

The Divorce Act, 1869

(ACT NO. IV OF 1869)

2♣An Act to amend the law relating to Divorce and Matrimonial Causes.

Preamble

WHEREAS it is expedient to amend the law relating to the divorce of persons professing the Christian religion, and to confer upon certain Courts jurisdiction in matters matrimonial; It is hereby enacted follows:-

CHAPTER I PRELIMINARY

Short Title Commencement of Act	1. This Act may be called the Divorce Act, and shall come into operation on the first day of April, 1869.
Extent of Act	2. This Act extends to the whole of Bangladesh.
Extent of power to grant relief generally and to make decrees of dissolution, or of nullity	<p>Nothing hereinafter contained shall authorise any Court to grant any relief under this Act except where the petitioner or respondent professes the Christian religion,</p> <p>or to make decrees of dissolution of marriage except where the parties to the marriage are domiciled in Bangladesh at the time when the petition is presented,</p> <p>or to make decrees of nullity of marriage except where the marriage if solemnized, before ³[the 26th day of March, 1971, has been solemnized in Pakistan] and if solemnized on or after that date has been solemnized in Bangladesh and the petitioner</p> <p>is resident in Bangladesh at the time of presenting the petition, or to grant any relief under this Act, other than a decree of dissolution of marriage or</p>

of nullity of marriage, except where the petitioner resides in Bangladesh at the time of presenting the petition:

Provided that nothing in this paragraph shall be deemed to authorize any Court to grant any relief under this Act where the petitioner or respondent is a Muslim.

Interpretation- clause

3. In this Act, unless there be something repugnant in the subject or context,-

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⁵[(2) "District Judge" means a Judge of a Principal Civil Court of a district.]

(3) "District Court" means, in the case of any petition under this Act, the Court of the District Judge within the local limits of whose ordinary jurisdiction, or of whose jurisdiction under this Act, the husband and wife reside or last resided together:

(4) "Court" means the High Court Division or the District Court, as the case may be:

(5) "minor children" means, in the case of sons of ⁶[fathers domiciled in Bangladesh], boys who have not completed the age of sixteen years, and, in the case of daughters of ⁷[fathers domiciled in Bangladesh], girls who have not completed the age of thirteen years: in other cases it means unmarried children who have not completed the age of eighteen years:

(6) "incestuous adultery" means adultery committed by a husband with a woman with whom, if his wife were dead, he could not lawfully contract marriage by reason of her being within the prohibited degrees of consanguinity (whether natural or legal) or affinity:

(7) "bigamy with adultery" means adultery with same woman with whom the bigamy was committed:

(8) "marriage with another woman" means marriage of any person, being married, to any other person, during the life of the former wife, whether the second marriage shall have taken place within Bangladesh or elsewhere:

(9) "desertion" implies an abandonment against the wish of the person charging it: and

(10) "property" includes, in the case of a wife, any property to which she is entitled for an estate in remainder or reversion, or as a trustee, executrix or administratrix; and the date of the death of the testator or intestate shall be deemed to be the time at which any such wife becomes entitled as executrix or administratrix.

CHAPTER II JURISDICTION

Matrimonial jurisdiction of High Court Division to be exercised subject to Act Exception

4. The jurisdiction now exercised by the High Court Division in respect of divorce a mensa et toro, and in all other causes, suits and matters matrimonial, shall be exercised by such Courts and by the District Courts subject to the provisions in this Act contained, and not otherwise: except so far as relates to the granting of marriage-licenses, which may be granted as if this Act had not been passed.

[Omitted]

5. [Omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision And Declaration) Act, 1973 (Act No. VIII of 1973).]

[Omitted]

6. [Omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision And Declaration) Act, 1973 (Act No. VIII of 1973).]

Court to act on principles of English Divorce Court

7. Subject to the provisions contained in this Act, the High Court Division and District Courts shall, in all suits and proceedings hereunder, act and give relief on principles and rules which, in the opinion of the said Courts, are as nearly as may be conformable to the principles and rules on which the Court for Divorce and Matrimonial Causes in England for the time being acts and gives relief:

Provided that nothing in this section shall deprive the said Courts of jurisdiction in a case where the parties to a marriage professed the Christian religion at the time of the occurrence of the facts on which the claim to relief is founded.

Extraordinary jurisdiction

of High Court Division

8. The High Court Division may, whenever it thinks fit, remove and try and determine as a Court of original jurisdiction any suit or proceeding instituted under this Act in the Court of any District Judge within the limits of its jurisdiction under the Act.

Power to transfer suits

The High Court Division may also withdraw any such suit or proceeding, and transfer it for trial or disposal to the Court of any other such District Judge.

Reference to High Court Division

9. When any question of law or usage having the force of law arises at any point in the proceedings, previous to the hearing of any suit under this Act by a District Court or at any subsequent stage of such suit, or in the execution of the decree therein or order thereon,

the Court may, either of its own motion or on the application of any of the parties, draw up a statement of the case and refer it, with the Court's own opinion thereon, to the decision of the High Court Division.

If the question has arisen previous to or in the hearing, the District Court may either stay such proceedings, or proceed in the case pending such reference and pass a decree contingent upon the opinion of the High Court Division upon it.

If a decree or order has been made, its execution shall be stayed until the receipt of the order of the High Court Division upon such reference.

CHAPTER III DISSOLUTION OF MARRIAGE

When husband may petition for dissolution

10. Any husband may present a petition to the District Court or to the High Court Division, praying that his marriage may be dissolved on the ground that his wife has, since the solemnization thereof, been guilty of adultery.

When wife may petition for dissolution

Any wife may present a petition to the District court or to the High Court Division, praying that her marriage may be dissolved on the ground that, since the solemnization thereof, her husband has exchanged his

profession of Christianity for the profession of some other religion, and gone through a form of marriage with another woman;

or has been guilty of incestuous adultery,

or of bigamy with adultery,

or of marriage with another woman with adultery,

or of rape, sodomy or bestiality,

or of adultery coupled with such cruelty as without adultery would have entitled her to a divorce mensa et toro,

or of adultery coupled with desertion, without reasonable excuse, for two years or upwards.

Contents of petition

Every such petition shall state, as distinctly as the nature of the case permits, the facts on which the claim to have such marriage dissolved is founded.

Adulterer to be co-respondent

11. Upon any such petition presented by a husband, the petitioner shall make the alleged adulterer a co-respondent to the said petition, unless he is excused from so doing on one of the following grounds, to be allowed by the Court:-

(1) that the respondent is leading the life of a prostitute, and that the petitioner knows of no person with whom the adultery has been committed;

(2) that the name of the alleged adulterer is unknown to the petitioner although he has made due efforts to discover it;

(3) that the alleged adulterer is dead.

Court to be satisfied of absence of collusion

12. Upon any such petition for the dissolution of a marriage, the Court shall satisfy itself, so far as reasonable can, not only as to the facts alleged, but also whether or not the petitioner has been on any manner accessory to, or conniving at the going through of the said form of marriage, or the adultery, or has condoned the same, and shall also inquire into any countercharge which may be made against the petitioner.