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HINDU MARRIAGE AND DIVORCE ACT

CHAPTER 157

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CHAPTER 157

HINDU MARRIAGE AND DIVORCE ACT

ARRANGEMENT OF SECTIONS

PART I – PRELIMINARY

Section

1. Short title.
2. Interpretation.

PART II – HINDU MARRIAGES

3. Conditions for Hindu marriages.
4. Guardianship in marriage.
5. Ceremonies for Hindu marriages.
6. Registration of Hindu marriages.
7. Provisions as to Hindu marriages.
8. Offences.

PART III – MATRIMONIAL CAUSES

9. Matrimonial causes.
10. Grounds for divorce.
11. Grounds for decree of nullity.
12. Grounds for judicial separation.

PART IV – REPEAL

13. Repeal.
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CHAPTER 157

HINDU MARRIAGE AND DIVORCE ACT

[Date of assent: 28th June, 1960.]

[Date of commencement: 19th July, 1960.]

An Act to regulate the marriage of, and provide for matrimonial causes between, Hindus and persons of allied religions

[L.N. 142/1963, L.N. 2/1964.]

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Hindu Marriage and Divorce Act.

2. Interpretation

(1) In this Act, except where the context otherwise requires—

“**court**” means the Supreme Court;

“**custom**” means a rule which, having been continuously observed for a long time, has attained the force of law among a community, group or family, being a rule that is certain and not unreasonable or opposed to public policy; and, in the case of a rule applicable only to a family, has not been discontinued by the family;

“**Hindu**” means a person who is a Hindu by religion in any form (including a Virashaiva, a Lingayat and a follower of the Brahmo, Prarthana or Arya Samaj) or a person who is a Buddhist of Indian origin, a Jain or a Sikh by religion;

“**marriage**” means a marriage between Hindus and either—

- (a) solemnized after the commencement of this Act; or
- (b) a marriage which, immediately before the commencement of this Act, was deemed, under section 3 (now repealed) of the Hindu Marriage, Divorce and Succession Act (Cap. 149), to be a valid marriage or which would have been so deemed if it had been solemnized in the Colony; or
- (c) a marriage solemnized under the Special Marriage Act, 1954 (No. 43 of 1954), or the Hindu Marriage Act, 1955 (No. 25 of 1955), of India, as amended from time to time, and any enactment substituted therefor;

“**of the full blood**” means descended from a common ancestor by the same wife;

“**of the half blood**” means descended from a common ancestor but by different wives;

“**of uterine blood**” means descended from a common ancestress but by different husbands.

(2) For the purposes of this Act, the following persons are Hindus, Buddhists, Jains or Sikhs, as the case may be—

- (a) a person, legitimate or illegitimate, both of whose parents are or were Hindus, Buddhists, Jains or Sikhs by religion;
- (b) a person, legitimate or illegitimate, one of whose parents is or was a Hindu, a Buddhist, a Jain or a Sikh by religion and who has been brought up as a member of the community, group or family to which such parent belongs or belonged;
- (c) any person who is a convert or reconvert to the Hindu, the Buddhist, Jain or Sikh religion.

PART II – HINDU MARRIAGES

3. Conditions for Hindu marriages

(1) A marriage may be solemnized if the following conditions are fulfilled—

- (a) neither party has a spouse living at the time of the marriage;
- (b) both parties are of sound mind at the time of the marriage;
- (c) the bridegroom has attained the age of eighteen years and the bride the age of sixteen years at the time of the marriage;
- (d) where the bride has not attained the age of eighteen years, the consent of her guardian in marriage, if any, has been obtained for the marriage;
- (e) the parties are not within the prohibited degrees of consanguinity, unless the custom governing each of them permits of a marriage between them.

(2) For the purposes of this section, two persons are within the prohibited degrees of consanguinity if—

- (a) one is a lineal ancestor of the other;
- (b) one was the wife or husband of a lineal ancestor or descendant of the other;
- (c) one was the wife of the father's or mother's brother or of the grandfather's or grandmother's brother of the other;
- (d) one was the husband of the father's or mother's sister or of the grandfather's or grandmother's sister of the other;
- (e) they are brother and sister, uncle and niece, aunt and nephew or children of brother and sister or of brothers or sisters; or
- (f) they have a common ancestor not more than two generations distant, if ancestry is traced through the mother of the descendant, or four generations distant, if ancestry is traced through the father of the descendant.

(3) The relationships referred to in subsection (2) of this section include those of the half blood and of uterine blood as well as those of the full blood, and the illegitimate child and adopted child of any person shall be deemed to be respectively the legitimate child and the child of the marriage of such person.

4. Guardianship in marriage

(1) Wherever the consent of a guardian in marriage is necessary for a bride under this Act, the guardian in marriage shall be—

- (a) the father; whom failing
- (b) the mother; whom failing
- (c) the paternal grandfather; whom failing
- (d) the paternal grandmother; whom failing
- (e) the brother of the full blood, as between brothers the elder being preferred; whom failing
- (f) the brother of the half blood, as between brothers of the half blood the elder being preferred, if the bride is living with him and is being brought up by him; whom failing
- (g) the paternal uncle of the full blood, as between paternal uncles the elder being preferred; whom failing
- (h) the paternal uncle of the half blood, as between paternal uncles of the half blood the elder being preferred, if the bride is living with him and is being brought up by him; whom failing
- (i) the maternal grandfather; whom failing
- (j) the maternal grandmother; whom failing
- (k) the maternal uncle of the full blood, as between maternal uncles the elder being preferred, if the bride is living with him and is being brought up by him.

(2) No person shall be entitled to act as guardian in marriage under the provisions of this section unless such person has himself attained the age of twenty-one years.

(3) Where the person entitled to be the guardian in marriage refuses, or is for any cause unable or unfit, to act, the person next in order shall be entitled to be the guardian.

(4) If there is no such person as is referred to in subsection (1) of this section, the consent of a guardian in marriage shall not be necessary.

5. Ceremonies for Hindu marriages

(1) A marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto.

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

(3) Where the marriage is solemnized in the form of *Anand Karaj* (that is, the going round the Granth Sahib by the bride and bridegroom together), the marriage becomes complete and binding as soon as the fourth round has been completed.

6. Registration of Hindu marriages

(1) The Minister may from time to time make rules requiring and prescribing the manner of registration of all or any marriages solemnized in Kenya.

(2) Separate or different rules may be made with respect to the marriages of Hindus belonging to different castes or communities.

(3) Without prejudice to the generality of the foregoing provisions, any such rules may—

- (a) require marriages to be compulsorily registered;
- (b) require the priest or other person performing the marriage ceremony to issue a certificate of marriage in the prescribed form;
- (c) require any marriage to be registered within the period prescribed by the rules;
- (d) impose fees for the issue of certificates of marriage and for the issue of copies or translations of certificates of marriage;
- (e) impose penalties of imprisonment for a term not exceeding six months or a fine of not more than six thousand shillings or both for the breach thereof;
- (f) provide for the receiving in evidence of entries in the register and marriage certificates and of certified copies thereof.

(4) Notwithstanding anything contained in this section, the validity of a marriage shall in no way be affected by the omission to make an entry in any marriage register, nor shall registration render valid any marriage which would otherwise be invalid.

7. Provisions as to Hindu marriages

(1) A marriage, whether solemnized before or after the commencement of this Act, shall not be capable of being dissolved during the joint lives of the parties otherwise than in accordance with the provisions of this Act.

(2) A marriage solemnized under this Act shall be a marriage within the meaning of the Matrimonial Causes Act (Cap. 152).

(3) A marriage solemnized after the commencement of this Act shall be void if 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; and the provisions of section 171 of the Penal Code (Cap. 63) shall apply in such a case.

(4) Notwithstanding the provisions of section 15 of the Subordinate Courts (Separation and Maintenance) Act (Cap. 153), the provisions of that Act shall apply in respect of any husband and wife whose marriage at the commencement of this Act is deemed under section 3 (now repealed) of the Hindu Marriage, Divorce and Succession Act (Cap. 149) to be a valid marriage or would be so deemed if it had been solemnized in Kenya.

(5) Notwithstanding the provisions of section 15 of the Subordinate Courts (Separation and Maintenance) Act, the provisions of that Act shall apply to the husband and wife of every marriage.

8. Offences

Whoever solemnizes or procures to be solemnized a marriage in respect of which any of the conditions specified in paragraphs (c), (d) and (e) of subsection (1) of section 3 of this Act has not at the time of the marriage been fulfilled shall be liable—

- (a) in the case of the condition specified in the said paragraph (c) to imprisonment for a term not exceeding fourteen days or to a fine not exceeding five hundred shillings, or to both such imprisonment and such fine;
- (b) in the case of the condition specified in the said paragraph (d) to a fine not exceeding one thousand shillings; and
- (c) in the case of the condition specified in the said paragraph (e) to imprisonment for a term not exceeding one month or to a fine not exceeding one thousand shillings, or to both such imprisonment and such fine.

PART III – MATRIMONIAL CAUSES**9. Matrimonial causes**

Except where and to the extent that other provision is made in this Act, the provisions of the Matrimonial Causes Act shall apply to matrimonial causes relating to marriages, and the Matrimonial Causes Act (Cap. 152) shall, in relation to marriages, be subject to the provisions of this Part.

10. Grounds for divorce

(1) A petition for divorce may be presented to the Court by either party to a marriage whether solemnized before or after the commencement of this Act on the ground that—

- (a) the respondent has since the celebration of the marriage committed adultery; or
- (b) the respondent has deserted the petitioner without cause for a period of at least three years immediately preceding the presentation of the petition; or
- (c) the respondent has since the celebration of the marriage treated the petitioner with cruelty; or
- (d) the respondent is incurably of unsound mind and has been continuously under care and treatment for a period of at least five years immediately preceding the presentation of the petition; or
- (e) the respondent has ceased to be a Hindu by reason of conversion to another religion; or
- (f) the respondent has renounced the world by entering a religious order and has remained in such order apart from the world for a period of at least three years immediately preceding the presentation of the petition; or

- (g) a decree of judicial separation has been in force between the parties for a period of at least two years immediately preceding the presentation of the petition, and the parties have not cohabited since the date of the decree,

and by the wife on the ground that her husband—

- (h) has, since the celebration of the marriage, been guilty of rape, sodomy or bestiality; or
- (i) in the case of a marriage solemnized before the commencement of this Act—
- (i) at the time of the marriage was already married; or
 - (ii) married again before such commencement,

the other wife being in either case alive at the date of presentation of the petition.

[L.N. 142/1963, Sch.]

(2) For the purposes of this section, a person of unsound mind shall be deemed to be under care and treatment while he is detained, whether in the Colony or elsewhere, in an institution duly recognized by the Government as an institution for the care and treatment of insane persons, lunatics or mental defectives, or is detained as a criminal lunatic under any law for the time being in force in the Colony. A certificate under the hand of the Minister that any place is a duly recognized institution for the purpose of this section shall be receivable in all courts as conclusive evidence of that fact.

11. Grounds for decree of nullity

(1) The following are the grounds on which a decree of nullity of marriage may be made—

- (a) in the case of a marriage solemnized after the commencement of this Act—
- (i) that either party had a spouse living at the time of the marriage, and the marriage with such spouse was then in force; or
 - (ii) that the parties are within the prohibited degrees of consanguinity, unless the custom governing each of them permits of a marriage between them;
- (b) in the case of any marriage, whether solemnized before or after the commencement of this Act—
- (i) that either party was permanently impotent, or incapable of consummating the marriage, at the time of the marriage; or
 - (ii) that either party was at the time of the marriage of unsound mind or subject to recurrent fits of insanity or epilepsy; or
 - (iii) that the consent of either party to the marriage or of the guardian in marriage was obtained by force or fraud in any case in which the marriage might be annulled on this ground by the Law of England; or
 - (iv) that the respondent was at the time of the marriage suffering from venereal disease in a communicable form; or

- (v) that the respondent was at the time of the marriage pregnant by some person other than the petitioner:

Provided that, in the cases specified in subparagraphs (ii), (iv) and (v) of paragraph (b) of this subsection, the Court shall not grant a decree unless it is satisfied—

- (i) that the petitioner was at the time of the marriage ignorant of the facts alleged;
- (ii) that proceedings were instituted, in the case of a marriage solemnized before the commencement of this Act, within one year after such commencement, and, in the case of any other marriage, within one year after the date of the marriage; and
- (iii) that marital intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of the existence of the grounds of decree.

(2) (a) Where a decree of nullity is granted in respect of a voidable marriage, any child who would have been the legitimate child of the parties to the marriage if it had been dissolved, instead of being annulled, on the date of the decree shall be deemed to be their legitimate child notwithstanding the annulment.

(b) Paragraph (a) of this subsection shall not operate so as to confer on a child any rights in the property of any person other than its parents in any case where, but for this section, such child would have been incapable of acquiring or possessing such rights by reason of its illegitimacy.

(3) Nothing in this section shall be construed as validating any marriage which is by law void, but with respect to which a decree of nullity has not been granted.

12. Grounds for judicial separation

A petition for judicial separation may be presented to the Court by either the husband or the wife on any of the following grounds—

- (a) on any of the grounds on which a petition for divorce might be presented by that party; or
- (b) that the respondent has deserted the petitioner without cause for a period of at least two years immediately preceding the presentation of the petition; or
- (c) that the respondent has since the celebration of the marriage treated the petitioner with cruelty; or
- (d) that the respondent has failed to comply with a decree for restitution of conjugal rights.

PART IV – REPEAL

13. Repeal

Sections 3 to 8 (inclusive) and section 12 of the Hindu Marriage, Divorce and Succession Act (Cap. 149) are hereby repealed.
