (Act No. IV of 1976), s.24.

or

That there was reasonable ground for your petitioner leaving his said wife, for that his said wife.

[Here state any legal grounds justifying the petitioner's separation from his wife.]

Your petitioner, therefore, prays that this [\*] Court will reverse the said decree.

(Signed) A.B.

Form of Verification : see No. 1

No. 11.—PETITION FOR PROTECTION-ORDER  
(See section 27)

In the ![\*] Court of  
ir" \* \* 2 \* \*

The day of, 186.  
The petition of C. B., of  
The wife of A. B.

SHEWETH,

That on the day of she was lawfully married to A. B. at

That she lived and cohabited with the said A. B. for years at , and also at

and had had children, issue of her said marriage, of whom are now living with the applicant, and wholly dependent upon her earnings.

That on or about , the said A. B., without any reasonable cause, deserted the applicant, and hath ever since remained separate and apart from her.

That since the desertion of her said husband, the applicant hath maintained herself by her own industry for on her own property, as the case may be], and hath thereby and otherwise acquired certain property consisting of /here state generally the nature of the property].

Wherefore she prays an order for the protection of her earnings and property acquired since the said day of

from the said A. B., and from all creditors and persons claiming under him.

(Signed) CB.

'Omitted by Act, 1975 (Act No. IV of 1976), s. 24.

No. 12.—PETITION FOR ALIMONY PENDING THE SUIT

(See section 36)

In the ![\*] Court of

B. against B.

The day of , 186.

The petition of C. B., the lawful wife of A. B.

SHEWETH,

1. That the said A. B. has for some years carried on the business of , at , and from

such business derives the net annual income of from Rs. 4,000 to 5,000.

2. That the said A. B. is possessed of plate, furniture, linen and other effects at his said house aforesaid, all of which he acquired in right of your petitioner as his wife, or purchased with money he acquired through her, of the value of Rs. 10,000.

3. That the said A. B. is entitled, under the will of his father, subject to the life interest of his mother therein, to property of the value of Rs. 5,000 or some other considerable amount.

Your petitioner, therefore, prays that this! Court will decree such sum or sums of money by way of alimony, pending the suit, as to this '[\*] Court may seem meet.

(Signed) CB.

Form of Verification : see No. 1

No. 13.—STATEMENT IN ANSWER TO No. 12

In the ![\*] Court of

B. against B.

A. B., of , the above

named respondent, in answer to the petition

for alimony, Pending the suit of C. B., says—

1. In answer to the first paragraph of the said petition, I say that I have for the last three years carried on the business of , at , and that, from such business, I have derived a net annual income of Rs. 900, but less than Rs. 1,000.

2. In answer to the second paragraph of the said petition, I say that I am possessed of plate, furniture, linen and other chattels and effects at my said house aforesaid, of the value of Rs. 7,000, but as I verily believe of no larger value. And I say that a portion of the said plate, furniture and other chattels and effects of the value of Rs. 1,500, belonged to my said wife before our marriage, but the remaining portions thereof I have since purchased with my own moneys. And I say that, save as hereinbefore set forth, I am not possessed of the plate and other effects as alleged in the

said paragraph in the said petition, and that I did not acquire the same as in the said petition also mentioned.

'Omitted by Act, 1975 (Act No. IV of 1976), s. 24.



3. I admit that I am entitled under the will of my father, subject to the life-interest of my mother therein, to property of the value of Rs. 5,000, that is to say, I shall be entitled under my said father's will, upon the death of my mother, to a legacy of Rs.7,000, out of which I shall have to pay to my father's executors the sum of Rs. 2,000, the amount of a debt owing by me to his estate, and upon which debt I am now paying interest at the rate of five per cent. per annum.

4. And, in further answer to the said petition, I say that I have no income whatever except that derived from my aforesaid business, that such income, since my said wife left me, which she did on the day of last, has been considerably diminished, and that such diminution is likely to continue. And I say that out of my said income, I have to pay the annual sum of Rs. 100 for such interest as aforesaid to my late father's executors' and also to support myself and my two eldest children.

5. And, in further answer to the said petition, I say that, when my wife left my dwelling-house on the day of last, she took with her, and has ever since withheld and still withholds from me, plate, watches and other effects in the second paragraph of this my answer mentioned, of the value of, as I verily believe, Rs. 800 at the least ; and I also say that, within five days of her departure from my house as aforesaid, my said wife received bills due to me from certain lodgers of mine, amounting in the aggregate to Rs. \_\_, and that she has ever since withheld and still withholds from me the same sum.

(Signed) A.B.

**No. 14.—UNDERTAKING BY MINOR'S NEXT FRIEND TO BE ANSWERABLE FOR RESPONDENT'S COSTS.**

(See section 49)

In the ![\*] Court of

I, the undersigned, A. B., of ,being the next friend of C. D., who is a minor, and who is desirous of filing a petition in this Court, under the Indian Divorce Act, against D. D. of , hereby undertake to be responsible for the costs of the said D. D. in such suit, and that, if the said C.D. fail to pay to the said D. D. when and in such manner as the Court shall order all such costs of such suit as the Court shall direct him (or her) to pay to the said D. D., I will forthwith pay the same to the proper officer of this Court.

Dated this day of , 186

(Signed) A.B,

'Omitted by Act, 1975 (Act No. IV of 1976), s. 24.