

**Nru. 193**

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**MALTA****KAMRA TAD-DEPUTATI****HOUSE OF REPRESENTATIVES**

ABBOZZ ta' Liġi mressaq mill-Onorevoli Joseph Brincat, M.P., Ministru tal-Gustizzja, Artijiet, Djar u Affarijiet tal-Parlament u moqri għall-Ewwel darba fis-Seduta tas-27 ta' Lulju, 1981.

A BILL introduced by the Honourable Joseph Brincat, M.P., Minister of Justice, Lands, Housing and Parliamentary Affairs and read the First time at the Sitting of the 27th July, 1981.

ATT biex jemenda l-Att ta' l-1975 dwar iż-Żwieġ.

AN ACT to amend the Marriage Act, 1975.

C. MIFSUD

*Skriwan tal-Kamra tad-Deputati*

C. MIFSUD

*Clerk to the House of Representatives*

## ABBOZZ TA' LIĠI

### msejjah

*ATT biex jemenda l-Att ta' l-1975 dwar iż-Żwieġ.*

IL-PRESIDENT, bil-parir u l-kunsens tal-Kamra tad-Deputati, imlaqqgħa f'dan il-Parlament, u bl-awtorità ta' l-istess, hareġ b'liġi dan li ġej:—

Titolu fil-qosor.

**1.** Dan l-Att jista' jissejjah l-Att ta' l-1981 li jemenda l-Att dwar iż-Żwieġ, u għandu jinqara u jiftiehem hekk waħda ma' l-Att ta' l-1975 dwar iż-Żwieġ, hawnhekk iżjed "il quddiem msejjah "l-Att prinċipali".

Emenda ta' l-artikolu 11 ta' l-Att prinċipali.

**2.** Fl-artikolu 11 ta' l-Att prinċipali, minnufih wara s-subartikolu (2) tiegħu għandu jiżdied is-subartikolu (3) ġdid li ġej:

“(3) Fil-każ tan-nuqqas tat-tħaris ta' xi formalità jew ta' xi htieġa oħra simili dwar iċ-ċelebrazzjoni taż-żwieġ jew li ssir bi tnejn jija għalih, żwieġ ma jistax ikun annullat u għandu jitqies li dejjem kien validu, jekk it-talba għall-annullament ma ssirx fi żmien sentejn wara iċ-ċelebrazzjoni taż-żwieġ.”.

Emenda ta' l-artikolu 14 ta' l-Att prinċipali.

**3.** Fl-artikolu 14 ta' l-Att prinċipali, minnufih wara s-subartikolu (3) tiegħu għandu jiżdied is-subartikolu (4) ġdid li ġej:

“(4) Fil-każ ta' żwieġ li jsir bi prokura ffirmata aktar kmieni minn disgħin jum qabel iż-żwieġ jew li tkun ġiet revokata qabel iż-żwieġ mingħajr ma tkun taf il-parti l-oħra, iż-żwieġ ma jistax ikun annullat u għandu jitqies li dejjem kien validu, jekk il-partijiet kienu jgħixu flimkien għal mill-inqas xahar wara iċ-ċelebrazzjoni taż-żwieġ.”.

Sostituzzjoni ta' l-artikolu 19 ta' l-Att prinċipali.

**4.** Minflok l-artikolu 19 ta' l-Att prinċipali għandu jidhol dan li ġej:

“Nullità ta' żwieġ.

19. (1) B'żieda mal-każijiet fejn żwieġ ikun null skond xi disposizzjoni oħra ta' dan l-Att, żwieġ ikun null —

(a) jekk il-kunsens ta' xi waħda mill-partijiet ikun inkiseb bi vjolenza, sew fiżika sew morali;

(b) jekk il-kunsens ta' xi waħda mill-partijiet ikun eskluż minħabba żball fuq l-identità tal-parti l-oħra;

(c) jekk il-kunsens ta' xi waħda mill-partijiet ikun inkiseb b'qerq dwar xi kwalità tal-parti l-oħra li tista' mix-xorta tagħha tfixkel serjament il-ħajja miżżewġa;

(d) jekk il-kunsens ta' xi waħda mill-partijiet ikun vizjat b'difett serju ta' diskrezzjoni ta' ġudizzju fuq il-ħajja miżżewġa, jew fuq id-drittijiet u d-dmirijiet essen-zjali tagħha, jew b'anomalija psikoloġika serja li tagħmilha impossibbli għal dik il-parti li taqdi l-obbligazzjo-nijiet essen-zjali taż-żwieġ;

(e) jekk xi waħda mill-partijiet tkun impotenti, sew jekk dik l-impotenza tkun assoluta jew relattiva, iżda biss jekk dik l-impotenza tkun teżisti qabel iż-żwieġ;

(f) jekk il-kunsens ta' xi waħda mill-partijiet ikun inkiseb bl-esklużjoni pożittiva taż-żwieġ innifsu, jew ta' xi wieħed jew iktar mill-elementi essen-zjali tal-ħajja miż-żewġa, jew tad-dritt għal l-att taż-żwieġ;

(g) jekk xi waħda mill-partijiet torbot il-kunsens tagħha ma' kondizzjoni li tirriferi għall-futur;

(h) jekk xi waħda mill-partijiet, għalkemm ma tkunx interdetta jew marida b'moħħa, ma kellhiex fiż-żmien li sar iż-żwieġ, ukoll minħabba raġuni temporanja, setgħat intelletwali jew ta' rieda biżżejjed biex jinholo kunsens għaž-żwieġ.

(2) Bla ħsara għad-disposizzjonijiet ta' dan l-Att, azzjo-ni għall-annullament ta' żwieġ tista' tinbeda biss minn waħda mill-partijiet f'dak iż-żwieġ, u din id-disposizzjoni tapplika wkoll jekk dik il-parti tkun inkapaċi, taħt xi disposizzjoni ta' liġi, li tħarrek jew tiġi mħarrka, u f'xi każ bħal dan l-azzjoni tista' tinbeda minn dik il-parti minkejja dik l-inkapaċità, bla ħsara għall-għajnuna jew kondizzjoni oħra li l-Qorti jidhrilha xieraq li tordna. Meta azzjoni tkun inbdiet minn parti fi żwieġ, l-azzjoni tista' titkompla minn kull wieħed mill-wer-rieta."

## 5. Minflok l-artikolu 20 ta' l-Att prinċipali għandu jidhol dan li

Sostituzzjoni  
ta' l-artikolu 20  
ta' l-Att  
prinċipali.

20. (1) Jekk żwieġ ikun dikjarat null l-effetti ta' żwieġ validu għandhom jitqiesu li kienu jeżistu, favur il-miżżewġin sakemm is-sentenza ta' nullità tkun saret *res judicata* meta l-miżżewġin ikunu żżewġu *in bona fide*.

(2) L-effetti ta' żwieġ validu jitqiesu li dejjem kienu jeżistu għal dak li jirrigwarda t-tfal li jitwiellu jew kon-ċepiti matul żwieġ dikjarat null kif ukoll għal dak li jirrigwar-da tfal li jitwiellu qabel dak iż-żwieġ u li jkunu rikonoxxuti qabel ma tingħata s-sentenza ta' nullità.

(3) Jekk waħda biss mill-partijiet kienet *in bona fide* dawk l-effetti japplikaw favur tagħha u favur l-ulied.

(4) Jekk ebda waħda mill-partijiet ma kienet *in bona fide* l-effetti ta' żwieġ validu għandhom japplikaw biss favur l-ulied li jitwiellu jew konċepiti matul iż-żwieġ dikjarat null.

(5) Minkejja kull disposizzjoni oħra, min mir-raġel jew il-mara jkun responsabbli għan-nullità taż-żwieġ, ikun obligat iħallas manteniment lill-parti l-oħra li tkun *in bona fide* għal perijodu ta' ħames snin, lima obbligu jispicċa jekk il-parti *in bona fide* tizzewweġ matul dak iż-żmien.

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### Għanijiet u Raġunijiet

Dan l-Abbozz jemenda l-Liġi taż-Żwieġ prinċipalment billi jiddeferixxi l-każijiet li fuqhom Qorti Maltija tista' tagħti n-nullità taż-żwieġ u jaħseb ukoll biex parti li mingħajr htija tagħha jkun sar l-annullament ikollha ċerti jeddijiet ta' manteniment.

**A BILL**  
**entitled**

*AN ACT to amend the Marriage Act, 1975.*

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in the present Parliament assembled, and by the authority of the same as follows:—

1. This Act may be cited as the Marriage (Amendment) Act, 1981, and shall be read and construed as one with the Marriage Act, 1975, hereinafter referred to as "the principal Act".

Short Title.

2. In section 11 of the principal Act, immediately after subsection (2) thereof, there shall be added the following new subsection (3):

Amendment of section 11 of the principal Act.

"(3) In the case of the non-observance of any formality or other similar requirement relating to the celebration of the marriage or preparatory thereto, a marriage may not be annulled and shall be held to have always been valid, if the demand for annulment is not made within two years after the celebration of the marriage."

3. In section 14 of the principal Act, immediately after subsection (3) thereof, there shall be added the following new subsection (4):

Amendment of section 14 of the principal Act.

"(4) In the case of a marriage contracted by proxy signed earlier than ninety days before marriage or which is revoked before the marriage without the knowledge of the other party, the marriage may not be annulled and shall be held to have always been valid, if there has been cohabitation for at least one month after the celebration of the marriage."

4. For section 19 of the principal Act there shall be substituted the following:

Substitution of section 19 of the principal Act.

"Nullity of Marriage. 19. (1) In addition to the cases in which a marriage is

void in accordance with any other provision of this Act, a marriage shall be void:

(a) if the consent of either of the parties is extorted by violence, whether physical or moral;

(b) if the consent of either of the parties is excluded by error on the identity of the other party;

(c) if the consent of either of the parties is extorted by fraud about some quality of the other party which could of its nature seriously disrupt matrimonial life;

(d) if the consent of either of the parties is vitiated by a serious defect of discretion of judgement on the matrimonial life, or on its essential rights and duties, or by a serious psychological anomaly which makes it impossible for that party to fulfill the essential obligations of marriage;

(e) if either of the parties is impotent, whether such impotence is absolute or relative, but only if such impotence is antecedent to the marriage;

(f) if the consent of either of the parties is vitiated by the positive exclusion of marriage itself, or of any one or more of the essential elements of matrimonial life, or of the right to the conjugal act;

(g) if either of the parties subjects his or her consent to a condition referring to the future;

(h) if either of the parties, although not interdicted or infirm of mind, did not have at the time of contracting marriage, even on account of a transient cause, sufficient powers of intellect or volition to elicit matrimonial consent.

(2) Subject to the provisions of this Act, an action for the annulment of a marriage may only be commenced by one of the parties to that marriage, and this provision shall apply even where such party is, under any provision of law, incapable of suing or being sued, and in any such case the action may be commenced by such party notwithstanding such incapacity, saving any assistance or other condition the Court may deem appropriate to order. Where an action has been commenced by a party to a marriage, the action may be continued by any of the heirs."

Substitution of  
section 20  
of the  
principal Act.

5. For section 20 of the principal Act there shall be substituted the following:

"Putative  
Marriage.

20. (1) If a marriage is declared to be void the effects of a valid marriage shall be deemed to have existed, in favour of the spouses until the judgement of nullity has become a *res judicata* when both spouses had contracted the marriage in good faith.

(2) The effects of a valid marriage shall be deemed to have always existed with reference to the children born or conceived during a marriage declared to be void as well as with reference to children born before such marriage and acknowledged before the judgement declaring the nullity.

(3) If only one of the spouses was in good faith such effects shall apply in his or her favour and in favour of the children.

(4) If both spouses were in bad faith the effects of a valid marriage shall apply only in favour of the children born or conceived during the marriage declared to be void.

(5) Notwithstanding any other provision, the spouse, who was responsible for the nullity of the marriage, is bound to pay maintenance to the other spouse in good faith for a period of five years, which duty shall cease if the party in good faith marries during such period.

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### **Objects and Reasons**

The Bill amends the Marriage Act mainly to define the cases where the Maltese Courts can declare nullity of marriage; the Bill also provides that the party suffering the annulment will have certain rights for maintenance.