

**CHAPTER 29:01
MARRIAGE**

ARRANGEMENT OF SECTIONS

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Act 18, 2001.

An Act to make provision for the solemnization and registration of marriages and for incidental matters.

[Date of Commencement: 28th December, 2001]

PART I
Civil Marriages (ss 1-21)

1. Short title

This Act may be cited as the Marriage Act, 2001.

2. Application

This Part shall apply to all marriages solemnized in Botswana except marriages contracted in accordance with any customary law of Botswana or Muslim, Hindu or other religious rites.

3. Preliminaries of marriage

No marriage shall be valid unless within a period of not more than three months previous to its solemnization banns have been published under section 4 or a special licence has been obtained under section 5.

4. Publications of banns

Banns may be published either—

- (a) in public in the ordinary manner in three successive weeks during divine service in a church or other building habitually used for public worship by a congregation to which one or both of the parties to the intended marriage belong and in a district in which one or both of such parties reside; or
- (b) by posting them up for a period covering three successive weeks in a conspicuous place to which the public have access at the office of an administrative officer in the district in which one or both of the parties to the intended marriage reside.

5. Special licence

Parties desiring to obtain a special licence shall appear before an administrative officer who, on being satisfied if necessary by evidence under oath or by affidavit that there is no legal impediment to the marriage of such parties, shall on payment of the prescribed fee issue a special licence entitling such persons to be married without publication of banns.

6. Protection of minors

(1) Unless the Minister in any case otherwise directs, no banns shall be published under section 4 and no special licence shall be issued under section 5—

- (a) with respect to or for the marriage of any widower or widow having minor children of a former marriage, or any children, whether minor or otherwise, of a marriage under any system of customary law, unless such person produces a certificate signed by the Master of the High Court, by an administrative officer (other than a cadet) or by a magistrate to the effect that he is satisfied that the inheritances or other properties which have devolved upon such children have been adequately secured;
- (b) with respect to or for the marriage of any other person having minor children of a former marriage under any system of customary law, unless a certificate is produced signed by an administrative officer (other than a cadet) or by a magistrate to the effect that he is satisfied that adequate provision has been made to safeguard the maintenance of such children.

(2) Where a person desiring to marry is resident outside Botswana the certificate required under subsection (1) may be signed by the holder in that person's country of residence of an office which is deemed by the Minister to be equivalent to that of a District Commissioner or of a magistrate.

7. Marriage officers

(1) No marriage shall be valid unless solemnized by a marriage officer.

(2) The following shall be marriage officers—

- (a) administrative officers;

(b) any minister of religion or person holding a responsible position in any religious denomination or community, whom the Minister has by notice published in the *Gazette* appointed a marriage officer.

(3) Any minister of religion or person holding a responsible position in any religious denomination or community desiring to be appointed a marriage officer shall make an application in writing to the Minister stating his qualifications.

(4) When a marriage officer has been found guilty of an offence under this Act, or for other good or sufficient reasons, the Minister may, by notice published in the *Gazette*, suspend or cancel his appointment as marriage officer.

8. Inquiries to be made by marriage officer

(1) No marriage officer shall solemnize a marriage unless on proof that the banns thereof have been published as required by this Act, or on production of a special licence for such marriage; and unless he is satisfied that there are no legal impediments to such marriage.

(2) Any marriage officer entertaining doubts as to whether he is legally entitled to solemnize a marriage may apply to the Minister for legal advice thereon.

9. Solemnization of marriage

(1) Every marriage shall be solemnized in the presence of at least two witnesses competent to give evidence in a court of law; and between the hours of six o'clock in the morning and six o'clock in the afternoon.

(2) The public shall have access to any place or any part of any building in which a marriage is being solemnized.

10. Formulary to be followed

(1) In solemnizing a marriage any minister of religion or person holding a responsible position in any religious denomination or community shall follow the formulary in use in the congregation to which he belongs.

(2) Any administrative officer who solemnizes a marriage shall require the bridegroom and bride to repeat separately after him the following words:

"I (name of bridegroom or bride) do solemnly declare that I know not of any lawful impediment why I (name of bridegroom or bride) may not be joined in matrimony to (name of bridegroom or bride) here present," and each of them, the bridegroom and bride, shall say to the other "I call upon these persons here present to witness that I (name of bridegroom or bride) do take (name of bridegroom or bride) to be my lawful wedded (husband or wife)." Thereupon the bridegroom and bride shall give each other the right hand and the administrative officer shall declare the marriage solemnized in these words:

"I declare that (name of bridegroom) and (name of bride) here present are lawfully joined together in matrimony.":

Provided however that in every case, before solemnizing the marriage, the marriage officer shall explain to the parties the consequences and implications of the proposed marriage, namely—

- (i) the fact that the marriage which it is proposed to contract will, during its subsistence, be a bar to either party thereto entering into any other marriage, whether that other marriage is contracted under this Part or in accordance with customary, Muslim, Hindu or other religious rites;
- (ii) that the marriage cannot be dissolved during the life-time of the spouses except by a valid decree of divorce;
- (iii) that if either spouse, before the death of the other, contracts another marriage, whether that other marriage is contracted under this Part or in accordance with any customary, Muslim, Hindu or other religious rites whilst the existing marriage remains undissolved, he or she will thereby be guilty of bigamy and

liable to punishment for that offence.

11. Registration of marriages

(1) Every marriage officer shall keep a register of marriages solemnized under this Part by him; and immediately after solemnizing any marriage he shall enter in the register the solemnization of the marriage, the place and date thereof, the full names of the parties, their ages, condition (whether widowers or bachelors, widows or spinsters) and residence, whether the marriage was by banns or special licence, whether in the case of one or both of the parties being minors the marriage was with the consent of parents or guardians or by what authority and any other particulars that the Minister may by notice published in the *Gazette* direct.

(2) Such register shall thereupon be signed in duplicate by the parties (by name or mark) and by the marriage officer in the presence of two witnesses who shall also sign the register.

(3) The prescribed fee shall be paid to the marriage officer in respect of the registration of each marriage under this section.

(4) Any person shall be entitled on payment of the prescribed fee to receive a copy of the register certified as correct by the marriage officer in whose custody it is.

(5) The Minister may, by notice published in the *Gazette*, appoint an officer to be styled the Registrar of Marriages, who shall be the custodian of all registers and records of marriages in Botswana.

(6) A duplicate original of the register of every marriage together with the prescribed fee, shall be transmitted by the marriage officer to the Registrar within one month of the solemnization of the marriage, and all the duplicates shall be filed by him and carefully preserved in his office.

(7) The Registrar shall furnish the public, on application and on payment of the prescribed fee, with a certified copy of the register, and shall cause a search to be made in his records for that purpose.

(8) Every certified copy of a register furnished by the Registrar or by a marriage officer shall in all courts of law and public offices within Botswana be *prima facie* evidence of the particulars set forth therein.

12. Consecration of marriages already solemnized

Any minister of religion may consecrate or solemnize a marriage that has already been solemnized by a marriage officer, and this Act shall not apply thereto.

13. Impediments to marriage

(1) No person who has previously contracted a marriage under this Part with a person still living may contract a marriage under this Part or in accordance with any customary, Muslim, Hindu or other religious rites unless the previous marriage has been dissolved or annulled by the sentence of a court:

Provided that such person may contract a marriage in accordance with any customary, Muslim, Hindu or other religious rites with the person with whom the previous marriage was contracted.

(2) No person who has previously contracted a marriage in accordance with any Customary, Muslim, Hindu or other religious rites with a person still living may contract a marriage under this Act unless the previous marriage has been dissolved or annulled in accordance with the applicable law:

Provided that such a person may contract a marriage under this Part with the person with whom the previous marriage was contracted.

(3) Where a person purports to contract a marriage under this Act or in accordance with any law which he is prohibited from so contracting by subsection (1) or (2), the ceremony of marriage shall be void.

(4) A person subject to Customary, Muslim, Hindu or other religious rites may not

contract a marriage under this Act unless he or she produces to the marriage officer a declaration in the prescribed form to the following effect—

- (a) that he or she, as the case may be, has never married according to any Customary, Muslim, Hindu or other religious rites any person (other than the person with whom it is proposed to contract the marriage); or
- (b) that any previous union contracted in accordance with any law has been dissolved by death or annulled in accordance with the law applicable in the circumstances of his or her case; and
- (c) if he or she has had any children by a previous marriage, the names, sex and ages of such children.

(5) Any person who makes a declaration in terms of subsection (4) which he knows to be false or does not believe to be true shall be deemed to be guilty of the crime of perjury.

14. Insane person and persons below age

No insane person who is incapable of giving consent to a marriage and no person below the age of 18 years may marry.

15. Consent to marriage by minors

No minor or person below the age of 21 years not being a widower or widow may marry without the consent in writing of his or her parents or guardians:

Provided that—

- (i) where such consent is given by one parent but refused by the other parent, the minor may apply to a magistrates' court, in the administrative district in which such minor resides, or to the High Court, for consent to the marriage and such minor shall not, for purposes of such application, require the legal assistance of his or her legal guardian;
- (ii) where a minor is born out of wedlock the consent of the mother or other lawful guardian only shall be required; or
- (iii) where a minor has no parents or guardian, an administrative officer in the district in which such minor resides may give an order in writing authorizing the marriage of such minor; and
- (iv) where consent cannot be obtained from the parents or guardian of a minor for reasons other than their unwillingness to give the same or when such consent is manifestly unreasonably withheld, an administrative officer in the district in which such minor resides or if the minor is resident outside Botswana, an administrative officer in the district in which the parents or guardian reside, may give an order in writing authorising the marriage of such minor.

16. Prohibited degree of marriages, etc.

(1) No persons may intermarry who are related within the forbidden degrees.

(2) For the purposes of this Act, persons are related within the forbidden degrees when they are related to one another as follows—

- (a) in the direct ascending or descending line in any degree, as, for example, parent and child, parent and grandchild and so forth;
- (b) in the collateral line by being children of the same person or by one being a child and another a grandchild or more remote descendant of the same person, as, for example, brother and sister, uncle and niece or grandniece and so forth;
- (c) by affinity as specified in paragraphs (a) and (b), that is, when the former husband or wife of one of the parties was related to the other party as therein specified:

Provided that—

- (i) a woman whose husband has died may marry her late husband's brother, and a man whose wife has died may marry his late wife's sister;

- (ii) it shall not be lawful for a woman to marry the brother of her divorced husband during the lifetime of such husband, and it shall not be lawful for a man to marry the sister of his divorced wife during the lifetime of such wife.

(3) Any marriage contracted contrary to the provisions of section 16 subsection (1) and (2) is void.

17. Offences and penalties

(1) Any person, who not being a marriage officer, performs a ceremony purporting to solemnize a marriage between two persons except in the case mentioned in section 13, shall be guilty of an offence and liable to a fine not exceeding P1000 or to imprisonment for a term not exceeding one year, or to both.

(2) A marriage officer shall not delegate his or her function of solemnizing a marriage to a person who has not been appointed a marriage officer, and any marriage officer who purports to do so shall be guilty of an offence and liable to a fine not exceeding P1000 or to imprisonment for a term not exceeding one year, or to both.

18. Solemnizing marriage of married person

Any marriage officer who solemnizes a marriage between parties one of whom is already to his knowledge lawfully married, and any person knowingly aiding, abetting or procuring such a marriage shall be guilty of an offence and liable to a fine not exceeding P1000 or to imprisonment for a term not exceeding one year, or to both.

19. Solemnizing marriage when legal impediments exist

Any marriage officer who solemnizes a marriage knowing or having reason to believe that there exists any of the legal impediments to such marriage specified in this Act other than as specified in section 13 shall be guilty of an offence and liable to a fine not exceeding P200 or, in default of payment, to imprisonment for a term not exceeding three months.

20. Criminal omissions

Any marriage officer who omits—

- (a) to make the entries in a register required in this Act immediately after each marriage solemnized by him;
- (b) to transmit in terms of this Act a duplicate original of each register of a marriage solemnized by him, together with the prescribed fee to the Registrar within one month of the solemnization thereof; or
- (c) to explain to the parties to a proposed marriage the consequences and implications of the marriage in terms of the proviso to section 10, unless he can show that there was a reasonable excuse for such omission, shall be guilty of an offence and liable to a fine of P120 or, in default of payment, to imprisonment for one month.

21. False statements

(1) Any person making a wilfully false statement to the Minister or an administrative officer in order to procure or prevent the issue of a special licence or an authorization for a minor to marry or to a marriage officer in order to procure or prevent the solemnization of a marriage shall be deemed to be guilty of the crime of perjury.

(2) Any person making or causing to be made a false entry in a marriage register or wilful destroying or falsifying the same shall be deemed to be guilty of the crime of fraud.

PART II

Registration of Customary, Muslim, Hindu and Other Religious Marriages (ss 22-27)

22. Application

This Part shall apply to Customary, Muslim, Hindu and other religious marriages, so however that nothing herein contained shall be taken as in any manner affecting or

casting doubts upon the validity of any Customary, Muslim, Hindu or other religious marriages contracted before the coming into operation of this Act.

23. Registration of Customary, Muslim, Hindu and other religious marriages

(1) Parties to a Customary, Muslim, Hindu and other religious marriages shall ensure that their marriage is registered within two months of contracting such marriage.

(2) Either spouse may apply to the Registrar of Marriages for the registration of his marriage and must furnish him with the prescribed information and any additional information which the Registrar may require in order to satisfy himself as to the existence of the marriage.

(3) The Registrar shall, if satisfied that the spouses concluded a valid Customary, Muslim, Hindu or other religious marriage, register the marriage by recording the identity of the spouses, the date of the marriage or property in cash or in kind which a prospective spouse undertakes to give to the other prospective spouse's family in consideration of such marriage (referred to as "bogadi" in vernacular) and any other particulars prescribed.

(4) Any person, who contravenes the provisions of subsection (1) shall be guilty of an offence and liable to a fine not exceeding P800 or to imprisonment for a term not exceeding one year, or to both.

24. Issue of certificate of registration

(1) The Registrar of Marriages shall issue to the spouses a certificate of registration, bearing the prescribed particulars.

(2) If the Registrar of Marriages is not satisfied that a valid Customary, Muslim, Hindu or other religious marriage was entered into by the spouses, he shall not register the marriage.

25. Registration of marriages contracted before commencement of Act

(1) Customary, Muslim, Hindu or other religious marriage contracted before the coming into operation of this Act may be registered upon application, by any of the parties to such marriage, to the Registrar in the prescribed manner.

(2) Where an application is made under subsection (1) and the Registrar of Marriages is satisfied that a valid Customary, Muslim, Hindu or other religious marriage exists between the spouses, he shall register the marriage and issue a certificate of registration as contemplated under section (24).

26. Certificate of registration is *prima facie* evidence of marriage

A certificate of registration of a customary, Muslim, Hindu or other religious marriage issued under this Part shall constitute *prima facie* evidence of the existence of such marriage and of the particulars contained in the certificate.

27. *Ex officio* registrars of customary marriages

Chiefs and Headmen of record shall be *ex officio* district registrars of customary marriages in their respective areas of jurisdiction.

PART III

General Provisions (ss 28-33)

28. Keeping of registers

The Registrar of Marriages shall keep a separate register for each type of marriage required to be registered under this Act.

29. Appeals to Minister

Any person aggrieved by a decision made under section 24 may appeal to the Minister and the Minister may confirm or vary such decision.

30. Regulations

The Minister may make regulations for the better carrying out of the purposes and provisions of this Act, and without derogation from the generality of the foregoing such regulations may provide for—

- (a) prescribing any form to be used for the purposes of this Act including the form of any certificate or declaration;
- (b) prescribing any fees to be prescribed in terms of this Act; or
- (c) generally for the better carrying out of the provisions of this Act.

31. Repeal of Act Cap. 29:01

The Marriage Act, hereinafter referred to as the "repealed Act", is hereby repealed.

32. Savings

All subsidiary legislation made under the repealed Act, and in force immediately prior to the coming into operation of this Act shall, in so far as such subsidiary legislation may not be inconsistent with the provisions of this Act, continue in force as if made under this Act.

33. Transitional provisions

Notwithstanding the repeal effected under section 31 any—

- (a) application or process commenced; or
- (b) determination, order or other ruling made,

under the repealed Act, immediately before the coming into operation of this Act, shall be deemed to have been made under this Act.

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