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THE SPECIAL MARRIAGE ACT, 1872

2ACT No. III OF 1872

[22 March, 1872]

An Act to provide a form of Marriage in certain cases

Preamble. WHEREAS it is expedient to provide a form of marriage for persons who do not profess the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh or Jaina religion, >[and for persons who profess the Hindu, Buddhist, Sikh or Jaina religion] and to legalize certain marriages the validity of which is doubtful; It is hereby enacted as follows:

411. Local extent. This Act extends to the whole of Pakistan.]

2. Conditions upon which marriages under Act may be celebrated. Marriages may be celebrated under this Act between persons neither of whom professes the Christian or the Jewish, or the Hindu or the *[Muslim], or the Parsi or the Buddhist, or the Sikh or the Jaina religion, “[or between persons each of whom professes one or other of the following religions, that is to say, the Hindu, Buddhist, Sikh or Jaina religion] upon the following conditions:—

(1) neither party must, at the time of the marriage, have a husband or wife living:

(2) the man must have completed his age of eighteen years, and the woman her age of fourteen years, according to the Gregorian calendar:

(3) each party must, if he or she has not completed the age of twenty-one years, have obtained the consent of his or her father or guardian to the marriage:

(4) the parties must not be related to each other in any degree of consanguinity or affinity which would, according to any law to which either of them is subject, render a marriage between them illegal.

1st Proviso.— No such law or custom, other than one relating to consanguinity or affinity, shall prevent them from marrying.

2nd Proviso.— No law or custom as to consanguinity shall prevent them from marrying, unless a relationship can be traced between the parties through some common ancestor, who stands to each of them in a nearer relationship than that of great-great-grand-father or great-great-grand mother, or unless one of the parties is the lineal ancestor, or the brother or sister of some lineal ancestor, of the other.

'Short title given by the Short Title Act, 1897 (14 of 1897)

°There was no Statement of Objects and Reasons; the Bill as introduced was published in the Gazette of Select Committee, dated 21st December 1871, see *ibid.*, 1871., Pt. V, p. 519 ; for discussions in Council, 1197; *ibid.*, 1871, Extra., Supplement, pp. 16 and 42 ; *ibid.*, 1872, Supplement, pp. 2, 57, 193 and 261.

This Act has been declared in force in Balochistan by the British Balochistan Laws Regulation, 1913 (2 of 1913)

This Act has been extended to the Leased Areas of Balochistan, see the Leased Areas (Laws) Order, 1937, Pt. I, p. 1499. Federated Areas of Balochistan, see Gazette of India, 1937, Pt. I, p. 1499.

3Ins. by the Special Marriage (Armdt.) Act, 1923 (30 of 1923), s.2.

'This section has successively been amended by the Repealing Act, 1874 (16 of 1874), s. 1 and Sch., Pt. I, (with effect from the 14th October, 1955), to read as follows:—

SSubs. by F.A.O., 1975, Art. 2 and Table for "Muhammadan".

"Ins. by Act 30 of 1923, s. 3.

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3. Appointment of Marriage Registrars. The! [Provincial Government] may appoint one or more Registrars under this Act, either by name or as holding any office for the time being, for any portion of the territory subject to its administration. The officer so appointed shall be called "Registrar of Marriages under Act III of 1872," and is hereinafter referred to as "the Registrar". The portion of territory for which any such officer is appointed shall be deemed his district.

4. One of the parties to intended marriage to give notice to Registrar. When a marriage is intended to be solemnized under this Act, one of the parties must give notice in writing to the Registrar before whom it is to be solemnized.

The Registrar to whom such notice is given must be the Registrar of a district within which one at least of the parties to the marriage has resided for fourteen days before such notice is given.

Such notice may be in the form given in the first schedule to this Act.

5. Notice to be filed and copy entered in the Marriage Notice Book. The Registrar shall file all such notices and keep them with the records of his office, and shall also forthwith enter a true copy of every such notice in a book to be for that purpose furnished to him by the *[Provincial Government], to be called the "Marriage Notice Book under Act III of 1872," and such book shall be open at all reasonable times, without fee, to all persons desirous of inspecting the same.

6. Objection to Marriage. Fourteen days after notice of an intended marriage has been given under section 4, such marriage may be solemnized, unless it has been previously objected to in the manner hereinafter mentioned.

Any person may object to any such marriage on the ground that it would contravene some one or more of the conditions prescribed in clauses (1), (2), (3) or (4) of section 2.

The nature of the objection made shall be recorded in writing by the Registrar in the register, and shall, if necessary, be read over and explained to the person making the objection, and shall be signed by him or on his behalf.

7. Procedure on receipt of objection. On receipt of such notice of objection the Registrar shall not proceed to solemnize the marriage until the lapse of fourteen days from the receipt of such objection, if there be a Court of competent jurisdiction open at the time, or, if there be no such Court open at the time, until the lapse of fourteen days from the opening of such Court.

8. Objector may file suit. The person objecting to the intended marriage may file a suit in any Civil Court having local jurisdiction (other than a Court of Small Causes) for a declaratory decree, declaring that such marriage would contravene some one or more of the conditions prescribed in clauses (1), (2), (3) or (4) of section 2.

9. Certificate of filing of suit to be lodged with Registrar. The officer before whom such suit is filed shall thereupon give the person presenting it a certificate to the effect that such suit has been filed. If such certificate be lodged with the registrar within fourteen days from the receipt of notice of objection, if there be a Court of competent jurisdiction open at the time, or, if there be no such Court open at the time, within fourteen days of the opening of such Court, the marriage shall not be solemnized till the decision of such Court has been given and the period allowed by law for appeals from such decision has elapsed; or, if there be an appeal from such decision, till the decision of the Appellate Court has been given.

'Subs. by A. O., 1937, for "L. G."
Subs. *ibid.*, for "Govt."

If such certificate be not lodged in the manner and within the period prescribed in the last preceding paragraph, or if the decision of the Court be that such marriage would not contravene anyone or more of the conditions prescribed in clauses (1), (2), (3) or (4) of section 2, such marriage may be solemnized.

If the decision of such Court be that the marriage in question would contravene anyone or more of the conditions prescribed in clauses (1), (2), (3) or (4) of section 2, the marriage shall not be solemnized.

10. Court may fine when objection not reasonable. Any Court in which any such suit as is referred to in section 7 is filed may, if it shall appear to it that the objection was not reasonable and bona fide, inflict a fine, not exceeding one thousand rupees, on the person objecting, and award it, or any part of it, to the parties to the intended marriage.

11. Declaration by parties and witnesses. Before the marriage is solemnized, the parties and three witnesses shall, in the presence of the Registrar, sign a declaration in the form contained in the second schedule to this Act. If either party has not completed the age of twenty-one years, the declaration shall also be signed by his or her father or guardian, except in the case of a widow, and, in every case, it shall be countersigned by the Registrar.

12. Marriage how to be solemnized. The marriage shall be solemnized in the presence of the Registrar and of the three witnesses who signed the declaration. It may be solemnized in any form, provided that each party says to the other, in the presence and hearing of the Registrar and witnesses, "I[A], take thee [B], to be my lawful wife (or husband.)"

13. Place where marriage may be solemnized. The marriage may be celebrated either at the office of the Registrar or at such other place, within reasonable distance of the office of the Registrar, as the parties desire: Provided that the [Provincial Government] may prescribe the conditions under which such marriages may be solemnized at places other than the Registrar's office, and the additional fees to be paid thereupon?.

13. Certificate of marriage. When the marriage has been solemnized, the Registrar shall enter a certificate thereof in a book to be kept by him for that purpose and to be called the "Marriage Certificate Book under Act II of 1872," in the form given in the third schedule to this Act, and such certificate shall be signed by the parties to the marriage and the three witnesses.

3[13A. Transmission of certified copies of entries in marriage certificate book to the Registrar General of Births, Deaths and Marriages. The Registrar shall send to the Registrar General of Births, Deaths and Marriages for the territories within which his district is situate, at such interval as the "[Provincial Government] from time to time directs®, a true copy certified by him, in such form as the "[Provincial Government] from time to time prescribes, of all entries made by him in the said marriage-certificate book since the last of such intervals®.]

'Subs. by A. O., 1937, for " L. G.".

?For rules framed under this section, see the different Local Rules and Orders.

3. 13A ins. by the Births, Deaths and Marriages Registration Act, 1886 (6 of 1886), s. 29.

4Subs. by A.O., 1937, for "L.G." which had been subs. for "G.G. in C." by the Devolution Act, 1920 (38 of 1920).

*For orders issued under this section, see Gazette of India, 1889, Supplement, p. 921.

"As to duty of the Registrar General to make and keep indexes of the certified copies sent to his office under the Births, Deaths and Marriages Registration Act, 1886 (6 of 1886), s. 7.

14. Fees. The '[Provincial Government]' shall prescribe the fees to be paid to the Registrar for the duties to be discharged by him under this Act”.

The Registrar may, if he thinks fit, demand payment of any such fee before the solemnization of the marriage or performance of any other duty in respect of which it is payable.

The said Marriage-Certificate Book shall at all reasonable times be open for inspection, and shall be admissible as evidence of the truth of the statements therein contained. Certified extracts there from shall on application be given by the Registrar on the payment to him by the applicant of a fee to be fixed by the “[Provincial Government] for each such extract.

15. Penalty on married person marrying again under Act. Every person who, being at the time married, procures a marriage of himself to be solemnized under this Act, shall be deemed to have committed an offence under section 494 or section 495 of the Pakistan Penal Code (XLV of 1860), as the case may be; and the marriage so solemnized is void.

16. Punishment of bigamy. Every person married under this Act who, during the life time of his or her wife or husband, contracts any other marriage, shall be subject to the penalties provided in sections 494 and 495 of the Pakistan Penal Code (XLV of 1860) for the offence of marrying again during the lifetime of a husband or wife, whatever may be the religion which he or she professed at the time of such second marriage.

17. Divorce Act to apply. The Divorce Act shall apply to all marriages contracted under this Act (IV of 1869), and any such marriage may be declared null or dissolved in the manner therein provided, and for the causes therein mentioned, or on the ground that it contravenes some one or more of the conditions prescribed in clauses (1), (2), (3) or (4) of section 2 of this Act.

18. Law to apply to issue of marriages under Act. The issue of marriages solemnized under this Act shall, if they marry under this Act, be deemed to be subject to the law to which their fathers were subject as to the prohibition of marriages by reason of consanguinity and affinity, and the provisos to section 2 of this Act shall apply to them.

19. Savings of marriages solemnized otherwise than under Act. Nothing in this Act contained shall affect the validity of any marriage not solemnized. under its provisions; nor shall this Act be deemed directly or indirectly to affect the validity of any mode of contracting marriage; but, if the validity of any such mode shall hereafter come into question before any Court, such question shall be decided as if this Act had not been passed.

20. [Registry of marriages contracted before passing of Act.] Rep. by the Repealing Act, 1876 (XII of 1876).

21. Penalty for signing declarations of certificates containing false statements. Every person making, signing or attesting any declaration or certificate prescribed by this Act, containing a statement which is false, and which he either knows or believes to be false or does not believe to be true, shall be deemed guilty of the offence described in section 199 of the Pakistan Penal Code. (XLV of 1860).

'Subs. by A. O., 1937, for “the L. G.”.

*For scales of fees to be paid to Registrars of marriages prescribed by different Provincial Governments,

'[22. Effect of certain marriages on coparcenary. The marriage under this Act of any member of an undivided family who professes the Hindu, Buddhist, Sikh or Jaina religion shall be deemed to effect his severance from such family.

23. Rights of succession in certain cases of marriages under Act. A person professing the Hindu, Buddhist, Sikh or Jaina religion who marries under this Act shall have the same rights and be subject to the same disabilities in regard to any right of succession to any property as a person to whom the Caste Disabilities Removal Act, 1850 (XXI of 1850), applies:

Provided that nothing in this section shall confer on any person any right to any religious office or service, or to the management of any religious or charitable trust.

24. Succession to the property of parties married under Act. Succession to the property of any person professing the Hindu, Buddhist, Sikh or Jaina religion who marries under this Act, and to the property of the issue of such marriage, shall be regulated by the provisions of the [Succession Act, 1925 (XXXIX of 1925)]'.

25. Person marrying under Act not to have right of adoption. No person professing the Hindu, Buddhist, Sikh or Jaina religion who marries under this Act shall have any right of adoption.

26. Adoption by father or person marrying under Act. When a person professing the Hindu, Buddhist, Sikh or Jaina religion marries under this Act, his father shall, if he has no other son living, have the right to adopt another person as a son under the law to which he is subject.]

FIRST SCHEDULE

(See section 4)

NOTICE OF MARRIAGE

To a Registrar of Marriages under Act III of 1872 for the District.

I hereby give you notice that a marriage under Act III of 1872 is intended to be had, within

three calendar months from the date hereof, between me and the other party herein named and described (that is to say):—

Names Condition Rank or Age Dwelling place Length of residence
profession

AB Unmarried Landowner Of full age .. 23 days

Widower

CD Spinster L. Minor

Witness my hand, this day of 187.

(Signed) A. B.

'22 to 26 were added by the Special Marriage (Amdt.) Act, 1923 (30 of 1923), s. 4.

?Subs. by the Federal Laws (Revision and Declaration) Ordinance, 1981(27 of 1981), s. 3 and 2nd Sch. f

SECOND SCHEDULE
(See section 10)

DECLARATION TO BE MADE BY THE BRIDEGROOM

I, A, B, hereby declare as follows:—

(1) I am at the present time unmarried:

(2) I do not profess the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh or Jaina religion; '[or (as the case may be) I profess the Hindu, or the Buddhist, or the Sikh, or the Jaina religion].

(3) [I have completed my age of eighteen years:

(4) I am not related to CD [the bride] in any degree of consanguinity or affinity which would, according to the law to which I am subject, or to which the said CD is subject, and subject to the provisos of clause (4) of section 2 of Act III of 1872, render a marriage between us illegal:

[And when the bridegroom has not completed his age of twenty one years:

The consent of my father [or guardian, as the case may be] has been given to a marriage between myself and CD, and has not been revoked:]

I am aware that, if any statement in this declaration is false, and if in making such statement I either know or believe it to be false, or do not believe it to be true, I am liable to imprisonment, and also to fine.

(Signed) A B [the bridegroom]

DECLARATION TO BE MADE BY THE BRIDE

(1) I, CD, hereby declare as follows:—

(2) I am at the present time unmarried:

(3) I do not profess the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh or Jaina religion: '[or (as the case may be) I profess the Hindu, or the Buddhist, or the Sikh, or the Jaina religion].

(4) [I have completed my age of fourteen years:

I am not related to A B [the bridegroom] in any degree of consanguinity or affinity which would, according to the law to which I am subject, or to which the said A B is subject, and subject to the provisos of clause (4) of section 2 of Act III of 1872, render a marriage between us illegal:

[And when the bride has not completed her age of twenty one years, unless she is a widow:

(5) The consent of M N, my father [or guardian, as the case may be] has been given to a marriage between myself and A B and has not been revoked:]

'Ins. by the Special Marriage (Amdt.) Act, 1923 (30 of 1923), s. 5.

I am aware that, if any statement in this declaration is false, and if in making such statement, I either know or believe it to be false, or do not believe it to be true, I am liable to imprisonment, and also to fine.

(Signed) C D [the bride]

Signed in our presence by the above-named A B and CD:

GH,

IJ, [three witnesses]

KL,

[And when the bridegroom or bride has not completed the age of twenty-one years, except in the case of a widow:

Signed in my presence and with my consent by the above-named 4 B and C D:

M. N., the father [or guardian]

of the above-named 4 B(or CD,
as the case may be).]

(Countersigned) E F,

Registrar of Marriages under Act II of
1872 for the District of

Dated the day of 18.

THIRD SCHEDULE

(See section 13)

REGISTRAR'S CERTIFICATE

I, E F, certify that, on the of 18, appeared before me A B and C D,

each of whom in my presence and in the presence of three credible witnesses, whose names are signed hereunder, made the declarations required by Act III of 1872, and that a marriage under the said Act was solemnized between them in my presence.

(Signed) E F,

Registrar of Marriages under Act III of
1872, for the District of

(Signed) A B,

CD.

GH,

IJ, [three witnesses]

KL,

Dated the day of 18.

FOURTH SCHEDULE

[Rep. by the Repealing Act, 1876 (XII of 1876).]