



सत्यमेव जयते

অসম চৰকাৰ

Govt of Assam

HANDBOOK ON

# Marriage Laws



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ARTPPG Department, GoA

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মুখ্যমন্ত্রী, অসম  
Chief Minister, Assam



## FOREWORD

The work environment across the globe is undergoing rapid changes, and the utilization of human resources is evolving accordingly, with Assam being no exception. To keep pace with these changes, it is imperative that the Assam government focuses on empowering its human resources with a global outlook while remaining grounded in Indian values.

To achieve this vision, our government is implementing effective changes in work culture and striving to instill new ideas and a broader perspective in the minds of the officials. In line with this effort, the ARTPPG Department of the Government of Assam is introducing a set of training manuals and handbooks. Our Government is ensuring the smooth functioning of the daily administration with the help of these Training Manuals/ Handbooks for the Grade-3 officials. To effectively cater to the requirements of Grade-3 officials, experts have meticulously drafted the training manuals and handbooks, aiming to cover a wide range of relevant topics. Moreover, focused attempts have been made to embed the books with relevant case studies, examples and FAQs on different topics to enable the users to adapt to the procedural yet divergent needs of today's dynamic administration.

True to the objective of our Government in creating a spirited workforce, introduction of multifaceted learning and training programme have been thought of to enable our officials realize their true potential. This would help them to reorient themselves to the day-to-day administrative developments while performing their duties with honesty and transparency.

I believe the Training Manuals / Handbooks will hold immense value as a guiding light on diverse professional trajectories. They will also serve as a roadmap to steer capacity building of the Grade-III officials in a systematic and coherent manner.

(Dr. Himanta Biswa Sarma)

**Dr. Ravi Kota, IAS**  
Chief Secretary  
Government of Assam



ড° ৰবি কোটা, ভাঃ প্ৰঃ সেঃ  
মুখ্য সচিব  
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Preparation of a Training policy of a State and aligning it with the needs of the variegated workforce which has to constantly prove its relevance in this era of transition towards technology forms the very backbone of the administration in the form of a challenging task. In this due course of action, capacity building of Grade-III officials not only requires them to remain efficient in their daily official duties but also must be able to motivate them to work, learn and evolve in a comprehensive manner.

The present District training manuals for Grade-III officials have been prepared under the aegis of the Administrative Reforms Training Pension and Public Grievances Department (ARTPPG) and the Assam Administrative Staff College (AASC), who were aided by renowned experts and stakeholders from all the concerned fields. The manuals are a product of much detailed and multiple deliberations on the requisite subjects and it also includes valuable inputs from The Institute of Secretariat Training and Management (ISTM), Delhi in certain applicable topics. The Training Needs Assessment (TNA) was diligently conducted by AASC to chalk out an inclusive need based approach suited for a bottom up perspective for the Grade-III officials and also to ensure that no vital subject has been overlooked.

I believe that the Training manuals will help the Trainers and the trainees as well in a holistic manner and I earnestly request all concerned to send us feedback which would be of great help when we take up further revisionary exercises.

(Dr. Ravi Kota)  
Chief Secretary, Assam

Shantanu Gotmare, IAS  
Commissioner & Secretary  
to the Govt. of Assam  
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### MESSAGE

The Department of Administrative Reforms, Training, Pension and Public Grievances (ARTPPG) plays a vital role in the formulation of the State Training Policy and training it's civil servants to build capacity for improving 'Ease of Living' for people of Assam.

The content of the district training manuals aims to bolster capacity of the Grade-3 employees in an elaborate and lucid manner. We have worked meticulously to prepare content of the manuals by collaborating with experts and have actively collated through appropriate stakeholders, which objectively present a comprehensive picture for the officials, covering a broad spectrum of their daily official duties.

I express my sincere thanks to the Committee for vetting the full content. ARTPPG acknowledges the contributions of Committee Members in the preparation of the training manuals. Special mention must be made to the Assam Administrative Staff College, Khanapara and my team in ARTPPG Department for relentless work to get the training manuals.

I sincerely hope that that these manuals will be extremely useful to the trainers, trainees and as well as the officials.

(Shantanu Gotmare)



## **Foreword**

The District Training Manuals for Grade-III officials of the Government of Assam have been designed by the Assam Administrative Staff College (AASC) with the help of renowned guest faculty and experts under the able guidance of the Administrative Reforms, Training, Pension and Public Grievances (ARTPPG) Department and inputs from the Institute of Secretariat Training and Management (ISTM), New Delhi.

I hope these manuals will be used extensively by the trainers and trainees and will help the officials become more knowledgeable, competent and productive at their work places.

I would like to convey my gratitude to all the renowned guest faculty and to all the individuals associated with the successful publication of the manuals for their inputs and support throughout the process of designing and printing these manuals.

A handwritten signature in blue ink, appearing to read 'Riju Gogoi', written in a cursive style.

Riju Gogoi  
Director of Training  
Assam Administrative Staff College

# MARRIAGE LAWS

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# FREQUENTLY ASKED QUESTIONS ON HINDU MARRIAGE ACT, 1955

## List of Abbreviations

| Abbreviation | Full Form                          |
|--------------|------------------------------------|
| HMA          | Hindu Marriage Act                 |
| HAMA         | Hindu Adoption and Maintenance Act |
| CrPC         | Code of Criminal Procedure         |

## Who does the HMA apply to?

The HMA applies to the following:

any person who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj,

any person who is a Buddhist, Jaina or Sikh by religion

any person who is not a Muslim, Christian, Parsi or Jew by religion

## Who is a Hindu, Buddhist, Jaina or Sikh by religion for the purposes of HMA?

any child, legitimate or illegitimate, both of whose parents are Hindus, Buddhists, Jains or Sikhs by religion;

any child, legitimate or illegitimate, one of whose parents is a Hindu, Buddhist, Jaina or Sikh by religion and who is brought up as a member of the tribe, community, group or family to which such parent belongs or belonged

any person who is a convert or re-convert to the Hindu, Buddhist, Jaina or Sikh religion

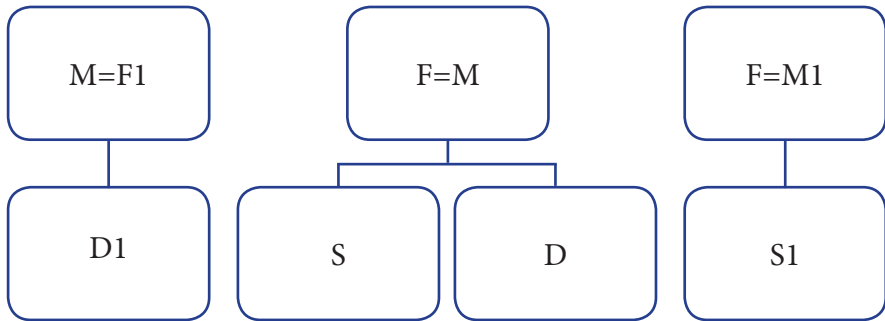
## Does the HMA apply to Scheduled Tribes?

No.

## What is the meaning of full blood, half blood and uterine blood?

| Full blood                 | Half blood                       | Uterine blood                    |
|----------------------------|----------------------------------|----------------------------------|
| same father<br>same mother | same father<br>different mothers | same mother<br>different fathers |

Illustration:



- Here, S and D are related by full blood as they have same father and same mother.
- S and S1 as well as D and S1 are related by half blood as they have same father but different mothers.
- S and D1 as well as D and D1 are related by uterine blood as they have same mother but different fathers.

## When are two persons within the degrees of prohibited relationship?

if one is a lineal ascendant of the other; or

if one was the wife or husband of a lineal ascendant or descendant of the other; or

if one was the wife of the brother or of the father's or mother's brother or of the grandfather's or grandmother's brother of the other; or

if the two are brother and sister, uncle and niece, aunt and nephew, or children of brother and sister or of two brothers or of two sisters;



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relationship by half or uterine blood as well as by full blood

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relationship includes

illegitimate blood relationship  
as well as legitimate

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relationship by adoption as well as by blood

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### What is sapinda relationship?

sapinda relationship with reference to any person extends as far as the third generation (inclusive) in the line of ascent through the mother, and the fifth (inclusive) in the line of ascent through the father, the line being traced upwards in each case from the person concerned, who is to be counted as the first generation

two persons are said to be “sapindas” of each other if one is a lineal ascendant of the other within the limits of sapinda relationship, or if they have a common lineal ascendant who is within the limits of sapinda relationship with reference to each of them

### What are the conditions for a Hindu marriage under HMA?

neither party has a spouse living at the time of the marriage;

at the time of the marriage, neither party -

- is incapable of giving a valid consent to it in consequence of unsoundness of mind; or
- though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or
- has been subject to recurrent attacks of insanity;

the bridegroom has completed the age of twenty-one years and the bride, the age of eighteen years at the time of the marriage;

the parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two;

the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two;

## Can Hindu marriages be registered under the HMA?

- The State Government may make rules providing that the parties to Hindu marriage may have the particulars relating to their marriage entered in the prescribed manner in a Hindu Marriage Register kept for the purpose for the purpose of facilitating the proof of Hindu marriages.
- The State Government may make such registration compulsory.
- The Hindu Marriage Register shall at all reasonable times be open for inspection, and shall be admissible as evidence of the statements therein contained and certified extracts therefrom shall, on application, be given by the Registrar on payment to him of the prescribed fee.
- The validity of any Hindu marriage shall in no way be affected by the omission to make the entry.

## What are the ceremonies of a Hindu marriage under the HMA?

- A Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto.
- Where such rites and ceremonies include the Saptapadi (that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire), the marriage becomes complete and binding when the seventh step is taken.

## What are void marriages under the HMA?

Any marriage shall be null and void on any of the following

if either husband or wife had another spouse at the time of their marriage i.e. bigamy

if husband and wife are within the degrees of prohibited relationship

if husband and wife are sapindas of each other

Any marriage shall be voidable on any of the following grounds:

that the marriage has not been consummated owing to the impotence of the respondent

that the marriage is in contravention of the following condition of marriage:

at the time of the marriage, neither party-  
is incapable of giving a valid consent to it in consequence of unsoundness of mind; or  
though capable of giving a valid consent, has been suffering from mental disorder  
of such a kind or to such an extent as to be unfit for marriage and the procreation of  
children; or  
has been subject to recurrent attacks of insanity;

**that the consent of the petitioner was obtained by force or by fraud as to the nature of the ceremony or as to any material fact or circumstances concerning the respondent**

no petition for annulling a marriage on this ground shall be entertained if—  
the petition is presented more than one year after the force had ceased to operate or  
the fraud had been discovered; or  
the petitioner has, with his or her full consent, lived with the other party to the  
marriage as husband or wife after the force had ceased to operate or the fraud had  
been discovered;

**that the respondent was at the time of the marriage pregnant by some person other than the petitioner.**

no petition for annulling a marriage on this ground shall be entertained unless  
the court is satisfied that—  
the petitioner was at the time of the marriage ignorant of the facts alleged;  
proceedings have been instituted within one year from the date of the mar-  
riage; and  
that marital intercourse with the consent of the petitioner has not taken place  
since the discovery by the petitioner of the existence of the said ground.

### **What is restitution of conjugal rights under the HMA?**

- When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply, by petition to the district court, for restitution of conjugal rights
- On being satisfied of the truth of the statements made in such petition and that there is no legal ground why the application should not be granted, the Court may decree restitution of conjugal rights accordingly
- Where a question arises whether there has been reasonable excuse for withdrawal from the society, the burden of proving reasonable excuse shall be on the person who has withdrawn from the society

**What are the grounds of dissolution of marriage by a decree of divorce under the HMA?**

The following grounds are available to both the parties:

adultery

cruelty

desertion

conversion

unsound mind

communicable  
venereal disease

renunciation of  
the world

not been heard of as being  
alive for a period of seven  
years or more

mutual consent

no resumption of cohabitation as between the parties to the marriage for a period of one year or upwards after the passing of a decree for judicial separation

no restitution of conjugal rights as between the parties to the marriage for a period of one year or upwards after the passing of a decree for restitution of conjugal rights

The following grounds are available only to the wife:

bigamy by husband

husband is guilty  
of rape, sodomy  
or bestiality

since the passing of maintenance decree or order under HAMA or CrPC, cohabitation between the parties has not been resumed for one year or upwards

her marriage (whether consummated or not) was solemnized before she attained the age of fifteen years and she has repudiated the marriage after attaining that age but before attaining the age of eighteen years.

### What is the procedure for divorce by mutual consent under the HMA?

- Both the parties to a marriage together can apply for dissolution of a marriage by a decree of divorce on the grounds that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved.
- Accordingly, within six to 18 months from the date of the petition by both the parties, the Court shall pass a decree of divorce declaring the marriage to be dissolved from the date of the decree

### What is judicial separation under the HMA?

- On the same grounds as those available for divorce, either party to a marriage, may present a petition praying for a decree for judicial separation
- Where a decree for judicial separation has been passed, it shall no longer be obligatory for the petitioner to cohabit with the respondent, but the court may, on the application by petition of either party and on being satisfied of the truth of the statements made in such petition, rescind the decree if it considers it just and reasonable to do so

### When can one petition the Court for dissolution of a marriage by a decree of divorce under the HMA?

- A petition for dissolution of a marriage by a decree of divorce cannot be presented unless at the date of the presentation of the petition one year has elapsed since the date of the marriage. In other words, it cannot be presented within a year of marriage
- However, the Court may allow a petition before one year has passed on the ground that the case is one of exceptional hardship to the petitioner or of exceptional depravity on the part of the respondent
- Apart from that, the 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 one year

### When may divorced persons marry again under the HMA?

#### **Divorced persons may marry again in the following situations:**

- When a marriage has been dissolved by a decree of divorce and there is no right of appeal against the decree, or
- When a marriage has been dissolved by a decree of divorce and if there is a right of appeal, the time for appealing has expired without an appeal having been presented, or
- When a marriage has been dissolved by a decree of divorce and if there is a right of appeal, an appeal has been presented but has been dismissed.

## What is the legitimacy of children born out of void and voidable marriages under the HMA?

Any child of void and voidable marriages shall be legitimate.

## What are the punishments for contravention of the conditions for a Hindu marriage under the HMA?

| Condition of marriage contravened  | Punishment prescribed  |
|--|--|
| neither party has a spouse living at the time of the marriage  | As per sections 494 and 495 of IPC, 1860   |
| the bridegroom has completed the age of twenty-one years and the bride, the age of eighteen years at the time of the marriage;                             | with rigorous imprisonment which may extend to two years or with fine which may extend to one lakh rupees, or with both.   |
| the parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two; | with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both |
| the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two;                       |  |

## Which Court should petitions under the HMA be presented to?

Every petition under HMA shall be presented to the District Court within the local limits of whose ordinary original civil jurisdiction:—

- The marriage was solemnized, or
- the respondent, at the time of the presentation of the petition, resides, or the parties to the marriage last resided together, or
- in case the wife is the petitioner, where she is residing on the date of presentation of the petition; or
- the petitioner is residing at the time of the presentation of the petition, in a case where the respondent is at that time, residing outside the territories to which this Act extends, or has not been heard of as being alive for a period of seven years or more.

## How should the proceedings under the HMA be conducted?

Every proceeding under the HMA shall be conducted on camera.

## Can the proceedings under the HMA be printed or published?

It shall not be lawful for any person to print or publish any matter in relation to any proceeding under the HMA except a judgment of the High Court or of the Supreme Court printed or published with the previous permission of the court.

If any person prints or publishes any matter in contravention of the above, he shall be punishable with fine which may extend to one thousand rupees.

### **Can the husband or wife apply for payment of maintenance pendente lite and expenses of proceedings under the HMA?**

- Husband or wife can apply to the court to order the opposite party to pay the expenses of the proceeding and a monthly sum during the proceeding
- If it appears to the court that either the wife or the husband has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may order the respondent to pay to the petitioner the expenses of the proceeding, and monthly sum during the proceeding
- The monthly sum will be decided having regard to the petitioner's own income and the income of the respondent and as may seem to the court to be reasonable
- The application for the payment of the expenses of the proceeding and such monthly sum during the proceeding, shall, as far as possible, be disposed of within sixty days from the date of service of notice on the wife or the husband.

### **Can the husband or wife apply for permanent alimony and maintenance under the HMA?**

- Yes
- At the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband,
- the Court may order that the respondent shall pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum
- for a term not exceeding the life of the applicant as,
- having regard to the respondent's own income and other property, if any, the income and other property of the applicant, the conduct of the parties and other circumstances of the case, it may seem to the court to be just,
- and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent.

At the instance of either party, if the Court is satisfied, the Court may vary, modify or rescind any such order in such manner as the court may deem just in the following situations:

- there is a change in the circumstances of either party at any time after it has made an order,
- the party in whose favour an order has been made under this section has re-married,
- if such party is the wife, that she has not remained chaste,
- if such party is the husband, that he has had sexual intercourse with any woman outside wedlock.

## **About the Author**

**Dr. Gitanjali Ghosh** is an Associate Professor of Law at the Department of Law, Tezpur University. Previously, she has served as Assistant Professor of Law at NLUJA, Assam. She has completed doctoral and postgraduate degree in law from NLSIU, Bengaluru after obtaining undergraduate degree in law with a gold medal from NEHU, Shillong.



