

In obligation to seek a
declaration of nullity



**ASSIGN
BUSTER**

In a void marriage, it is open to the parties even without recourse to the court to treat it as a nullity. Neither party is under any obligation to seek a declaration of nullity under this section.

When a marriage is void, the court regards it as never having taken place and that there is no conferment of status of matrimony as a result thereof. A voidable marriage, on the other hand, is regarded by the court as a valid and subsisting marriage until a decree of nullity is obtained during the life time of the parties. In the case of a void marriage, the decree declares the status and in the case of a voidable marriage the decree changes the status. In case of a voidable marriage, till it is annulled by a decree, the parties are husband and wife and children begotten of such marriage are legitimate.

A voidable marriage can be avoided only on presentation of a petition by either party thereto whereas a marriage which is null and void may be declared under ordinary law to be so even at the instance of a stranger whose interests are affected by such marriage. In case of marriages which are void ab initio, no lapse of time is by itself a bar to the inquiry as to their validity or invalidity. Thus it can be questioned at any time because it is seeking a relief of declaration regarding status. Whereas a marriage which is voidable cannot be questioned after the death of either party.

In a void marriage, no rights or obligations are created between the parties to marriage, which arise in lawful marriages in normal course as a void marriage stands nullified from the very beginning. In *Sheelwati v. Ram Nandini*, pointing out the distinction between void and voidable marriage, Deokinandan Agrawal, J., observed that under Section 11 either party can

move a petition to have it declared void but in a voidable marriages under Section 12 only the aggrieved party can file a petition for nullity of marriage. In both the cases the decree which follows would be a decree of nullity although under Section 16 the consequences of both void and voidable marriages declared as such are identical.

In the aforesaid judgment the Hon'ble judge has opined that in void marriages until the court for the contravention of the provisions of Section 5 clauses (i), (iv) and (v) declares the marriage null and void, the marriage subsists and it could not be termed as a nullity. This view is sharply in contrast to the prevailing view, as expressed in *Bajirao v. Tolan Bai's*, case. In *Tolan Bai's* case the court observed that a marriage in contravention of the provisions of Section 5(1) does not create and confer any legal status upon the parties thereto and to bring such a marriage to an end it is not necessary to move any petition and obtain a decree of nullity. In such marriages performance of religious rituals does not attach any meaning to it. In the judgment delivered by Mr. Deokinandan, the difference between void and voidable marriage has been rendered nugatory.

In fact void marriage is itself void since its inception, for which a decree of nullity is not necessary. But as per judgment of Allahabad High Court such a declaration would still be required. If this view is accepted then the principal difference between void and voidable marriage would vanish. Hence this view does not seem to be correct.