

# THE PARSI MARRIAGE AND DIVORCE ACT

[ INDIA ACT III, 1936] (23<sup>rd</sup> April, 1936)

## I. PRELIMINARY

- 1.<sup>1</sup> This Act extends to Parsis in the Union of Burma.
2. In this Act, unless there is anything repugnant in the subject or context,
  - (1) \* \* \* \*
  - (2) "**Court**" means a Court constituted under this Act;
  - (3) to "**desert**", together with its grammatical variations and cognate expressions, means to desert the other party to a marriage without reasonable cause and without the consent, or against the will, of such party;
  - (4) "**grievous hurt**" means -
    - (a) emasculation;
    - (b) permanent privation of the sight of either eye;
    - (c) permanent privation of the hearing of either ear;
    - (d) privation of any member or joint;
    - (e) destruction or permanent impairing of the powers of any member or joint;
    - (f) permanent disfiguration of the head or face; or
    - (g) any hurt which endangers life;
  - (5) "**husband**" means a Parsi husband;
  - (6) "**marriage**" means a marriage between Parsi whether contracted before or after the commencement of this Act;
  - (7) a "**Parsi**" means a Parsi Zoroastrian;
  - (8) "**priest**" means a Parsi priest and includes Dastur and Mobed; and
  - (9) "**wife**" means a Parsi wife.

## II.-MARRIAGES BETWEEN PARSIS

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<sup>1</sup> Substituted by the Union of Burma (Adaptation of Laws) Order, 1948

3. No marriage shall be valid if -
  - (a) the contracting parties are related to each other in any of the degrees of consanguinity or affinity set forth in Schedule 1; or
  - (b) such marriage is not solemnized according to the Parsi form of ceremony called "**Ashirvad**" by a priest in the presence of two Parsi witnesses other than such priest; or
  - (c) in the case of any Parsi (whether such Parsi has changed his or her religion or domicile or not) who has not completed the age of twenty-one years, the consent of his or her father or guardian has not been previously given to such marriage.
4. (1) No Parsi (whether such Parsi has changed his or her religion or domicile or not) shall contract any marriage under this Act or any other law in the lifetime of his or her wife or husband, whether a Parsi or not, except after his or her lawful divorce from such wife or husband or after his or her marriage with such wife or husband has lawfully been declared null and void or dissolved, and, if the marriage was contracted with such wife or husband under the Parsi Marriage and Divorce Act, 1865,<sup>1</sup> or under this Act, except after a divorce, declaration of dissolution as aforesaid under either of the said Acts.
  - (2) Every marriage contracted contrary to the provisions of sub-section (1) shall be void.
5. Every Parsi who during the lifetime of his or her wife or husband, whether a Parsi or not, contracts a marriage without having been lawfully divorced from such wife or husband, or without his or her marriage with such wife or husband having legally been declared null and void or dissolved, shall be subject to the penalties provided in sections 494 and 495 of the Indian Penal Code for the offence of marrying again during the lifetime of a husband or wife.
6. Every marriage contracted under this Act shall, immediately on the solemnization thereof, be certified by the officiating priest in the form contained in Schedule II. The certificate shall be signed by the said priest, the contracting parties

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<sup>1</sup> Repealed by India Act III of 1936.

and two witnesses present at the marriage; and the said priest shall thereupon send such certificate together with a fee of two rupees to be paid by the husband to the Registrar of the place at which such marriage is solemnized. The Registrar on receipt of the certificate and fee shall enter the certificate in a register to be kept by him for that purpose and shall be entitled to retain the fee.

7. For the purposes of this Act a Registrar shall be appointed. Within the local limits of the ordinary original civil jurisdiction of a High Court, the Registrar shall be appointed by the Chief Justice of such Court<sup>1</sup>, and without such limits, by the State Government. Every Registrar so appointed may be removed by the Chief Justice or State Government appointing him.

8. The register of marriage mentioned in section 6 shall, at all reasonable times, be open for inspection, and certified extracts therefrom shall, on application, be given by the Registrar on payment to him by the applicant of two rupees for each such extract. Every such register shall be evidence of the truth of the statements therein contained.

9. Every Registrar, except the Registrar appointed by the Chief Justice of the High Court of Judicature at Bombay shall, at such intervals as the State Government by which he was appointed from time to time directs to send to the Registrar-General of Births, Deaths and Marriages for the territories administered by such State Government a true copy certified by him in such form as such State Government from time to time prescribes, of all certificates entered by him in the said register of marriage since the last of such intervals.

10. When a Court passes a decree for divorce, nullity or dissolution, the Court shall send a copy of the decree for registration to the Registrar of Marriages within its jurisdiction appointed under section 7; the Registrar shall enter the same in a register to be kept by him for the purpose, and the provisions of Part II applicable to the Registrars and registers of marriages shall be applicable, so far as may be, to the Registrars and registers of divorces and decrees of nullity and dissolution.

11. Any priest knowingly and wilfully solemnizing any marriage contrary to and

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<sup>1</sup> The Chief Justice has appointed the Deputy Commissioner, Rangoon Town District, to be the Registrar within the local limits of the original civil jurisdiction of the High Court, see Burma Gazette, 1939, Part IV, page 196.

in violation of section 4 shall, on conviction thereof, be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two hundred rupees, or with both.

12. Any priest neglecting to comply with any of the requisitions affecting him contained in section 6 shall, on conviction thereof, be punished for every such offence with simple imprisonment for a term which may extend to three months, or with fine which may extend to one hundred rupees, or with both.

13. Every other person required by section 6 to subscribe or attest the said certificate who shall wilfully omit or neglect so to do, shall, on conviction thereof, be punished for every such offence with a fine not exceeding one hundred rupees.

14. Every person making or signing or attesting any such certificate containing a statement which is false, and which he either knows or believes to be false shall be punished with simple imprisonment for a term which may extend to three months, or with fine which may extend to one hundred rupees, or with both; and if the act amounts to forgery as defined in the Indian Penal Code, then such person shall also be liable, on conviction, thereof, to the penalties provided in section 466 of the said Code.

15. Any Registrar failing to enter the said certificate pursuant to section 6 shall be punished with simple imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

16. Any person secreting, destroying, or dishonestly or fraudulently altering the said register in any part thereof, shall be punished with imprisonment of either description as defined in the Indian Penal Code for a term which may extend to two years, or if he be a Registrar, for a term which may extend to five years and shall be liable to fine which may extend to five hundred rupees.

17. No marriage contracted under this Act shall be deemed to be invalid solely by reason of the fact that it was not certified under section 6, or that the certificate was not sent to the Registrar, or that the certificate was defective, irregular or incorrect.

### **III. PARSİ MATRİMONIAL COURTS**

18. For the purpose of hearing suits under this Act, Parsi Matrimonial Court shall be constituted at Rangoon and at such other places as the President of the Union

shall think fit.

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20. Subject to the provisions contained in section 21, the local limits of the jurisdiction of such Court shall be conterminous with the limits of the district in which it is held. In Rangoon, a Judge of the High Court, and elsewhere the Judge of the principle Court of original civil jurisdiction at such place, shall be the Judge of such Matrimonial Court, and in the trial of cases under this Act he shall be aided by seven delegates. 21. The President of the Union may alter the local limits of the jurisdiction of any Parsi District Matrimonial Court, and may include within such limits any number of districts.

22. \* \* \* \*

23. A seal shall be made for every Court constituted under this Act, and all decrees and orders and copies of decrees and orders of such Court shall be sealed with such seal, which shall be kept in the custody of the presiding judge.

24. (1) The President of the Union shall appoint persons to be delegates to aid in the adjudication of cases arising under this Act after giving the local Parsis an opportunity of expressing their opinion in such manner as the President of the Union may think fit.

(2) The person so appointed shall be Parsis and their names shall be published in the Gazette, and their number shall, within the local limits of the ordinary original civil jurisdiction of the High Court, be not more than thirty, and in districts beyond such limits, not more than twenty.

25. The appointment of a delegate shall be for ten years; but he shall be eligible for reappointment for the like term or terms. Wherever a delegate shall die, or have completed his term of office, or be desirous or relinquishing his office, or refuse or become incapable or unfit to act or cease to be a Parsi, or be convicted of an offence under the Penal Code or other law for the time being in force, or be adjudged insolvent, then and so often the President of Union may appoint any person being a Parsi to be a delegate in his stead; and the name of the person so appointed shall be published in the Gazette.

26. All delegates appointed under this Act shall be considered to be public

servants within the meaning of the Penal Code.

27. The delegates selected under section 20 to aid in the adjudication of suits under this Act, shall be taken under the orders of the presiding judge of the Court in due rotation from the delegates appointed by the Government under section 24:

Provided that each party to the suit may, without cause assigned challenge any three of the delegates attending the Court before such delegates are selected and no delegate so challenged shall be selected.

28. All legal practitioners entitled to practice in 11[ the High Court Division] shall be entitled to practice in any Court constituted under this Act, and all legal practitioners entitled to practice in a District Court shall be entitled to practice in any Parsi District Matrimonial Court constituted under this Act.

29. (1) All suits instituted under this Act shall be brought in the Court within the limits of whose jurisdiction the defendant resides at the time of the institution of the suit.

(2) When the defendant shall at such time have left Bangladesh such suit shall be brought in the Court at the place where the plaintiff and defendant last resided together.

(3) In any case, whether the defendant resides in Bangladesh or not, such suit may be brought in the Court at the place where the plaintiff resides or at the place where the plaintiff and the defendant last resided together, if such Court, after recording its reasons in writing, grants leave so to do.

#### **IV.-MATRIMONIAL SUITS.**

30. In any case in which consummation of the marriage is from natural causes impossible, such marriage may, at the instance of either party thereto, be declared to be null and void.

31. If a husband or wife shall have been continually absent from his or her wife or husband for the space of seven years, and shall not have been heard of as being alive within that time by those persons who would have naturally heard of him or her, had he or she been alive, the marriage of such husband or wife may, at the instance of

either party thereto, be dissolved.

32. Any married person may sue for divorce on any one or more of the following grounds, namely:-

- (a) that the marriage has not been consummated within one year after its solemnization owing to the wilful refusal of the defendant to consummate it;
- (b) that the defendant at the time of the marriage was of unsound mind and has been habitually so up to the date of the suit:

Provided that divorce shall not be granted on this ground unless the plaintiff (1) was ignorant of the fact at the time of the marriage, and (2) has filed the suit within three years from the date of the marriage;

- (c) that the defendant was at the time of marriage pregnant by some person other than the plaintiff:

Provided that divorce shall not be granted on this ground unless (1) the plaintiff was at the time of the marriage ignorant of the fact alleged, (2) the suit has been filed within two years of the date of marriage, and (3) marital intercourse has not taken place after the plaintiff came to know of the fact;

- (d) that the defendant has since the marriage committed adultery or fornication or bigamy or rape or an unnatural offence:

Provided that divorce shall not be granted on this ground if the suit has been filed more than two years after the plaintiff came to know of the fact;

- (e) that the defendant has since the marriage voluntarily caused grievous hurt to the plaintiff or has infected the plaintiff with venereal disease or, where the defendant is the husband, has compelled the wife to submit herself to prostitution:

Provided that divorce shall not be granted on this ground if the suit has been filed more than two years (i) after the infliction of the grievous hurt, or (ii) after the plaintiff came to know of the infection, or (iii) after the last act of compulsory prostitution;

- (f) that the defendant is undergoing a sentence of imprisonment for seven years or more for an offence as defined in the Penal Code:

Provided that divorce shall not be granted on his ground unless the defendant has prior to the filing of the suit undergone at least one year's imprisonment out of the said period;

- (g) that the defendant has deserted the plaintiff for at least three years;
- (h) that a decree or order for judicial separation has been passed against the defendant, or an order has been passed against the defendant by a Magistrate awarding separate maintenance to the plaintiff, and the parties have not had marital intercourse for three years or more since such decree or order;
- (i) that the defendant has failed to comply with a decree for restitution of conjugal rights for a year or more; and
- (j) that the defendant has ceased to be a Parsi:

Provided that divorce shall not be granted on this ground if the suit has been filed more than two years after the plaintiff came to know of the fact.

33. In every such suit for divorce on the ground of adultery, the plaintiff shall, unless the Court shall otherwise order, make the person with whom the adultery is alleged to have been committed a co-defendant, and in any such suit by the husband the Court may order the adulterer to pay the whole or any part of the costs of the proceedings.

34. Any married person may sue for judicial separation on any of the grounds for which such person could have filed a suit for divorce, or on the ground that the defendant has been guilty of such cruelty to him or her or their children, or has used such personal violence, or has behaved in such a way as to render it in the judgment of the Court improper to compel him or her to live with the defendant.

35. In any suit under section 30, 31, 32 or 34, whether defended or not, if the Court be satisfied that any of the ground set forth in those sections for granting relief exist, that none of the grounds therein set forth for withholding relief exist and that-

- (a) the act omission set forth in the plaint has not been condoned;
- (b) the husband and wife are not colluding together;
- (c) the plaintiff has not connived at or been accessory to the said act or omission;



- (d) (save where a definite period of limitation is provided by this Act) there has been no unnecessary or improper delay in instituting the suit; and
- (e) there is no other legal ground why relief should not be granted; then and in such case, but not otherwise, the Court shall decree such relief accordingly.

36. Where a husband shall have deserted or without lawful cause ceased to cohabit with his wife, or where a wife shall have deserted or without lawful cause ceased to cohabit with her husband, the party so deserted or with whom cohabitation shall have deserted or without lawful cause ceased to cohabit with her husband, the party so deserted or with whom cohabitation shall have so ceased may sue for the restitution of his or her conjugal rights and the Court, if satisfied of the truth of the allegations contained in the plaint, and that there is no just ground why relief should not be granted, may proceed to decree such restitution of conjugal rights accordingly.

37. In any suit under this Act, the defendant may make a counter-claim for any relief he or she may be entitled to under this Act.

38. Notwithstanding anything hereinbefore contained, no suit shall be brought in any Court to enforce any marriage or any contract connected with or arising out of any marriage, if, at the date of the institution of the suit, the husband shall not have the age of sixteen years, or the wife shall not have completed the age of fourteen years.

39. In any suit under this Act if the wife shall not have an independent income sufficient for her support and the necessary expenses of the suit, the Court, on the application of the wife, may order the husband to pay her monthly or weekly during the suit such sum not exceeding one-fifth of her husband's net income as the Court, considering the circumstances of the parties, shall think reasonable.

40. (1) The Court may, if it shall think fit at the time of passing any decree under this Act or subsequently thereto on application made to it for the purpose, order that the husband shall while the wife remains chaste and unmarried,-

- (a) to the satisfaction of the Court, secure to the wife such gross

sum or such monthly or periodical payment of money for a term not exceeding her life as, having regard to her own property, if any, her husband's ability and the conduct of the parties, shall be deemed just, and for that purpose may require a proper instrument to be executed by all necessary parties and suspend the pronouncing of its decree until such instruments shall have been duly executed, or

- (b) make such monthly payments to the wife for her maintenance and support as the Court may think reasonable.

In case any such order shall not be obeyed by her husband it may be enforced in the manner provided for the execution of decrees and orders under the Code of Civil Procedure, 1908, and further the husband may be sued by any person supplying the wife with necessaries during the time of such disobedience for the price of such necessaries.

- (2) The Court, if satisfied that there is a change in the circumstances of either party at any time, may at the instance either party vary, modify or rescind such order in such manner as the Court may deem just.
- (3) Where an order for alimony or maintenance in favour of a wife has been mad either under the provisions of the Parsi Marriage and Divorce Act, 1865, or under the provisions of this Act, the Court, if satisfied that the wife has remarried or has not remained chaste, shall vary or rescind the order.

41. In all cases in which the Court shall make 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 may seem expedient, and may from time to time appoint a new trustee, if for any reason it shall appear to the Court expedient so to do.

42. In any suit under this Act the Court may make such provisions in the final decree as it may deem just and proper with respect to property presented at or about the time of marriage which may belong jointly to both the husband and wife.

43. In every suit preferred under this Act, the case shall be tried with closed doors

should such be the wish of either of the parties.

44. Notwithstanding anything contained in section 19 or section 20, where in the case of a trial in a Parsi Matrimonial Court not less than five delegates have attended throughout the proceedings, the trial shall not be invalid by reason of the absence during any part thereof of the other delegates.

45. The provisions of the Code of Civil Procedure, 1908, shall, so far as the same may be applicable, apply to proceedings in suits instituted under this Act including proceedings in execution and orders subsequent to decree.

46. In suits under this Act all questions of law and procedure shall be determined by the presiding judge; but the decision on the facts shall be the decision of the majority of the delegates before whom the case is tried:

Provided that, where such delegates are equally divided in opinion, the decision on the facts shall be the decision of the presiding judge.

47. An appeal shall lie to the 12[ the High Court Division] from-

- (a) the decision of any Court established under this Act, on the ground of the decision being contrary to some law or usage having the force of law, or of a substantial error or defect in the procedure or investigation of the case which may have produced error or defect in the decision of the case upon the merits, and on no other ground; and
- (b) the granting of leave by any such Court under sub-section (3) of section 29:

Provided that such appeal shall be instituted within three calendar months after the decision appealed from shall have been pronounced.

48. When the time hereby limited for appealing against any decree granting a divorce or annulling or dissolving a marriage shall have expired, and no appeal shall have been presented against such decree, or when any such appeal shall have been dismissed, or when in the result of any appeal a divorce has been granted or a marriage has been declared to be annulled or dissolved, but not sooner, it shall be lawful for the respective parties thereto to marry again, as if the prior marriage had been terminated by death.

### **V.-CHILDREN OF THE PARTIES.**

49. In any suit under this Act, the Court may from time to time pass such interim orders and make such provisions in the final decree as it may deem just and proper with respect to the custody, maintenance and education of the children under the age of sixteen years, the marriage of whose parents is the subject of such-suit, and may, after the final decree upon application, by petition for this purpose, make, revoke, suspend or vary from time to time all such orders and provisions with respect to the custody, maintenance and education of such children as might have been made by such final decree or by interim orders in case the suit for obtaining such decree were still pending.

50. In any case in which the Court shall pronounce a decree divorce or judicial separation for adultery of the wife, if it shall be made to appear to the Court that the wife is entitled to any property either in possession or reversion, the Court may order such settlement as it shall think reasonable to be made of any part of such property, not exceeding one-half thereof, for the benefit of the children of the marriage or any of them.

### **VI.-Miscellaneous.**

51. The High Court shall have superintendence<sup>1</sup> over all Courts constituted under this Act subject to its appellate jurisdiction in the same manner as it has over other Courts [ \* \* \* \* \* ].<sup>2</sup>

52. (1) The provisions of this Act shall apply to all suits to which the same are applicable whether the circumstances relied on occurred before or after the passing of this Act, and whether any decree or order referred to was passed under this Act or under the law in force before the passing of this Act, and where any proceedings are pending in any Court at the time of the commencement of this Act, the Court shall allow such amendment of the pleadings as may be necessary as the result of the coming into operation of this Act.

(2) A Parsi who has contracted a marriage under the Parshi Marriage and

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<sup>1</sup> For rules made by the High Court in exercise of this power, see Burma Gazette, 1939, Part IV, page 157.

<sup>2</sup> Omitted by the Union of Burma (Adaptation of Laws) Order, 1943.

Divorce Act, 1865<sup>1</sup> or under this Act as in force for the time being in the Union of Burma or India or Pakistan, even though such Parsi may change his or her religion or domicile, so long as his or her wife or husband is alive and so long as such Parsi has not been lawfully divorced from such wife or husband or such marriage has not lawfully been declared null and void or dissolved under the decree of a competent Court under either of the said Acts, shall remain bound by the provisions of this Act.

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## SCHEDULE I.

(See section 3.)

Table of prohibited Degrees of Consanguinity and Affinity.

A man shall not marry his-

1. Paternal grand-father—s mother.
2. Paternal grand-mother—s mother.
3. Maternal grand-father—s mother.
4. Maternal grand-mother—s mother.
5. Paternal grand-mother.
6. Paternal grand-father—s wife.
7. Maternal grand-mother.
8. Maternal grand-father—s wife.
9. Mother or step-mother.
10. Father—s sister or step- sister.
11. Mother—s sister or step-sister.

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<sup>1</sup> Repealed by India Act III of 1936.

12. Sister or step-sister.
13. Brother—s daughter or step-brother—s daughter, or any direct lineal descendant of a brother or step-brother.
14. Sister—s daughter or step-sister—s daughter, or any direct lineal descendant of a sister or step-sister.
15. Daughter or step-daughter, or any direct lineal descendant of either.
16. Son—s daughter or step-son—s daughter, or any direct lineal descendant of a son or step-son.
17. Wife of son or step-son, or of any direct lineal descendant of a son or step-son.
18. Wife of daughter—s son or of step-daughter—s son, or of any direct lineal descendant of a daughter or step-daughter.
19. Mother of daughter—s husband.
20. Mother of son—s wife.
21. Mother of wife—s paternal grand-father.
22. Mother of wife—s paternal grand-mother.
23. Mother of wife—s maternal grand-father.
24. Mother of wife—s maternal grand-mother.
25. Wife—s paternal grand-mother.
26. Wife—s maternal grand-mother.
27. Wife—s mother or step-mother.
28. Wife—s father—s sister.
29. Wife—s mother—s sister.
30. Father—s brother—s wife.

31. Mother—s brother—s wife.

32. Brother—s son—s wife.

33. Sister—s son—s wife.

A woman shall not marry her-

1. Paternal grand-father—s father.

2. Paternal grand-mother—s father.

3. Maternal grand-father—s father.

4. Maternal grand-mother—s father.

5. Paternal grand-father.

6. Paternal grand-mother—s husband.

7. Maternal grand-father.

8. Maternal grand-mother—s husband.

9. Father or step-father.

10. Father—s brother or step-brother.

11. Mother—s brother or step-brother.

12. Brother or step-brother.

13. Brother—s son or step-brother—s son, or any direct lineal descendant of a brother or step brother.

14. Sister—s son or step-sister—s son, or any direct lineal descendant of a sister or step-sister.

15. Son or step-son, or any direct lineal descendant of either.

16. Daughter—s son or step-daughter—s son, or any direct lineal descendant of a daughter or step-daughter.

17. Husband of daughter or of step-daughter, or of any direct lineal descendant of a daughter or step-daughter.

18. Husband of son—s daughter or of step-son—s daughter, or of any direct lineal descendant of a son or step-son.

19. Father of daughter—s husband.

20. Father of son—s wife.

21. Father of husband—s paternal grand-father.

22. Father of husband—s paternal grand-mother.

23. Father of husband—s maternal grand-father.

24. Father of husband—s maternal grand-mother.

25. Husband—s paternal grand-father.

26. Husband—s maternal grand-father.

27. Husband—s father or step-father.

28. Brother of husband—s father.

29. Brother of husband—s mother.

30. Husband—s brother—s son, or his direct lineal descendant.

31. Husband—s sister—s son, or his direct lineal descendant.

32. Brother—s daughter—s husband.

33. Sister—s daughter—s husband.

NOTE.- In the above table the words 'brother' and 'sister' denote brother and sister of the whole as well as half-blood. Relationship by step means relationship by marriages.



## SEHEDULE II.

(See section 6.)

### Certificate of Marriage.

Date and place of marriage	...	
Names of the husband and wife	...	
Condition at the time of marriage	...	
Rank or profession	...	
Age	...	
Residence	...	
Names of the fathers or guardians	...	
Rank or profession	...	
Signature of the officiating priest	...	
Signatures of the contracting parties		
Signatures of the fathers or guardians of the contracting parties under 21 years of age.		
Signatures of witnesses	...	

