

withdrawn in the meantime, the district court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has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 to be dissolved with effect from the date of the decree.

29. Restriction on petitions for divorce during first three years after marriage.—(1) No petition for divorce shall be presented to the district court unless at the date of the presentation of the petition three years have passed since the date of entering the certificate of marriage in the Marriage Certificate Book:

Provided that the district court may, upon application being made to it, allow a petition to be presented before three years have passed on the ground that the case is one of exceptional hardship suffered by the petitioner or of exceptional depravity on the part of the respondent, but if it appears to the district court at the hearing of the petition that the petitioner obtained leave to present the petition by any misrepresentation or concealment of the nature of the case, the district court may, if it pronounces a decree, do so subject to the condition that the decree shall not have effect until after the expiry of three years from the date of the marriage or may dismiss the petition, without prejudice to any petition, which may be brought after the expiration of the said three years upon the same, or substantially the same, facts as those proved in support of the petition so dismissed.

(2) In disposing of any application under this section for leave to present a petition for divorce before the expiration of three years from the date of the marriage, the district court shall have regard to the interests of any children of the marriage, and to the question whether there is a reasonable probability of a reconciliation between the parties before the expiration of the said three years.

30. Re-marriage of divorced persons.—Where a marriage has been dissolved by a decree of divorce, and either there is no right of appeal against the decree or if there is such a right of appeal, the time for appealing has expired without an appeal having been presented, or an appeal has been presented but has been dismissed, and one year has elapsed thereafter but not sooner, either party to the marriage may marry again.

CHAPTER VII

JURISDICTION AND PROCEDURE

31. Court to which petition should be made.—(1) Every petition under Chapter V or Chapter VI shall be presented to the district court within the local limits of whose jurisdiction the marriage was solemnized or the husband and wife reside or last resided together.

(2) Without prejudice to any jurisdiction exercisable by the court under sub-section (1), the district court may, by virtue of this sub-section, entertain a petition by a wife domiciled in the territories to which this Act extends for nullity of marriage or for divorce if she is resident in the said territories and has been ordinarily resident therein for a period of three years immediately preceding the presentation of the petition and the husband is not resident in the said territories.

32. Contents and verification of petitions.—(1) Every petition under Chapter V or Chapter VI shall state, as distinctly as the nature of the case permits, the facts on which the claim to relief is founded, and shall

also state that there is no collusion between the petitioner and the other party to the marriage.

(2) The Statements contained in every such petition shall be verified by the petitioner or some other competent person in the manner required by law for the verification of plaints, and may, at the hearing, be referred to as evidence.

33. Proceedings may be in camera.—A proceeding under this Act shall be conducted *in camera* if either party thereto so desires or if the district court so thinks fit to do.

34. Duty of court in passing decrees.—(1) In any proceeding under Chapter V or Chapter VI, whether defended or not, if the court is satisfied that,—

- (a) any of the grounds for granting relief exist; and
 - (b) where the ground of the petition is adultery, the petitioner has not in any manner been accessory to or connived at or condoned the adultery, or, where the ground of the petition is cruelty, the petitioner has not in any manner condoned the cruelty; and
 - (c) when divorce is sought on the ground of mutual consent, such consent has not been obtained by force, fraud or undue influence; and
 - (d) the petition is not presented or prosecuted in collusion with the respondent; and
 - (e) there has not been any unnecessary or improper delay in instituting the proceeding; and
 - (f) there is no other legal ground why the relief should not be granted;
- then, and in such a case, but not otherwise, the court shall decree such relief accordingly.

(2) Before proceeding to grant any relief under this Act it shall be the duty of the court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about a reconciliation between the parties.

35. Relief to respondent on petition for divorce.—If in any proceeding for divorce, the respondent opposes the relief sought on the ground of the petitioner's adultery, cruelty or desertion, the court may give to the respondent the same relief to which he or she would have been entitled if he or she had presented a petition seeking such relief.

36. Alimony pendente lite.—Where in any proceeding under Chapter V or Chapter VI it appears to the district court that the wife has no independent income sufficient for her support and the necessary expenses of the proceeding, it may, on the application of the wife, order the husband to pay to her the expenses of the proceeding and weekly or monthly during the proceeding such sum as, having regard to the husband's income, it may seem to the court to be reasonable.

37. Permanent alimony and maintenance.—(1) Any court exercising jurisdiction under Chapter V or Chapter VI may, at the time of passing any decree or at any time subsequent to the decree, on application made to it for the purpose, order that the husband shall secure to the wife for her maintenance and support, if necessary, by a charge on the husband's property, 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 property and ability and the conduct of the parties, it may seem to the court to be just.

(2) If the district court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may, at the instance of either party, vary, modify or rescind any such order in such manner as it may seem to the court to be just.

(3) If the district court is satisfied that the wife in whose favour an order has been made under this section re-married or is not leading a chaste life, it shall rescind the order.

38. Custody of Children.—In any proceeding under Chapter V or Chapter VI the district court may, from time to time, pass such interim orders and make such provisions in the decree as it may seem to it to be just and proper with respect to the custody, maintenance and education of minor children, consistently with their wishes wherever possible, and may after the decree, upon application by petition for the 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 decree or interim orders in case the proceeding for obtaining such decree were still pending.

39. Enforcement of and appeal from decrees and orders.—All decrees and orders made by the court in any proceeding under Chapter V or Chapter VI shall be enforced in like manner as the decrees and orders of the court made in the exercise of its original civil jurisdiction are enforced and may be appealed from under the law for the time being in force :

Provided that every such appeal shall be instituted within a period of ninety days from the date of the decree or order.

40. Application of Act V of 1908.—Subject to the other provisions contained in this Act, and to such rules as the High Court may make in this behalf, all proceedings under this Act shall be regulated, as far as may be, by the Code of Civil Procedure, 1908 (Act V of 1908).

41. Power of High Court to make rules regulating procedure.—
(1) The High Court shall, by notification in the Official Gazette, make such rules consistent with the provision contained in this Act and the Code of Civil Procedure, 1908 (Act V of 1908), as it may consider expedient for the purpose of carrying into effect the provisions of Chapters V, VI and VII.

(2) In particular, and without prejudice to the generality of the foregoing provision, such rules shall provide for,—

(a) the impleading by the petitioner of the adulterer as a co-respondent on a petition for divorce on the ground of adultery, and the circumstances in which the petitioner may be excused from doing so ;

(b) the awarding of damages against any such co-respondent ;

(c) the intervention in any proceeding under Chapter V or Chapter VI by any person not already a party thereto ;

(d) the form and contents of petitions for nullity of marriage or for divorce and the payment of costs incurred by parties to such petitions ; and

(e) any other matter for which no provision or no sufficient provision is made in this Act, and for which provision is made in the Indian Divorce Act, 1869 (IV of 1869).

42. Saving.—Nothing contained in this Act shall affect the validity of any marriage not solemnized under its provisions ; nor shall this Act be deemed directly or indirectly to affect the validity of any mode of contracting marriage.

43. Penalty on marriage person marrying again under this Act.—Save as otherwise provided in Chapter III, every person who, being at the time married, procures a marriage of himself or herself to be solemnized under this Act shall be deemed to have committed an offence under section 494 or section 495 of the Indian Penal Code (Act XLV of 1860), as the case may be, and the marriage so solemnized shall be void.

44. Punishment of bigamy.—Every person whose marriage is solemnized under this Act and who, during the lifetime of his or her wife or husband, contracts any other marriage shall be subject to the penalties provided in section 494 and section 495 of the Indian Penal Code (Act XLV of 1860), for the offence of marrying again during the lifetime of a husband or wife, and the marriage so contracted shall be void.

45. Penalty for signing false declaration or certificate.—Every person making, signing or attesting any declaration or certificate required by or under this Act containing a statement which is false and which he either knows or believes to be false or does not believe to be true shall be guilty of the offence described in section 199 of the Indian Penal Code (Act XLV of 1860).

46. Penalty for wrongful action of Marriage Officer.—Any Marriage Officer who knowingly and wilfully solemnizes a marriage under this Act—

(1) without publishing a notice regarding such marriage as required by section 5, or

(2) within thirty days of the publication of the notice of such marriage, or

(3) in contravention of any other provision contained in this Act,

shall be punishable with simple imprisonment for a term which may extend to one year, or with fine which may extend to five hundred rupees, or with both.

47. Marriage Certificate Book to be opened to inspection.—(1) The Marriage Certificate Book kept under this Act shall at all reasonable times be opened for inspection and shall be admissible as evidence of the statements therein contained.

(2) Certified extracts from the Marriage Certificate Book shall, on application, be given by the Marriage Officer to the applicant on payment by him of the prescribed fee.

48. Transmission of copies of entries in marriage records.—Every Marriage Officer in the State shall send to the Registrar-General of Birth, Deaths and Marriages of that State at such intervals and in such form as may be prescribed, a true copy of all entries made by him in the Marriage Certificate Book since the last of such intervals, and, in the case of Marriage Officers outside the territories to which this Act extends, the true copy shall be sent to such authority as the Central Government may specify in this behalf.

49. Correction of errors.—(1) Any Marriage Officer who discovers any errors in the form or substance of any entry in the Marriage Certificate

Book may, within one month next after the discovery of such error, in the presence of the persons married or, in case of their death or absence, in the presence of two other credible witnesses correct the error by entry in the margin without any alteration of the original entry and shall sign the marginal entry and add thereto the date of such correction and the Marriage Officer shall make the like marginal entry in the certificate thereof.

(2) Every correction made under this section shall be attested by the witnesses in whose presence it was made.

(3) Where a copy of any entry has already been sent under section 48 to the Registrar-General or other authority the Marriage Officer shall make and send in like manner a separate certificate of the original erroneous entry and of the marginal corrections therein made.

50. Power to make rules.—(1) The Central Government, in the case of diplomatic and consular officers and other officers of the Central Government, and the State Government, in all other cases, may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(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 duties and powers of Marriage Officers and the areas in which they may exercise jurisdiction;

(b) the manner in which a Marriage Officer may hold inquiries under this Act and the procedure therefor;

(c) the form and manner in which any books required by or under this Act shall be maintained;

(d) the fees that may be levied for the performance of any duty imposed upon a Marriage Officer under this Act;

(e) the manner in which public notice shall be given under section 16;

(f) the form in which, and the intervals within which, copies of entries in the Marriage Certificate Book shall be sent in pursuance of section 48;

(g) any other matter which may be or requires to be prescribed.

51. Repeals and savings.—(1) The Special Marriage Act, 1872 (III of 1872), and any law corresponding to the Special Marriage Act, 1872, in force in any Part B State immediately before the commencement of this Act are hereby repealed.

(2) Notwithstanding such repeal,—

(a) all marriages duly solemnized under the Special Marriage Act, 1872 (III of 1872), or any such corresponding law shall be deemed to have been solemnized under this Act;

(b) all suits and proceedings in causes and matters matrimonial which, when this Act comes into operation, are pending in any court, shall be dealt with and decided by such court, so far as may be, as if they had been originally instituted therein under this Act.

(3) The provisions of sub-section (2) shall be without prejudice to the provisions contained in section 6 of the General Clauses Act, 1897 (X of 1897), which shall also apply to the repeal of the corresponding law as if such corresponding law had been an enactment.

THE FIRST SCHEDULE

[See section 2 (b) "Degrees of prohibited relationship"]

PART I

1. Mother
2. Father's widow (step-mother)
3. Mother's mother
4. Mother's father's widow (step grand-mother)
5. Mother's mother's mother
6. Mother's mother's father's widow (step great grand-mother)
7. Mother's father's mother
8. Mother's father's father's widow (step great grand-mother)
9. Father's mother
10. Father's father's widow (step grand-mother)
11. Father's mother's mother
12. Father's mother's father's widow (step great grand-mother)
13. Father's father's mother
14. Father's father's father's widow (step great grand-mother)
15. Daughter
16. Son's widow
17. Daughter's daughter
18. Daughter's son's widow
19. Son's daughter
20. Son's son's widow
21. Daughter's daughter's daughter
22. Daughter's daughter's son's widow
23. Daughter's son's daughter
24. Daughter's son's son's widow
25. Son's daughter's daughter
26. Son's daughter's son's widow
27. Son's son's daughter
28. Son's son's son's widow
29. Sister
30. Sister's daughter
31. Brother's daughter
32. Mother's sister
33. Father's sister
34. Father's brother's daughter
35. Father's sister's daughter
36. Mother's sister's daughter
37. Mother's brother's daughter.

Explanation.—For the purposes of this Part, the expression "widow" includes a divorced wife.

PART II

1. Father
2. Mother's husband (step-father)
3. Father's father
4. Father's mother's husband (step grand-father)
5. Father's father's father
6. Father's father's mother's husband (step great grand-father)
7. Father's mother's father

- 8. Father's mother's mother's husband (step great grand-father)
- 9. Mother's father
- 10. Mother's mother's husband (step grand-father)
- 11. Mother's father's father
- 12. Mother's father's mother's husband (step great grand-father)
- 13. Mother's mother's father
- 14. Mother's mother's mother's husband (step great grand-father)
- 15. Son
- 16. Daughter's husband
- 17. Son's son
- 18. Son's daughter's husband
- 19. Daughter's son
- 20. Daughter's daughter's husband
- 21. Son's son's son
- 22. Son's son's daughter's husband
- 23. Son's daughter's son
- 24. Son's daughter's daughter's husband
- 25. Daughter's son's son
- 26. Daughter's son's daughter's husband
- 27. Daughter's daughter's son
- 28. Daughter's daughter's daughter's husband
- 29. Brother
- 30. Brother's son
- 31. Sister's son
- 32. Mother's brother
- 33. Father's brother
- 34. Father's brother's son
- 35. Father's sister's son
- 36. Mother's sister's son
- 37. Mother's brother's son.

Explanation.—For the purposes of this Part, the expression “husband” includes a divorced husband.

THE SECOND SCHEDULE

(See section 5)

NOTICE OF INTENDED MARRIAGE

To

Marriage Officer for the..... District

WE hereby give you notice that a marriage under the Special Marriage Act, 1954, is intended to be solemnized between us within three calendar months from the date hereof.

Name	Condition	Occupation	Age	Dwelling place	Permanent dwelling place if present dwelling place not permanent	Length of residence
------	-----------	------------	-----	----------------	--	---------------------

A.B. Unmarried
Widower
Divorcee

C.D. Unmarried
Widow
Divorcee

Witness our hands this..... day of..... 19.....

(Sd.) A.B.

(Sd.) C.D.

THE THIRD SCHEDULE

(See section 11)

DECLARATION TO BE MADE BY THE BRIDEGROOM

I, A.B., hereby declare as follows:—

1. I am at the present time unmarried (or a widower or a divorcee as the case may be).
2. I have completed..... years of age.
3. I am not related to C.D. (the bride) within the degrees of prohibited relationship.
4. I am aware that, if any statement in this declaration is false, and if in making such statement I either know or believe it to be false or do not believe it to be true, I am liable to imprisonment and also to fine.

(Sd.) A.B. (the Bridegroom).

DECLARATION TO BE MADE BY THE BRIDE

I, C. D., hereby declare as follows:—

1. I am at the present time unmarried (or a widow or a divorce, as the case may be).
2. I have completed..... years of age
3. I am not related to A. B. (the bridegroom) within the degrees of prohibited relationship.
4. I am aware that, if any statement in this declaration is false, and if in making such statement I either know or believe it to be false or do not believe it to be true, I am liable to imprisonment and also to fine.

(Sd.) C. D. (the Bride).

Signed in our presence by the above-named A.B. and C.D. So far as we are aware there is no lawful impediment to the marriage.

(Sd.) G.H.

(Sd.) I.J.

(Sd.) K.L.

} Three witnesses.

Countersigned E.F.,
Marriage Officer.

Dated the

day of

19

THE FOURTH SCHEDULE

(See section 13)

CERTIFICATE OF MARRIAGE

I, E.F., hereby certify that on the _____ day of _____ 19____, A.B. and C.D.* appeared before me and that each of them, in my presence and in the presence of three witnesses who have signed hereunder, made the declarations required by section 11 and that a marriage under this Act was solemnized between them in my presence.

(Sd.) E.F.

Marriage Officer for

(Sd.) A.B.

Bridegroom.

(Sd.) C.D.

Bride.

(Sd.) G.H. }

(Sd.) I. . }

(Sd.) K.L. }

Three witnesses.

Dated the

day of

19

THE FIFTH SCHEDULE

(See section 16)

CERTIFICATE OF MARRIAGE CELEBRATED IN OTHER FORMS

I, E.F., hereby certify that A.B. and C.D.* appeared before me this _____ day of _____ 19____ and that each of them, in my presence and in the presence of three witnesses who have signed hereunder, have declared that a ceremony of marriage has been performed between them and that they have been living together as husband and wife since the time of their marriage, and that in accordance with their desire to have their marriage registered under this Act, the said marriage has, this

day of _____ 19____ been registered under this Act, having effect as from

(Sd.) E.F.

Marriage Officer for

(Sd.) A.B.,

Husband.

(Sd.) C.D.,

Wife.

(Sd.) G.H. }

(Sd.) I. J. }

(Sd.) K.L. }

Three witnesses.

Dated the

day of

19

*Herein give particulars of the parties.

R. K. BORAH,

for Secy. to the Govt. of Assam, Leg. & Judl. Deptt