



DISSOLUTION OF MARRIAGE, MUTUAL CONSENT, NULLITY OF MARRIAGE, JUDICIAL SEPARATION AND RESTITUTION OF CONJUGAL RIGHTS UNDER THE INDIAN DIVORCE ACT, 1869

THE (INDIAN)* DIVORCE ACT,1869

*The word 'Indian' omitted by THE INDIAN DIVORCE (AMENDMENT) ACT, 2001

THE DIVORCE ACT,1869

111. - DISSOLUTION OF MARRIAGE

SECTION 10

"10. Grounds for dissolution of marriage.-(1) Any marriage solemnized, whether before or after the commencement of the Indian Divorce (Amendment) Act, 2001, may, on a petition presented to the District Court either by the husband or the wife, be dissolve on the ground that since the solemnization of the marriage, the respondent -

(i) has committed adultery; or

(ii) has ceased to be Christian by conversion to another religion; or

(iii) has been incurably of unsound mind for a continuous period of not less than two years immediately preceding the presentation of the petition; or

(iv) has, for a period of not less than two years immediately preceding the presentation of the petition, been suffering from a virulent and incurable form of leprosy; or

(v) has, for a period of not less than two years immediately preceding the presentation of the petition, been suffering from venereal disease in a communicable form; or

(vi) has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of the respondent if the respondent had been alive; or

(vii) has wilfully refused to consummate the marriage and the marriage has not therefore been consummated; or

(viii) has failed to comply with a decree for restitution of conjugal rights for a period of two years or upwards after the passing of the decree against the respondent; or

(ix) has deserted the petitioner for at least two years immediately preceding the presentation of the petition; or

(x) has treated the petitioner with such cruelty as to cause a reasonable apprehension in the mind of the petitioner that it would be harmful or injurious for the petitioner to live with the respondent.

(2) A wife may also present a petition for the dissolution of her marriage on the ground that the husband has, since the solemnization of the marriage, been guilty of rape, sodomy or bestiality."

SECTION 10A MUTUAL CONSENT

"10A. Dissolution of marriage by mutual consent.-(1) Subject to the provisions of this Act and the rules made thereunder, a petition for dissolution of marriage may

be presented to the District Court by both the parties to a marriage together, whether such marriage was solemnized before or after the commencement of the Indian Divorce (Amendment) Act, 2001, on the ground that they have been living separately for a period of two years or more, that they have not been able to live together and they have mutually agreed that the marriage should be dissolved.

(2) On the motion of both the parties made not earlier than six months after the date of presentation of the petition referred to in sub-section (1) and not later than eighteen months after the said date, if the petition is not withdrawn by both the parties in the meantime, the Court shall, on being satisfied, after hearing the parties and making such inquiry, as it thinks fit, that a marriage has been solemnized and that the averments in the petition are true, pass a decree declaring the marriage to be dissolved with effect from the date of decree."

SECTION 11.- ADULTERER OR ADULTERESS TO BE CO-RESPONDENT

11. Adulterer or adulteress to be co-respondent.-On a petition for dissolution of marriage presented by a husband or wife on the ground of adultery, the petitioner shall make the alleged adulterer or adulteress a co-respondent, unless the petitioner is excused by the Court from so doing on any of the following grounds, namely:-

(a) that the wife, being the respondent is leading the life of a prostitute or the husband, being respondent is leading an immoral life and that the petitioner knows of no person with whom the adultery has been committed;

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

(c) that the alleged adulterer or adulteress is dead."

SECTION 12. COURT TO BE SATISFIED OF ABSENCE OF COLLUSION.

12. Court to be satisfied of absence of collusion.-Upon any such petition for the dissolution of a marriage, the Court shall satisfy itself, so far as it reasonably can, not only as to the facts alleged, but also whether or not the petitioner has been in

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 enquire into any countercharge which may be made against the petitioner.

SECTION 13. DISMISSAL OF PETITION.

13. Dismissal of petition.-In case the Court, on the evidence in relation to any such petition, is satisfied that the petitioner's case has not been proved, or is not satisfied that the alleged adultery has been committed,

or finds that the petitioner has, during the marriage, been accessory to, or conniving at, the going through of the said form of marriage, or the adultery of the other party to the marriage, or has condoned the adultery complained of,

or that the petition is presented or prosecuted in collusion with either of the respondents,

then and in any of the said cases the Court shall dismiss the petition

SECTION 14. - POWER TO COURT TO PRONOUNCE DECREE FOR DISSOLVING MARRIAGE.-

14. Power to Court to pronounce decree for dissolving marriage.- In case the Court is satisfied on the evidence that the case of the petitioner has been proved,

and does not find that the petitioner has been in any manner accessory to, or conniving at, the going through of the said form of marriage, or the adultery of the other party to the marriage, or has condoned the adultery complained of,

or that the petition is presented or prosecuted in collusion with either of the respondents,

the Court shall pronounce a decree declaring such marriage to be dissolved.

Provided that the Court shall not be bound to pronounce such decree if it finds that the petitioner has, during the marriage, been guilty of adultery,

or if the petitioner has, in the opinion of the Court, been guilty of unreasonable delay in presenting or prosecuting such petition,

or of cruelty towards the other party to the marriage,

or of having deserted or wilfully separated himself or herself from the other party before the adultery complained of, and without reasonable excuse,

or of such wilful neglect or misconduct of or towards the other party as has conduced to the adultery.

CONDONATION.

Condonation.-No adultery shall be deemed to have been condoned within the meaning of this Act unless where conjugal cohabitation has been resumed or continued.

SECTION 15. RELIEF IN CASE OF OPPOSITION ON CERTAIN GROUNDS.

15.Relief in case of opposition on certain grounds.-In any suit instituted for dissolution of marriage, if the respondent opposes the relief sought on the ground, in case of such a Suit instituted by a husband, of his adultery, cruelty, or desertion in case of such a suit instituted by a wife, on the ground of [her adultery or cruelty or desertion], the Court may in such suit give to the respondent, on his or her application, the same relief to which he or she would have been entitled in case he or she had presented a petition seeking such relief, and the respondent shall be competent to give evidence of or relating to [such adultery ,cruelty] or desertion.

SECTION 16. DECREES FOR DISSOLUTION TO BE NISI.

16. Decrees for dissolution to be nisi.-Every decree for a dissolution of marriage made by a High Court, shall, in the first instance, be a decree nisi, not to be made absolute till after the expiration of such time, not less than six months from the pronouncing thereof, as the High Court, by general or special order from time to time, directs.

Collusion.-During that period any person shall be at liberty, in such manner as the High Court by general or special order from time to time directs, to show cause why the said decree should not be made absolute by reason of the same having been obtained by collusion or by reason of material facts not being brought before the Court.

On cause being so shown, the Court shall deal with the case by making the decree absolute, or by reversing the decree nisi, or by requiring further inquiry, or otherwise as justice may demand.

The High Court may order the costs of Counsel and witnesses and otherwise arising from such cause being shown, to be paid by the parties or such one or more of them as it thinks fit, including a wife if she have separate property.

Whenever a decree nisi has been made, and the petitioner fails, within a reasonable time, to move to have such decree made absolute, the High Court may dismiss the suit.

SECTION 17. POWER OF HIGH COURT TO REMOVE CERTAIN SUITS.-

"17. Power of High Court to remove certain suits.-During the progress of the suit in the Court of the District Judge, any person suspecting that any parties to the suit are or have been acting in collusion for the purpose of obtaining a divorce, shall be at liberty, in such manner as the High Court by general or special order from time to time directs, to apply to the High Court to remove the suit under section 8, and the Court shall thereupon, if it thinks fit, remove such suit and try and determine the same as a court of original jurisdiction, and the provisions contained in section 16 shall apply to every suit so removed; or it may direct the District Judge to take such steps in respect of the alleged collusion as may be necessary, to enable him to make a decree in accordance with the justice of the case."

IV.-NULLITY OF MARRIAGE

SECTION 18. PETITION FOR DECREE OF NULLITY.

18. Petition for decree of nullity.-Any husband or wife may present a petition to the District Court praying that his or her marriage may be declared null and void.

SECTION 19. GROUNDS OF DECREE.

19. Grounds of decree.-Such decree may be made on any of the following grounds:-

- (1) that the respondent was impotent at the time of the marriage and at the time of the institution of the suit;
- (2) that the parties are within the prohibited degrees of consanguinity (whether natural or legal) or affinity;
- (3) that either party was a lunatic or idiot at the time of the marriage;
- (4) that the former husband or wife of either party was living at the time of the marriage, and the marriage with such former husband or wife was then in force.

Nothing in this section shall affect the jurisdiction of the District Court to make decrees of nullity of marriage on the ground that the consent of either party was obtained by force or fraud.

SECTION 21. CHILDREN OF ANNULLED MARRIAGE.

21. Children of annulled marriage.-Where a marriage is annulled on the ground that a former husband or wife was living, and it is adjudged that the subsequent marriage was contracted in good faith and with the full belief of the parties that the former husband or wife was dead, or when a marriage is annulled on the ground of insanity, children begotten before the decree is made shall be specified in the decree, and shall be entitled to succeed, in the same manner as legitimate children, to the estate of the parent who at the time of the marriage was competent to contract.

V.-JUDICIAL SEPARATION

SECTION 22. BAR TO DECREE FOR DIVORCE A MENSA ET TORO; BUT JUDICIAL SEPARATION OBTAINABLE BY HUSBAND OR WIFE.

22. Bar to decree for divorce a mensa et toro; but judicial separation obtainable by husband or wife.-No decree shall hereafter be made for a divorce a mensa et toro, but the husband or wife may obtain a decree of judicial separation, on the ground of adultery, or cruelty, or desertion for two years or upwards, and such decree shall have the effect of a divorce a mensa et toro under the existing law,

SECTION 23. APPLICATION FOR SEPARATION MADE BY PETITION.

23. Application for separation made by petition.—Application for judicial separation on any one of the grounds aforesaid, may be made by either husband or wife by petition to the District Court; and the Court, 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, may decree judicial separation accordingly.

SECTION 24. SEPARATED WIFE DEEMED SPINSTER WITH RESPECT TO AFTER-ACQUIRED PROPERTY.

24. Separated wife deemed spinster with respect to after-acquired property.-In every case of a judicial separation under this Act, the wife shall, from the date of the sentence, and whilst the separation continues, be considered as unmarried with respect to property of every description which she may acquire, or which may come to or devolve upon her.

Such property may be disposed of by her in all respects as an unmarried woman, and on her decease the same shall, in case she dies intestate, go as the same would have gone if her husband had been then dead:

Provided that, if any such wife again cohabits with her husband, all such property as she may be entitled to when such cohabitation takes place shall be held to her separate use, subject, however, to any agreement in writing made between herself and her husband whilst separate.

SECTION 25. SEPARATED WIFE DEEMED SPINSTER FOR PURPOSES OF CONTRACT AND SUING.

25. Separated wife deemed spinster for purposes of contract and suing.-In every case of a judicial separation under this Act, the wife shall, whilst so separated, be considered as an unmarried woman for the purposes of contract, and wrongs and injuries, and suing and being sued in any civil proceeding; and her husband shall not be liable in respect of any contract, act or costs entered into, done, omitted or incurred by her during the separation:

Provided that where, upon any such judicial separation, alimony has been decreed or ordered to be paid to the wife, and the same is not duly paid by the husband, he shall be liable for necessaries supplied for her use:

Provided also that nothing shall prevent the wife from joining, at any time during such separation, in the exercise of any joint power given to herself and her husband.

REVERSAL OF DECREE OF SEPARATION

SECTION 26. DECREE OF SEPARATION OBTAINED DURING ABSENCE OF HUSBAND OR WIFE MAY BE REVERSED.

26. Decree of Separation obtained during absence of husband or wife may be reversed.-Any husband or wife, upon the application of whose wife or husband, as the case may be, a decree of judicial separation has been pronounced, may, at any time thereafter, present a petition to the Court by which the decree was pronounced, praying for a reversal of such decree, on the ground that it was obtained in his or her absence, and that there was reasonable excuse for the alleged desertion, where desertion was the ground of such decree.

The Court may, on being satisfied of the truth of the allegations of such petition, reverse the decree accordingly; but such reversal shall not prejudice or affect the rights or remedies which any other person would have had, in case it had not been decreed, in respect of any debts, contracts, or acts of the wife incurred,

entered into, or done between the times of the sentence of separation and of the reversal thereof.

VI.-PROTECTION-ORDERS

SECTION 27.DESERTED WIFE MAY APPLY TO COURT FOR PROTECTION.

27. Deserted wife may apply to Court for protection.—Any wife to whom section 4 of the Indian Succession Act, 1865¹ (10 of 1865), does not apply, may, when deserted by her husband, present a petition to the District Court, at any time after such desertion, for an order to protect any property which she may have acquired or may acquire, and any property of which she may have become possessed or may become possessed after such desertion, against her husband or his creditors, or any person claiming under him.

SECTION 28. COURT MAY GRANT PROTECTION-ORDER.

28. Court may grant protection-order.—The Court, if satisfied of the fact of such desertion, and that the same was without reasonable excuse, and that the wife is maintaining herself by her own industry or property, may make and give to the wife an order protecting her earnings and other property from her husband and all creditors and persons claiming under him. Every such order shall state the time at which the desertion commenced, and shall, as regards all persons dealing with the wife in reliance thereon, be conclusive as to such time.

SECTION 29. DISCHARGE OF VARIATION OF ORDERS.

29. Discharge of variation of orders.—The husband or any of, or person claiming under him, may apply to the Court by which such order was made for the discharge or variation thereof, and the Court, if the desertion has ceased, or if for any other reason it thinks fit so to do, may discharge or vary the order accordingly.

SECTION 30. LIABILITY OF HUSBAND SEIZING WIFE'S PROPERTY AFTER NOTICE OF ORDER.

30.Liability of husband seizing wife's property after notice of order.-If the husband, or any creditor of, or person claiming under, the husband, seizes or continues to hold any property of the wife after notice of any such order, he shall be liable, at the suit of the wife (which she is hereby empowered to bring), to return or deliver to her the specific property, and also to pay her a sum equal to double its value.

SECTION 31. WIFE'S LEGAL POSITION DURING CONTINUANCE OF ORDER.

31. Wife's legal position during continuance of order.-So long as any such order of protection remains in force, the wife shall be and be deemed to have been, during such desertion of her, in the like position in all respects, with regard to property and contracts and suing and being sued, as she would be under this Act if she obtained a decree of judicial separation.

VII.-RESTITUTION OF CONJUGAL RIGHTS

SECTION 32. PETITION FOR RESTITUTION OF CONJUGAL RIGHTS.

32.Petition for restitution of conjugal rights.-When either the husband or the wife has without reasonable excuse, withdrawn from the society of the other, either wife or husband may apply, by petition to the District Court, for restitution of conjugal rights, and the Court, 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, may decree restitution of conjugal rights accordingly.

33. ANSWER TO PETITION.

33. Answer to petition.-Nothing shall be pleaded in answer to a petition for restitution of conjugal rights, which would not be ground for a suit for judicial separation or for a decree of nullity of marriage.

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