

THE SINDH HINDUS MARRIAGE (AMENDMENT) ACT, 2018
SINDH ACT NO. XLIX OF 2018

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THE SINDH HINDUS MARRIAGE (AMENDMENT) ACT, 2018

SINDH ACT NO. XLIX OF 2018

[08th August, 2018]

AN ACT to amend the Sindh Hindus Marriage Act, 2016.

WHEREAS the right to family is a fundamental right guaranteed by the Constitution of Pakistan; **Preamble.**

And whereas there is a need to create a uniform law to protect right of Hindu marriages and for matters which are incidental or ancillary thereto.

It is hereby enacted as follows:-

CHAPTER-I PRELIMINARY

1. (1) This Act may be called the Sindh Hindus Marriage (Amendment) Act, 2018. **Short title and commencement.**
 - (2) This Act extends to all Hindus in the Province of Sindh.
 - (3) It shall come into force at once.
2. In this Act: **Definitions.**
 - (a) “Certificate of marriage” means the document provided in Schedule A;
 - (b) “Concerned Officer” means the officer duly authorized in the Union Council, Ward or any other Municipal Authority where the marriage ceremony takes places;
 - (c) “Consent” means informed and voluntary consent that is given freely without any coercion, undue influence, fraud or misrepresentation by an adult with full capacity to give any such consent and full knowledge of the implications of the consent and any alternatives;
 - (d) “Degree of prohibited relationship” means a relationship prohibited under personal law of the religion and customs of Hindus that forbids certain relations to join in marital life;
 - (e) “Government” means the Government of Sindh;

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- (f) “Hindu” any person who practices the Hindu, Jain or Sikh religions in any of the forms or development;
- (g) “Marriage Register” means the register of marriages maintained by the Concerned Officer as prescribed by the Government;
- (h) “Solemnization” means the marriage ceremony;
- (i) “Court” means Family Court as defined under the West Pakistan Family Court Act, 1946 (W.P Act XXXV of 1964).

3. The objective of this Act is to address the issues relation to Hindu Marriages. **Objective.**
4. (1) A marriage may be solemnized under this Act, if the following conditions are fulfilled, namely: **Conditions for a Hindu Marriage.**
 - (a) parties to the marriage are of 18 years of age or above;
 - (b) parties to the marriage are able to give consent;
 - (c) parties to the marriage give free consent;
 - (d) parties are not within the prohibited degree of relationship;
 - (e) neither of the parties to the marriage has a spouse living at the time of marriage; and
 - (f) at least two witnesses are present at the time of the solemnization and registration of marriage.

Provided that condition in clause (e) shall not apply where a living female spouse cannot conceive a child and medically declared to be so.

5. Notwithstanding anything contained in this Act, a marriage may be solemnized in accordance with the customary rites and ceremonies of either party to the marriage. **Ceremonies for Marriage.**

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6. Every marriage solemnized under this Act shall be registered with the Union Councils/Wards or any other Municipal Authority, where the marriage ceremony took place, within 45 days of the solemnization. **Registration of marriages.**
7. (1) There shall be 4 copies of the certificate of marriage, as provided in Schedule A, all of which after being filled out shall be provided to the Concerned Officer. **Manner of registration.**
- (2) The Concerned Officer after satisfying himself that all conditions of marriage set out in rules have been met shall certify/endorse the certificate of marriage and keep one copy of the certificate for its record and return the remaining copies to the parties.
- (3) The Concerned Officer shall maintain a Marriage Register for the purposes of this Act as per Rules and directions issued by the Government.
- (4) Omitted.
8. (1) Either party to Hindu marriage, whether solemnized before or after commencement of this Act, may present a petition to the court praying for decree of judicial separation on any of the grounds specified in sub-section (1) of section 11 and in the case of a wife also on any of the ground specified in sub-section (2) thereof. **Restitution of Conjugal Rights.**
- (2) Where as decree of judicial separation has been passed, the court may on application of both the parties and on being satisfied or truth of statements made in such petition, rescind the decree if it consider it just and reasonable to do so.
9. Any Hindu marriage solemnized after commencement of this Act may, on a petition to the court presented by either party to the marriage or their real parents be declared null and void the conditions specified in clause (c) and (d) of section 4. **Void Marriages.**
10. Any Hindu marriage solemnized, whether before or after commencement of this act may be declared voidable and may be subsequently annulled by a decree of nullity passed by the Court if:- **Void Marriage.**
- (a) Marriage has not been consummated owing to impotence of the respondent, or

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- (b) the marriage has been solemnized in contravention of the condition specified in clause (a) of Section 4, or
- (c) Consent of the petitioner was obtained by force, coercion or by fraud as to the nature of the ceremony or as any material fact or circumstance concerning the respondent, or
- (d) the respondent was at the time of the marriage pregnant by some person.

(2) Notwithstanding anything contained in sub-section (1), no petition for annulling a marriage

- (A) on the ground specified in clause (c) of sub-section (1) shall be entertained if:-
 - (i) the petition is presented more than one year after the force or coercion has ceased to operate or, as the case may be, the fraud had been discovered: or
 - (ii) the petitioner has, with his or her full consent, continued to live with the other party to the marriage as husband or wife the force has ceased to operate or, as the case may be, the fraud has been discovered, and
- (B) on the ground specified in clause (d) of sub-section (1) shall be entertained unless the Court is satisfied that:-
 - (i) the petitioner was, at the time of the marriage, ignorant of the facts alleged: and
 - (ii) the proceeding have been instituted, in case of marriage solemnized:-
 - (a) Before the commencement of this Act within one year of such commencement and
 - (b) After such commencement, within one year from the date of the marriage.

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11. Any Hindu marriage solemnized whether before or after commencement of this Act may, on a petition presented to the Court by either a husband or a wife, be terminated by decree of termination of marriage on the ground:- **Termination of Hindu marriage.**

(a) That the other party:-

- (i) has, after the solemnization of the marriage, treat the petitioner with cruelty, or
- (ii) has deserted the petitioner, for a continuous period of not less than two years immediately preceding the presentation of the petition or

Explanation- in this clause, the expression “desertion” means the 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; or

- (iii) has ceased to be Hindu by conversion to another religion, or
- (iv) has been incurably of unsound mind, Mental Disorder.

Explanation:- In this clause the expression “mental disorder” means mental illness, arrested or incomplete development of mind, psychopathic disorder or any disorder or disability of mind including schizophrenia and the expression “psychopathic disorder” means a persistent disorder or disability of mind (whether or not including sub-normality of intelligence) which results in abnormally aggressive or serious irresponsible conduct on the part of the other party and whether or not it requires or is susceptible to medical treatment: or

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- (v) has been suffering from virulent and incurable from of leprosy, or
 - (vi) has been suffering from venereal disease in communicable from or HIV Aids: or
 - (vii) has renounced the world by entering any religious order, or
- (b) That there has been no resumption of cohabitation as between the parties to the marriage for a period of more than one year after the passing of a degree for judicial separation or order of restitution of conjugal rights passed by the court.

(2) A wife may also present a petition for termination of her marriage on the ground:-

- (a) in the case of any marriage solemnized before commencement of this Act, that the husband has married again before such commencement or that another wife of the husband married before such commencement was alive at the time of the solemnization of the marriage of the petitioner:-

Provided that in either case the other wife is alive at the time of the presentation of the petition: or

- (b) that the husband has neglected or has failed to provide for her maintenance for a period of two years;
- (c) that the husband has been sentenced to imprisonment for a period of four years or upward; or
- (d) that her marriage, whether consumed or not, was solemnized before she attained the age of eighteen years and she has repudiated the marriage before attaining that age;

Explanation:- This clause applies whether the marriage was solemnized before or after commencement of this Act.

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12. (1) If a wife is respondent in a petition for termination of the marriage by decree of termination she may oppose the grant of decree on the ground that the termination of the marriage may result in grave financial hardship to her unless arrangement have been made to the satisfaction of the court to eliminate such hardship.
- Financial security of wife and children.**
- Provided that nothing contained in this Act shall affect any right which she may have to her dower or any party thereof on the termination of marriage.
- (2) The Court shall not pass a decree of termination unless the Court is satisfied that adequate provisions for the maintenance of children born out of the marriage has been made in commensuration with the financial capacity of the parties to the marriage.
13. Subject to the provisions of this Act a petition for termination of marriage by a decree of divorce may be presented to the Court by both the parties to a marriage together, whether such marriage was solemnized before or after the commencement of this Act, on the ground that they have been living separately for a period of Six month a year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be terminated.
- Termination of Hindu marriage by mutual consent.**
- (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 and that the averments in the petition are true, pass a decree of termination declaring the marriage to be terminated with effect from the date of the decree.
14. When a marriage has been annulled or terminated by a decree of nullity or decree of termination as the case may be and the time for appeal has expired or an appeal has been preferred but has been dismissed, it shall be lawful of either party to marry again after expiry of six months from final decision.
- After termination of marriage person may marry again.**
15. A Hindu widow shall have right to re-marry of her own will and consent after the death of her husband provided a period of six months has lapsed after the husband's death.
- Hindu widows are entitled to remarry.**
16. (1) Notwithstanding that a marriage is null and void under section 9, any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate, whether such a child is born before or after the commencement of this Act and whether or
- Legitimacy of child born out of voidable Hindu marriage.**

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not a decree of nullity is granted in respect of the marriage under this Act and whether or not the marriage is held to be void otherwise than on a petition under this Act.

(2) Where a decree of nullity is granted in respect of a voidable marriage under section 10, any child begotten or conceived before the decree is made, who would have been the legitimate child of the parties to the marriage if at the date of the decree it had been terminated instead of being annulled, shall be deemed to be their legitimate child notwithstanding the decree of nullity.

17. Any marriage solemnized after the commencement of this Act is void if at the date of such marriage either party had a spouse living and the provisions of Sections 494 and 495 of the Pakistan Penal Code, 1860 (Act XLV of 1860) shall apply accordingly. **Punishment of bigamy.**
18. Every person who get his or her marriage solemnized under this Act in contravention of the conditions specified in clauses (b) or (c) of section (4) shall be punishable with simple imprisonment with may extend to six months but not less than three months or with fine which may extend to five thousand rupees, or with both. **Punishment for contravention of certain other conditions for Hindu marriage.**
19. Every petition under this Act shall be presented to the Family Court and the provisions of:- **Court to which petition shall be presented.**
- (a) the Family Court Act, 1964 (XXXV of 1964) except proviso of sub-section (4) of section 10, sub-section (2) of section 14 and section 21 and 23 thereof; and
- (b) the West Pakistan Family Court Rules, 1965, except proviso to clause (b) of rule (6) thereof;
- Shall mutatis mutandis apply to the proceeding under this Act.
20. (1) any person who contravenes the provisions of this Act or rules made there under regarding of Hindu marriage shall be punishable with simple imprisonment for a term which may extend to three months or with fine which may extend to one thousand rupees or with both. **Penalty for violation the provisions of this Act.**
- (2) Any person who make statement or give particulars to be entered in the Marriage register, which is false or has reason to believe to be false, shall be punished with a simple imprisonment,

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which may extend to six month but not less than one month or fine which may extend up to one hundred thousand or with both.

21. Notwithstanding anything contained in the Code of Criminal Procedure 1898 (Act V of 1898), all offences under this Act shall be non-cognizable and non-compoundable and the same shall be triable by a Magistrate First Class on a complaint in writing by a marriage registrar. **Cognizance of offence under this Act.**

22. The Government through a notification published in the official Gazette shall prescribe fee for registering marriages and issuing certified copies of the certificates. **Government to prescribe fee.**

23. The Government shall within 3 months of when this Act comes into force, shall notify Rules for the purpose of furtherance of achieving the objects of this Act. **Power to make rules.**

24. (1) The Act shall have retrospective effect for the purposes of validation and registration of the marriages solemnized prior to the commencement of this Act. **Retrospective effect of the Act.**
 (2) Marriages solemnized before this Act came into force may be registered with the Concerned Officer with the same procedure, as prescribed under this Act.

25. If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order in the official Gazette, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty. **Power to remove difficulties.**

26. This Act and the Rules framed hereunder shall be interpreted so as to advance the purposes of this Act and to facilitate and encourage people belonging to Hindu religion to get their marriages registered. **Interpretation.**

27. The provisions of this Act shall take precedence over the provisions of any other law. **Act to take precedence over other laws.**