

Bill No. XXIII of 2010

THE MARRIAGE LAW BILL, 2010

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to remove the discrimination between man and woman in the matter of marriage and divorce in the existing laws, to ensure equality between them and confer dignity and humane treatment to women and to strengthen family and for matters connected therewith and incidental thereto.

Whereas, article 16 of Universal Declaration of Human Rights requires that every Member State should accord equal treatment to man and woman in the matter of marriage and divorce;

And whereas, article 15 of the Constitution of India prohibits discrimination against any citizen on grounds of religion and sex;

And whereas article 44 of the Constitution directs the State to enact uniform civil code which includes uniform law regarding marriage and divorce.

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

1. (1) This Act may be called the Marriage Law Act, 2010.

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

5 (3) it shall apply to all the citizens of India.

Short title,
commencement,
and
applicability.

Definition. **2.** In this Act, unless the context otherwise requires, the words and expressions used but not defined herein shall, *mutatis mutandis* have the same meanings respectively assigned to them in the laws relating to marriage and divorce which are in force at the time of the coming into force of this Act.

Restriction on marriage when spouse is alive. **3.** (1) No man whose wife is living, shall marry another woman and no woman whose husband is living, shall marry another man except as expressly provided in this Act.

(2) Any marriage in contravention of sub-section (1) shall be void and the man or woman who marries in violation of sub-section (1) shall be guilty of the offence and shall be liable to be punished for the offence of adultery under section 494 of the Indian Penal Code, 1860.

45 of 1860.

Petition for divorce. **4.** Subject to the provisions of this Act, and to the rules made thereunder, a petition for divorce may be presented to the District Court or the family court as the case may be, either by the husband or the wife on the ground that his wife or her husband as the case may be:—

(a) has after the solemnization of the marriage had voluntary sexual intercourse with any person other than his or her spouse; or

(b) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or

(c) is undergoing a sentence of imprisonment for seven years or more for an offence as defined in the Indian Penal Code, 1860; or

(d) has since the solemnization of the marriage treated the petitioner with cruelty; or

(e) has been suffering from incurable and communicable disease which makes it unsafe for the spouse to live with him or her; or

(f) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot be reasonably expected to live with the respondent.

Explanation.— In this sub-section;

(i) 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,

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

(g) has been suffering from any venereal disease in a communicable form including AIDS;

(h) has been suffering from leprosy, the disease not having been contracted from the petitioner; and

(i) has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of the respondent, if the respondent has been alive.

Explanation.—In this sub-section, the expression "desertion" means desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the willful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly.

5. A wife may also present a petition for divorce to the District Court on the ground that her husband has, since the solemnization of the marriage, been guilty of rape, sodomy or bestiality. Petition for divorce by wife.

6. (1) Subject to the provisions of this Act and to the rules made thereunder, a petition for divorce may be presented to the District Court by both the parties together 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.

(2) On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in sub-section (1) and not later than eighteen months after the said date, if the petition is not withdrawn in the meantime, the district 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 that the averments in the petition are true, pass a decree declaring the marriage be dissolved with effect from the date of the decree.

7. No petition for divorce shall be presented unless as on the date of the presentation of the petition three years have elapsed from the date of marriage. Restriction on presentation of petition for divorce.

8. Notwithstanding anything contained in this Act, or in any other law for the time being in force:— Second marriage with the permission of the court.

(1) A man can take a second wife with the consent of his wife and with the permission of the court which could be given on any one or more grounds on which divorce can be granted under section 4 of this Act or on the ground of physical disability caused on account of any accident or any illness or for any reasons whatsoever which renders her unfit for discharging her duties, responsibilities and obligations as the wife.

(2) In every petition for divorce presented by the husband under section 4 or for permission to take a second wife under section 9, if the court comes to the conclusion that the petitioner is entitled to the decree of divorce on any one of the grounds on which it could be given under section 4, or permission to take a second wife could be granted under section 8, the court shall in the first instance pass a preliminary decree granting divorce or permission to take a second wife as the case may be.

(3) The wife against whom the preliminary decree is passed under section 8, shall be entitled to prefer an appeal against such decree except in cases in which she had given her consent, to the High Court within a period of thirty days from the date of the preliminary decree.

(4) It shall, however, be open to the wife not to prefer any appeal against such preliminary decree and to give consent to the husband to take a second wife and if, the wife files such consent before the court within thirty days from the date of the preliminary decree, the Court shall set aside the preliminary decree for divorce and grant permission to the husband to take a second wife.

(5) If neither an appeal is filed by the wife to the High Court nor the consent is filed, consenting to the husband taking a second wife within the prescribed period, the Court shall proceed to pass final decree for divorce:

Provided that before passing final decree, the Court shall give paramount consideration to the interest of child/children of the petitioner and respondent and shall pass appropriate orders for the protection of their interest in every respect including their health, education and maintenance:

Provided further that before passing a decree of divorce or appropriate orders which directly affects the children, the Court shall give notice and opportunity of hearing to the person who is interested in the welfare of the children of the spouse.

Permission to take a second wife on the application of the wife.

9. (1) A wife shall be entitled to file a petition before the District Court according permission to her husband to take a second wife only on the ground that she is medically certified as incapable of child bearing or she has been incapacitated for discharging her duties and obligations as required by a wife on account of any accident or any illness or for any reasons whatsoever.

(2) the permission under sub-section (1) shall be given by the Court if, the Court is satisfied that the application made, is out of her free will and desire and not on account of any force, fraud or undue influence brought to bear on her by the husband or any one on his behalf.

Maintenance allowance.

10. (1) In case, a permission is granted to a man to take a second wife under section 8 or 9 of the Act, the wife shall have the option either to live with the husband or to live separately and claim maintenance from the husband for herself and for her children, if any, from the husband, if she has no sufficient source of livelihood.

(2) The quantum of maintenance, however, shall be determined by the Court having due regard to the requirement of the wife and/or children and also having due regard to the financial capacity of the husband on an application made by the wife and/or children as the case may be.

Permission to take a second husband.

11. (1) A wife shall be, with the permission of the competent court, entitled to take a second husband if,—

(a) her husband has been convicted for an offence and sentenced to undergo imprisonment for more than seven years; or

(b) her husband is suffering from incurable and communicable venereal diseases including AIDS and thereby, incompetent and unsuitable to lead a conjugal life; or

(c) he joins ascetic order and shuns married life; or

(d) he is guilty of such cruelty which makes it impracticable to the wife to live with him; or

(e) he has been absconding for more than seven years; and

(f) he has been certified by a competent medical authority that he is impotent.

(2) Notwithstanding the taking of a second husband with the permission of the Courts on the grounds mentioned in this section, her right for any share in the property of her first husband or any right flowing from her relationship with her first husband including the right of their children if any, shall remain unaffected.

(3) Whenever a petition is filed by a wife seeking permission to take a second husband, the court shall consider the grounds urged with great circumspection and grant permission after recording a finding that the ground has been made out beyond reasonable doubt.

Right in the property of the spouse to remain unaffected even on taking second spouse.

12. In all cases in which permission is given to a man to take a second wife or permission is given to a woman to take a second husband their right to share in the property of the spouse concerned or any right flowing from the relationship as spouse including the right of their children if any, shall remain unaffected.

Jurisdiction.

13. Only the highest court of original civil jurisdiction in the district other than the High Court alone shall have jurisdiction to entertain and decide all the petitions presented under any of the provisions of this Act.

Presence during proceedings in the Court.

14. At the time of the proceedings of the Court, in each case only parties to that cases and their counsel and such other persons, with the permission of the court shall be present in the Court.

15. (1) An appeal shall lie to a Division Bench of the High Court against all or any of the orders passed by the Court having original jurisdiction both on questions of law and fact. Appeal.

5 of 1908. (2) The High Court shall have all the powers of the first appellate Court under the Code of Civil Procedure, 1908 both in respect of making any interim order as well as passing the final orders.

16. All religious aspects of the marriage in all the personal laws of the citizens belonging to different religions shall remain unaffected. Religious aspects of Marriage remain unaffected.

26 of 1937. **17.** The provisions of this Act shall have effect notwithstanding any thing contained 8 of 1939. in any of the laws in force as on the date of commencement of this Act, including the Muslim Personal Law Application Act, 1937 and the Dissolution of Muslim Marriage Act, 1939 and all the laws continued by virtue of Article 372 of the Constitution as also any usage, custom or practice. Act to have overriding effects.

18. (1) The Central Government shall have the power to frame rules after previous publication generally for carrying out the purposes of this Act. Power to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters namely:—

(a) the procedure to be adopted by the Court in the petitions presented under the provisions of this Act;

(b) the form and manner in which any restriction, the type of restriction and particulars of information required to be entered in the registers, in respect of all the proceedings under the Act;

(c) fees that may be levied in respect of petitions and/or applications under the Act;

(d) manner in which public notice may be given in cases in which the whereabouts of the respondent is not known; and

(e) any other matters, which may be or required to be prescribed.

STATEMENT OF OBJECTS AND REASONS

Prior to the date of commencement of the Constitution, there were different laws governing marriage and divorce as applicable to different classes of citizens. All those laws were continued by virtue of Article 372 of the Constitution insofar as they are consistent with the provisions of the Constitution. One of the main objectives of the Constitution as enshrined in the Preamble is that the State shall be secular and shall ensure equality for all citizens and to secure Social Justice. Article 14 is an injunction to the State not to deny equality before law. Article 15 in particular prohibits discrimination against any citizen on grounds of religion or sex.

Article 44 of the Constitution read with Article 37 of the Constitution makes it the fundamental duty of the State to secure for the citizens a Uniform Civil Code. As held by the Hon'ble Supreme Court in the case of *S.R. Bommai Vs. Union of India*. 1994 (3) SCC1 it is part of secular character of our Constitution. There are laws such as those relating to rights of individuals in family property, right to succession, minority, guardianship, marriage and divorce which fall within the scope of the expression 'Civil Code'. Of all these, Marriage and Divorce are the most important. On this topic, there are both post constitution as well as pre-constitutional laws such as. The Hindu Marriage Act, 1955, the Special Marriage Act, 1954 [Act Nos. 32 of 1963, 33 of 1969, 29 of 1970 and 68 of 1976]. The Indian Christian Marriage Act, 1872, The Parsi Marriage and Divorce Act, 1936. The Muslims Marriage and Divorce Act 1951 as applicable to different class of citizens have been made.

However, as regards the Personal Laws of Muslims, concerning marriage and divorce, no law has been enacted by the Parliament after the commencement of the Constitution. The Muslim Personal Law relating to marriage and divorce enables a man to take four wives at a time and further it confers a unilateral and absolute right on the husband to divorce his wife by his own order called 'talaq'. These provisions of Muslim Personal Law relating to Marriage and Divorce are discriminatory against women only on ground of sex. It is also discriminatory only on the ground of religion. Equality as between man and woman and dignity of individual citizen is the very fundamental aspect of equality and social justice. The fundamental right guaranteed under Article 15 *inter alia* prohibits discrimination on the ground of sex or religion. Further, the Uniform Law on the topic of Marriage and Divorce is essential for the purpose of national integration, as held by the Hon'ble Supreme Court in the case of *Mohd. Ahmed Khan Vs. Shah Bano Begum*—AIR 1985 SC 955 and in its recent judgment is *Sarala Mudgal* [1995 (3) SCC 635].

Despite the words of wisdom coming from the highest court and the Constitutional mandate, they are subordinated to religion dominated politics. Therefore, it is high time that supremacy of the Constitution must prevail. It is also matter of common knowledge that ordinarily no woman relishes the idea of her husband having another wife and Muslim women are no exception to this. But they are being discriminated against both on grounds of religion and sex and males are favoured to the detriment of the interest of women and thereby causing gender discrimination.

Therefore, this Bill is intended to put an end to the discrimination against women on grounds of sex, and religion by incorporating the rule of monogamy subject to the exceptions as expressly provided for in the Act. The provisions regarding divorce incorporated in this Act is, in terms of Section 27 and 28 of the Special Marriage Act, 1954.

Monogamy as an invariable rule in exceptional cases causes great hardship both to the husband and wife, who are unwilling for divorce but second marriage has become necessary in the interest of both and the family. To illustrate, in a case where husband and wife love each other, and are leading a happy life, unfortunately on account of a motor

accident, the wife loses both her legs, and therefore, unable to discharge her obligations as a wife, and therefore desires that her husband should take a second wife. But the existing law does not permit that and for that purpose has to seek a divorce of the first wife though they do not want it and which would result in inflicting greater injury than already suffered on account of accident or in a case where it is medically proved that the wife is not child bearing and therefore, the wife herself desires and gives consent to her husband taking a second wife, the law does not permit, which is unbearable to both.

Therefore, exception to monogamy is provided for, for all in order to avoid divorce, in cases in which either the wife or the husband or both do not want divorce even in cases in which a ground for divorce is made out. In such cases, provision has been made to the effect that with the consent of the wife only, according permission to the husband to take a second wife is provided for. This is intended to safeguard the interest of wife who does not like to be a divorcee, not only by maintaining her status as wife but also protecting all her rights under the law, as wife.

Further, in cases in which the wife is not child bearing or has become incapacitated for discharging her duties and obligations as a wife, she is given the right to seek permission of the Court for her husband taking a second wife with the object of continuity of the family. Provision has also been made for enabling a wife to take a second husband as provided in Section 11. In substance, this law is meant not only to ensure complete national integration which is essential for protecting and strengthening the feeling of fraternity among the people and unity and integrity of the National but also in protecting the interests of both husband, wife and their family.

Hence, this Bill.

M. RAMA JOIS

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 18 of the Bill empowers the Central Government to make rules to carry out the purposes of the Bill. It will relate to matters of details only. The delegation of legislative power is of normal character.

RAJYA SABHA

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to remove the discrimination between man and woman in the matter of marriage and divorce in the existing laws, to ensure equality between them and confer dignity and humane treatment to women and to strengthen family and for matters connected therewith and incidental thereto.

(Shri M. Rama Jois, M.P.)