

THE PARSI MARRIAGE AND DIVORCE (AMENDMENT)
ACT, 1988

No. 5 OF 1988

[25th March, 1988.]

An Act further to amend the Parsi Marriage and Divorce Act, 1936.

BE it enacted by Parliament in the Thirty-ninth Year of the Republic of India as follows:—

Short
title
and
com-
mence-
ment.

1. (1) This Act may be called the Parsi Marriage and Divorce (Amendment) Act, 1988.

(2) It shall come into force on such date¹ as the Central Government may, by notification in the Official Gazette, appoint.

Amend-
ment of
section 3.

2. In the Parsi Marriage and Divorce Act, 1936 (hereinafter referred to as the principal Act), section 3 shall be re-numbered as sub-section (1) thereof, and—

3 of 1936.

(a) in sub-section (1) as so re-numbered, for clause (c), the following clause shall be substituted, namely:—

“(c) in the case of any Parsi (whether such Parsi has changed his or her religion or domicile or not) who, if a male, has not completed twenty-one years of age, and if a female, has not completed eighteen years of age.”;

(b) after sub-section (1) as so re-numbered, the following sub-section shall be inserted, namely:—

“(2) Notwithstanding that a marriage is invalid under any of the provisions of sub-section (1), any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate.”.

Amend-
ment of
section 6.

3. In section 6 of the principal Act, the words “, or their fathers or guardians when they shall not have completed the age of twenty-one years,” shall be omitted.

Amend-
ment of
sections
19 and 20.

4. In sections 19 and 20 of the principal Act, for the words “by seven delegates”, the following shall be substituted, namely:—

“by five delegates, except in regard to—

(a) interlocutory applications and proceedings;

¹ 15.4.1988 *Vide* Notification No. S.O. 381 (E) dated 12.4.1988, Gazette of India, Extraordinary 1988 Pt. II Sec. 3 (ii)

(b) alimony and maintenance, both permanent as well as *pendente lite*;

(c) custody, maintenance and education of children; and

(d) all matters and proceedings other than the regular hearing of cases”.

5. In section 25 of the principal Act, after the words “being in force”, the words “involving moral turpitude” shall be inserted.

Amendment of section 25.

6. In the proviso to section 27 of the principal Act, for the word “three”, the word “two” shall be substituted.

Amendment of section 27.

7. In section 29 of the principal Act, in sub-section (1), the words “or where the marriage under this Act was solemnized” shall be added at the end.

Amendment of section 29.

8. In section 32 of the principal Act,—

Amendment of section 32.

(i) after clause (b), the following clause shall be inserted, namely:—

“(bb) that the defendant has been incurably of unsound mind for a period of two years or upwards immediately preceding the filing of the suit or has been suffering continuously or intermittently from mental disorder of such kind and to such an extent that the plaintiff cannot reasonably be expected to live with the defendant.

Explanation.—In this clause,—

(a) the expression “mental disorder” means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia;

(b) the expression “psychopathic disorder” means a persistent disorder or disability of mind (whether or not including subnormality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the defendant, and whether or not it requires or is susceptible to medical treatment;”;

(ii) after clause (d), the following clause shall be inserted, namely:—

“(dd) that the defendant has since the solemnization of the marriage treated the plaintiff with cruelty or has behaved in such a way as to render it in the judgment of the Court improper to compel the plaintiff to live with the defendant:

Provided that in every suit for divorce on this ground it shall be in the discretion of the Court whether it should grant a decree for divorce or for judicial separation only;”;

(iii) in clause (g), for the words “three years”, the words “two years” shall be substituted;

(iv) in clause (h),—

(1) the words "a decree or order for judicial separation has been passed against the defendant, or" shall be omitted;

(2) for the words "three years", the words "one year" shall be substituted;

(v) clause (i) shall be omitted;

(vi) in clause (j), after the word "Parsi", the words "by conversion to another religion" shall be inserted.

9. After section 32 of the principal Act, the following sections shall be inserted, namely:—

Insertion of new sections 32A and 32B.

"32A. (1) Either party to a marriage, whether solemnized before or after the commencement of the Parsi Marriage and Divorce (Amendment) Act, 1988, may sue for divorce also on the ground,—

Non-resumption of cohabitation or restitution of conjugal rights within one year in pursuance of a decree to be ground for divorce.

(i) that there has been no resumption of cohabitation as between the parties to the marriage for a period of one year or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties; or

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

(2) No decree for divorce shall be granted under sub-section (1) if the plaintiff has failed or neglected to comply with an order for maintenance passed against him under section 40 of this Act or section 488 of the Code of Criminal Procedure, 1898 or section 125 of the Code of Criminal Procedure, 1973.

5 of 1898.
2 of 1974.

32B. (1) Subject to the provisions of this Act, a suit for divorce may be filed by both the parties to a marriage together, whether such marriage was solemnized before or after the commencement of the Parsi Marriage and Divorce (Amendment) Act, 1988, on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved:

Divorce by mutual consent.

Provided that no suit under this sub-section shall be filed unless at the date of the filing of the suit one year has lapsed since the date of the marriage.

(2) 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 under this Act and the averments in the plaint are true and that the consent of either party to the suit was not obtained by force or fraud, pass a decree declaring the marriage to be dissolved with effect from the date of the decree."

10. In section 34 of the principal Act, the portion beginning with the words “, or on the ground that”, and ending with the words “with the defendant” shall be omitted.

Amendment of section 34.

11. In section 35 of the principal Act, after the figures “32”, the figures and letter “, 32A” shall be inserted.

Amendment of section 35.

12. For section 38 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 38.

“38. Notwithstanding anything contained in any other law for the time being in force, no document shall be inadmissible in evidence in any proceeding at the trial of a suit under this Act on the ground that it is not duly stamped or registered.”.

Documentary evidence.

13. For sections 39 and 40 of the principal Act, the following sections shall be substituted, namely:—

Substitution of new sections 39 and 40.

“39. Where in any suit under this Act, it appears to the Court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the suit, it may, on the application of the wife or the husband, order the defendant to pay to the plaintiff, the expenses of the suit, and such weekly or monthly sum, during the suit, as, having regard to the plaintiff's own income and the income of the defendant, it may seem to the Court to be reasonable.

Alimony pendente lite.

40. (1) Any Court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on an application made to it for the purpose by either the wife or the husband, order that the defendant shall pay to the plaintiff for her or his maintenance and support, such gross sum or such monthly or periodical sum, for a term not exceeding the life of the plaintiff as having regard to the defendant's own income and other property, if any, the income and other property of the plaintiff, the conduct of the parties and other circumstances of the case, it may seem to the Court to be just, and any such payment may be secured, if necessary, by a charge on the movable or immovable property of the defendant.

Permanent alimony and maintenance.

(2) The Court if it is satisfied that there is change in the circumstances of either party at any time after it has made an order under sub-section (1); it may, at the instance of either party, vary, modify or rescind any such order in such manner as the Court may deem just.

(3) The Court if it is satisfied that the party in whose favour an order has been made under this section has remarried or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he had sexual intercourse with any woman outside wedlock, it may, at the instance of the other party, vary,

modify or rescind any such order in such manner as the Court may deem just.”.

Amend-
ment of
section
41.

14. In section 41 of the principal Act,—

(a) after the words “approved by the Court”, the words “or to a guardian appointed by the Court” shall be inserted;

(b) after the words “a new trustee,”, the words “or guardian,” shall be inserted.

Substitu-
tion of
new
section for
section 43.

15. For section 43 of the principal Act, the following section shall be substituted, namely:—

“43. (1) Every suit filed under this Act shall be tried *in camera* and it shall not be lawful for any person to print or publish any matter in relation to any such case except a judgment of the Court printed or published with the previous permission of the Court.

(2) If any person prints or publishes any matter in contravention of the provisions contained in sub-section (1), he shall be punishable with fine which may extend to one thousand rupees.”.

Suits to
be heard
in camera
and may
not be
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or pub-
lished.

Amend-
ment of
section 44.

16. In section 44 of the principal Act, for the word “five”, the word “three” shall be substituted.

Amend-
ment of
section 45.

17. To section 45 of the principal Act, the following provisos shall be added, namely:—

“Provided that the presiding Judge shall read out to the delegates the relevant sections of this Act, and may, if he considers it necessary so to do, explain the same:

Provided further that a *verbatim* record shall be made of what the presiding Judge reads out or explains to the delegates.”.

Amend-
ment of
section 47.

18. Section 47 of the principal Act shall be re-numbered as sub-section (1) thereof, and after sub-section (1) as so re-numbered, the following sub-section shall be inserted, namely:—

“(2) Every appeal under sub-section (1) shall be heard by a Bench of two Judges of the High Court.”.

Amend-
ment of
section 48.

19. In section 48 of the principal Act,—

(a) the word “hereby” shall be omitted;

(b) the words “, as if the prior marriage had been terminated by death” shall be omitted.

Amend-
ment of
section 49.

20. In section 49 of the principal Act, for the words “sixteen years”, the words “eighteen years” shall be substituted.