

## **Special Marriage Act, 1872**

**3 of 1872**

**[18 July 1872]**

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**Special Marriage Act, 1872**

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An Act to provide a form of Marriage in certain cases. Preamble WHEREAS it is expedient to provide a form of marriage for persons who do not profess the Christian, Jewish, Hindu, Muslim, Parsi, Buddhist, Sikh or Jaina religion, and for persons who profess the Hindu, Buddhist, Sikh or Jaina religion and to legalize certain marriages the validity of which is doubtful; It is hereby enacted as follows:-

### **1. Local Extent :-**

This Act extends to the whole of 3[ Bangladesh].

### **2. Conditions Upon Which Marriages Under Act May Be Celebrated :-**

Marriages may be celebrated under this Act between persons neither of whom professes the Christian or the Jewish, or the Hindu or the Muslim or the Parsi or the Buddhist, or the Sikh or the Jaina religion, or between persons each of whom professes one or other of the following religions, that is to say, the Hindu, Buddhist, Sikh or Jaina religion upon the following conditions:-

- (1) neither party must, at the time of the marriage, have a husband or wife living:
- (2) the man must have completed his age of eighteen years, and the woman her age of fourteen years, according to the Gregorian calendar:
- (3) each party must, if he or she has not completed the age of twenty-one years, have obtained the consent of his or her father or guardian to the marriage:
- (4) the parties must not be related to each other in any degree of consanguinity or affinity which would, according to any law to which either of them is subject, render a marriage between them illegal.

1st Proviso- No such law or custom, other than one relating to consanguinity or affinity, shall prevent them from marrying.

2nd Proviso- No law or custom as to consanguinity shall prevent them from marrying, unless a relationship can be traced between the parties through some common ancestor, who stands to each of them in a nearer relationship than that of great-great-grand-father or great-great-grand-mother, or unless one of the parties is the lineal ancestor, or the brother or sister of some lineal ancestor, of the other.

### **3. Appointment Of Marriage Registrars :-**

The Government may appoint one or more Registrars under this Act, either by name or as holding any office for the time being, for any portion of the territory subject to its administration. The officer so appointed shall be called "Registrar of Marriages under Act III of 1872," and is hereinafter referred to as "the Registrar". The portion of territory for which any such officer is appointed shall be deemed his district.

### **4. One Of The Parties To Intended Marriage To Give Notice To Registrar :-**

When a marriage is intended to be solemnized under this Act, one of the parties must give notice in writing to the Registrar before whom it is to be solemnized.

The Registrar to whom such notice is given must be the Registrar of a district within which one at least of the parties to the marriage has resided for fourteen days before such notice is given.

Such notice may be in the form given in the First Schedule to this Act.

### **5. Notice To Be Filed And Copy Entered In The Marriage Notice Book :-**

The Registrar shall file all such notices and keep them with the records of his office, and shall also forthwith enter a true copy of every such notice in a book to be for that purpose furnished to him by the Government, to be called the "Marriage Notice Book under Act III of 1872," and such book shall be open at all reasonable times, without fee, to all persons desirous of inspecting the same.

### **6. Objection To Marriage :-**

Fourteen days after notice of an intended marriage has been given under section 4, such marriage may be solemnized, unless it has been previously objected to in the manner hereinafter mentioned.

Any person may object to any such marriage on the ground that it would contravene some one or more of the conditions prescribed in clauses (1), (2), (3) or (4) of section 2.

The nature of the objection made shall be recorded in writing by the Registrar in the register, and shall, if necessary, be read over and explained to the person making the objection, and shall be

signed by him or on his behalf.

## **7. Procedure On Receipt Of Objection Objector May File Suit**

**:-**

On receipt of such notice of objection the Registrar shall not proceed to solemnize the marriage until the lapse of fourteen days from the receipt of such objection, if there be a Court of competent jurisdiction open at the time, or, if there be no such Court open at the time, until the lapse of fourteen days from the opening of such Court.

The person objecting to the intended marriage may file a suit in any Civil Court having local jurisdiction (other than a Court of Small Causes) for a declaratory decree, declaring that such marriage would contravene some one or more of the conditions prescribed in clauses (1), (2), (3) or (4) of section 2.

## **8. Certificate Of Filing Of Suit To Be Lodged With Registrar**

**:-**

The officer before whom such suit is filed shall thereupon give the person presenting it a certificate to the effect that such suit has been filed. If such certificate be lodged with the Registrar within fourteen days from the receipt of notice of objection, if there be a Court of competent jurisdiction open at the time, or, if there be no such Court open at the time, within fourteen days of the opening of such Court, the marriage shall not be solemnized till the decision of such Court has been given and the period allowed by law for appeals from such decision has elapsed; or, if there be an appeal from such decision, till the decision of the Appellate Court has been given.

If such certificate be not lodged in the manner and within the period prescribed in the last preceding paragraph, or if the decision of the Court be that such marriage would not contravene any one or more of the conditions prescribed in clauses (1), (2), (3) or (4) of section 2, such marriage may be solemnized.

If the decision of such Court be that the marriage in question would contravene any one or more of the conditions prescribed in clauses (1), (2), (3) or (4) of section 2, the marriage shall not be solemnized.

## **9. Court May Fine When Objection Not Reasonable :-**

Any Court in which any such suit as is referred to in section 7 is filed may, if it shall appear to it that the objection was not reasonable and bonafide, inflict a fine, not exceeding one thousand rupees, on the person objecting, and award it, or any part of it, to the parties to the intended marriage.

#### **10. Declaration By Parties And Witnesses :-**

Before the marriage is solemnized, the parties and three witnesses shall, in the presence of the Registrar, sign a declaration in the form contained in the second schedule to this Act. If either party has not completed the age of twenty-one years, the declaration shall also be signed by his or her father or guardian, except in the case of a widow, and, in every case, it shall be countersigned by the Registrar.

#### **11. Marriage How To Be Solemnized :-**

The marriage shall be solemnized in the presence of the Registrar and of the three witnesses who signed the declaration. It may be solemnized in any form, provided that each party says to the other, in the presence and hearing of the Registrar and witnesses, "I [A], take the [B], to be my lawful wife (or husband)."

#### **12. Place Where Marriage May Be Solemnized :-**

The marriage may be celebrated either at the office of the Registrar or at such other place, within reasonable distance of the office of the Registrar, as the parties desire: Provided that the Government may prescribe the conditions under which such marriages may be solemnized at places other than the Registrars office, and the additional fees to be paid thereupon.

#### **13. Certificate Of Marriage :-**

When the marriage has been solemnized, the Registrar shall enter a certificate thereof in a book to be kept by him for that purpose and to be called the "Marriage Certificate Book under Act III of 1872," in the form given in the third schedule to this Act, and such certificate shall be signed by the parties to the marriage and the three witnesses.

**13A.** Transmission Of Certified Copies Of Entries In Marriage Certificate Book To The Registrar General Of Births, Deaths And

Marriages :- .

The Registrar shall send to the Registrar General of Births, Deaths and Marriages for the territories within which his district is situate, at such interval as the Government from time to time directs, a true copy certified by him, in such form as the Government from time to time prescribes, of all entries made by him in the said marriage-certificate book since the last of such intervals.

#### **14. Fees :-**

The Government shall prescribe the fees to be paid to the Registrar for the duties to be discharged by him under this Act.

The Registrar may, if he thinks fit, demand payment of any such fee before the solemnization of the marriage or performance of any other duty in respect of which it is payable.

The said Marriage-Certificate Book shall at all reasonable times be open for inspection, and shall be admissible as evidence of the truth of the statements therein contained. Certified extracts therefrom shall on application be given by the Registrar on the payment to him by the applicant of a fee to be fixed by the Government for each such extract.

#### **15. Penalty On Married Person Marrying Again Under Act :-**

Every person who, being at the time married, procures a marriage of himself to be solemnized under this Act, shall be deemed to have committed an offence under section 494 or section 495 of the Penal Code, as the case may be; and the marriage so solemnized is void.

#### **16. Punishment Of Bigamy :-**

Every person married under this Act who, during the life time of his or her wife or husband, contracts any other marriage, shall be subject to the penalties provided in sections 494 and 495 of the Penal Code for the offence of marrying again during the lifetime of a husband or wife, whatever may be the religion which he or she professed at the time of such second marriage.

#### **17. Divorce Act To Apply :-**

The Divorce Act shall apply to all marriages contracted under this Act, and any such marriage may be declared null or dissolved in the

manner therein provided, and for the causes therein mentioned, or on the ground that it contravenes some one or more of the conditions prescribed in clauses (1), (2), (3) or (4) of section 2 of this Act.

**18. Law To Apply To Issue Of Marriages Under Act :-**

The issue of marriages solemnized under this Act shall, if they marry under this Act, be deemed to be subject to the law to which their fathers were subject as to the prohibition of marriages by reason of consanguinity and affinity, and the provisos to section 2 of this Act shall apply to them.

**19. Saving Of Marriages Solemnized Otherwise Than Under Act :-**

Nothing in this Act contained 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; but, if the validity of any such mode shall hereafter come into question before any Court, such question shall be decided as if this Act had not been passed.

**20. Repealed :-**

[Repealed by the Repealing Act, 1876 (Act No. XII of 1876)].

**21. Penalty For Signing Declarations Or Certificates Containing False Statements :-**

Every person making, signing or attesting any declaration or certificate prescribed by 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 deemed guilty of the offence described in section 199 of the Penal Code.

**22. Effect Of Certain Marriages On Coparcenary :-**

The marriage under this Act of any member of an undivided family who professes the Hindu, Buddhist, Sikh or Jaina religion shall be deemed to effect his severance from such family.

**23. Rights Of Succession In Certain Cases Of Marriage Under Act :-**

A person professing the Hindu, Buddhist, Sikh or Jaina religion who marries under this Act shall have the same rights and be subject to the same disabilities in regard to any right of succession to any property as a person to whom the Caste Disabilities Removal Act, 1850, applies:

Provided that nothing in this section shall confer on any person any right to any religious office or service, or to the management of any religious or charitable trust.

**24. Succession To The Property Of Parties Married Under Act :-**

Succession to the property of any person professing the Hindu, Buddhist, Sikh or Jaina religion who marries under this Act, and to the property of the issue of such marriage shall be regulated by the provisions of the 5[ Succession Act, 1925].

**25. Person Marrying Under Act Not To Have Right Of Adoption :-**

No person professing the Hindu, Buddhist, Sikh or Jaina religion who marries under this Act shall have any right of adoption.

**26. Adoption By Father Of Person Marrying Under Act :-**

When a person professing the Hindu, Buddhist, Sikh or Jaina religion marries under this Act, his father shall, if he has no other son living, have the right to adopt another person as a son under the law to which he is subject.