

Hindu Marriage and Divorce Act 1961

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CHAPTER 250

THE HINDU MARRIAGE AND DIVORCE ACT.

Arrangement of Sections.

Section

1. Interpretation.
2. Conditions for marriages.
3. Guardianship in marriage.
4. Ceremonies for marriages.
5. Registration of marriages.
6. Bigamy, etc.
7. Offences and penalties.
8. Matrimonial causes.

CHAPTER 250

THE HINDU MARRIAGE AND DIVORCE ACT.

Commencement: 1 September, 1961.

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

1. Interpretation.

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

1. “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;
2. “Hindu” means a person who is a Hindu by religion in any form, including a Virashaiva, a Lingayat and a follower of the Brahma, Prarthana or Arya Samaj, or a person who is a Buddhist of Indian origin, a Jain or a Sikh by religion;
3. “marriage” means a marriage between Hindus which is either— (i) a marriage solemnised under this Act; (ii) a marriage, including a polygamous marriage, solemnised

before the commencement of this Act inside or outside Uganda and recognised as such by both parties;

(iii) a marriage solemnised under the Hindu Marriage and Divorce Ordinance, 1960, of Kenya, the Special Marriage Act, 1954, of India or the Hindu Marriage Act, 1955, of India, or any enactment substituted for that Ordinance or those Acts; or

(iv) a marriage declared by the Minister by statutory instrument to be a marriage for the purposes of this Act;
4. “of the full blood” means descended from a common ancestor by the same wife;
5. “of the half blood” means descended from a common ancestor but by different wives;
6. “of uterine blood” means descended from a common female ancestor but different husbands.

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

1. a person, legitimate or illegitimate, both of whose parents are or were Hindus, Buddhists, Jains or Sikhs by religion;
2. 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 that parent belongs or belonged;
3. any person who is a convert or reconvert to the Hindu, the Buddhist, Jain or Sikh religion.

2. Conditions for marriages.

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

1. neither party has a spouse living at the time of the marriage;
2. both parties are of sound mind at the time of the marriage;
3. the bridegroom has attained the age of eighteen years and the bride the age of sixteen years at the time of the marriage;
4. 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;
5. 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—

1. one is a lineal ancestor of the other;
2. one was the wife or husband of a lineal ancestor or descendant of the other;
3. one was the wife of the father's or mother's brother or of the grandfather's or grandmother's brother of the other;
4. one was the husband of the father's or mother's sister or of the grandfather's or grandmother's sister of the other;
5. they are brother and sister, uncle and niece, aunt and nephew or children of brother and sister or of brothers or sisters; or
6. 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) shall 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 that person.

3. 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—

1. the father; whom failing;
 2. the mother; whom failing;
 3. the paternal grandfather; whom failing;
 4. the paternal grandmother; whom failing;
 5. the brother of the full blood, as between brothers the elder being preferred; whom failing;
 6. the paternal uncle of the full blood, as between paternal uncles; the elder being preferred; whom failing;
- (g) the maternal grandfather; whom failing;
(h) the maternal grandmother.

2. No person shall be entitled to act as guardian in marriage under this section unless that person has himself or herself 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), a guardian in marriage may be appointed by a chief magistrate or a magistrate grade I on the application of any interested party.

4. Ceremonies for marriages.

1. A marriage may be solemnised in accordance with the customary rites and ceremonies of either party to the marriage.
2. Where the customary 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 solemnised 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.

5. Registration of marriages.

(1) The Minister shall make rules—

1. requiring marriages to be registered within a period to be prescribed in the rules;
2. requiring the priest or other person performing the marriage ceremony to issue a certificate of marriage in a form to be prescribed in the rules;
3. imposing fees for the issue of certificates of marriage and for the issue of copies or translations of the certificates;
4. providing for the receiving in evidence of entries in the register and marriage certificates and of certified copies thereof; and
5. providing for anything incidental to or connected with the registration of marriages.

2. Rules made under this section may provide that any person who contravenes any provision of those rules commits an offence and is liable on conviction to a fine not exceeding two thousand shillings.

3. All fees collected in pursuance of rules made under this section shall be paid into the Consolidated Fund.

4. Notwithstanding anything 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.

6. Bigamy, etc.

(1) A marriage solemnised 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 that former husband or wife was then in force, and section 153 of the Penal Code Act shall apply in that case.

(2) A marriage, whether solemnised 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 this Act.

7. Offences and penalties.

Any person who solemnises or procures to be solemnised a marriage in respect of which any of the conditions specified in section 2(1)(c), (d) and (e) has not at the time of the marriage been fulfilled commits an offence and is liable on conviction—

1. in the case of the condition specified in paragraph (c), to a fine not exceeding five hundred shillings;
2. in the case of the condition specified in paragraph (d), to a fine not exceeding one hundred shillings; and
3. in the case of the condition specified in paragraph (e), to a fine not exceeding one thousand shillings.

8. Matrimonial causes.

1. Subject to this section, the Divorce Act shall apply to marriages and to matrimonial causes relating to marriages.
2. In addition to the grounds for divorce mentioned in the Divorce Act, a petition for divorce may be presented—

(a) by either party to a marriage on the ground that—

(i) the respondent has ceased to be a Hindu by reason of

conversion to another religion; or (ii) the respondent has renounced the world by entering a religious order and has remained in that order apart from the world for at least three years immediately preceding the presentation of the petition; and

(b) by the wife, in the case of a marriage solemnised before the commencement of this Act, on the ground that her husband—

(i) at the time of the marriage was already married; or

(ii) married again before the commencement of this Act,

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

(3) A decree of nullity of marriage—

(a) shall not be granted on the ground that the parties are within the

prohibited degrees of consanguinity if the custom governing each

party permits a marriage between them;

2. in the case of a marriage solemnised before the commencement of this Act, shall not be granted on the grounds that the former husband or wife of either party was living at the time of the marriage and the marriage with the previous husband or wife was then in force; and

3. may be granted on the ground that the consent of a guardian in marriage was necessary under this Act and was obtained by force or fraud.

(4) In this section, references to the Divorce Act include a reference to any Act replacing that Act.

History: Cap. 214.