

MARRIAGE DISSOLUTION UNDER PERSONAL LAW II

CHRISTIAN LAW

INTRODUCTION

Marriage is the mutual relation of a husband and wife through wedlock. It is an institution whereby men and women are joined in a special kind of social and legal relationship for the purpose of having a family. The marriage status is effected through the act of marrying or by the exercise of a prescribed rite of marriage. A marriage is valid if it has not violated any provision of law or customs.

In India Christians and Hindus have always considered their marriage as a sacrament. Those who considered their marriage as a sacrament made their marriage an indissoluble union. Therefore, the marital bond has been held stable and permanent. Children bearing marriage add to the joy of the family, its prosperity and unity. It is marriage which preserves stability and continuity of the family. It maintains the spirit of faith and confidence among its members. Besides it gives legal sanction and social status to family.

The law relating to divorce amongst Christians in India can be found in the Indian Divorce Act, 1869. The Act provides matrimonial relief such as nullity of marriage, judicial separation, and restitution of conjugal relief. The wife who has been deserted by her husband can obtain from the Court "Protection orders for protecting the property against the husband or his creditors.

There is also provision empowering the Court to make certain orders regarding settlement of wife's property (consequential on divorce or judicial separation) and for modifying settlements made before or after marriage. The Court has power to order payment of alimony ([permanent or during litigation) by the husband to the wife and to pass orders regarding the custody of children, when passing decrees of divorce etc. under the Act.

The idea of divorce came from the very notion of marriage. Marriage came to be recognized as a human institution based on the free volition of men and women who were undoubtedly responsible though not infallible individuals. They can err, they can blunder, therefore they should be given the right and liberty to get over the burden that had become intolerable and which was sapping the vital energy and moral fibre of the spouse in a marriage that had failed. Hence they should have freedom or a way out in pursuit of happiness. This freedom's errors or to rectify one's blunders in choosing his or her life partners explains divorce or dissolution of marriage.

The Divorce Act, 1869 as amended by the Indian Divorce (Amendment) Act, 2001. The Marriage Laws (Amendment) Act, 2001. This Act extends to the whole of India except the state of Jammu and Kashmir.

Under this Act, the Court can grant relief where either the petitioner or the respondent professes the Christian religion.

- a. under this Act the Court can dissolve a marriage if the parties to the marriage are domiciled in India at the time when the petition is presented.
- b. A decree of nullity of marriage can be passed by the Court if the marriage has been solemnized in India and the petitioner is resident of India at the time of presentation of the petition.
- c. Other reliefs can be granted by the Indian Court if the petitioner resides in India at the time of presentation of the petition.

II. JURISDICTION.

1. Matrimonial Jurisdiction of High Court to be exercised subject to Act Exception-

The jurisdiction now exercised by the H. Courts in respect of divorce a mensa et toro, and all other causes, suits and matters matrimonial, shall be exercised by such Courts and by the District Courts subject to the provisions in this Act contained, and not otherwise; except as far as relates to the granting of marriage licenses which may be granted as if this Act had not been passed.

2. Enforcement of decrees or orders made heretofore by S.C. or H.C.

Any decree or order of the S.C. of judicature at Calcutta, Madras or Bombay sitting on the ecclesiastical side or of any of the said High Courts sitting in their exercise of their matrimonial jurisdiction, respectively, in any cause or matter matrimonial, may be enforced and dealt with by the said High Courts, respectively, as herein after mentioned, in like manner as if such decree or order had been originally, made under this Act by the Court so enforcing or dealing with the same.

3. Pending suits-

All suits & proceedings in cause and matters matrimonial, which when this Act came into operation are pending in any H.C, shall be dealt with and decided by such Court, so far as may be, as if they had been originally instituted therein under this Act.

4. Extraordinary jurisdiction of High Court.

The H.C. may whenever it thinks fit, remove & try & determine as a Court of original jurisdiction any suit or proceeding instituted under this Act in the Court of any District Judge within the limits of its jurisdiction under this Act.

- Power to transfer suits: The H.C may also withdraw any such suit or proceeding, & transfer it for trial or disposal to the Court of any other such District Judge

5. Reference to High Court.:

When any question of law or usage having the force of law arises at any point in the proceedings previous to the hearing of any suit under this Act by a District Court or at any subsequent stage of such suit, or in the execution of the decree therein or order thereon.

- the court may, either of its own motion or on the application of any of the parties, draw up a statement of the case & refer it, with the Court's own opinion thereon, to decision of the H.C.
- If the question has arisen previous to or in the hearing, the District Court may either stay such proceedings or proceed in the case pending such response, & pass decree contingent upon the opinion of the H.C. upon it.
- If a decree or orders has been made, its execution shall be stayed until the receipt of the order of the High Court upon such response.

DISSOLUTION OF MARRIAGE

The Grounds for Dissolution of Marriage.

I. 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 dissolved on the ground that since the solemnization of the marriage, the respondent

- i. has committed adultery; or
- ii. has ceased to be a Christian by conversion to another religion; or
- iii. has been incurably of unsound mind for a continuous period of not less than two year 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 willfully refuse 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.

10 A. Dissolution of Marriage by mutual consent-(1)

(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 refused to in sub-section (1) and not less than 18 months after the said dates, if the petition is not withdrawn by both the parties in the mean time, 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.

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 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 in 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 petition has made due efforts to discover it,
- c) that the alleged adulterer or adulteress is dead.

12. Court to be satisfied of absence of collusion-

Upon any such petition for the dissolution of marriage, the Court shall satisfy itself, so far it reasonably can, not only to the facts alleged, but also whether or not the petitioner has been in any manner accessory to, or convincing at, the going through of the said form of marriage, or the adultery, or has condoned the same, and shall also inquire into any counter charge which may be made against the petitioner.

13. Dismissal of petition-

In case the Court, or the evidence in relation to any such petition, it 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 petition has, during the marriage, been accessory to or convincing 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.

14. Power to Court to pronounce decree for dissolving marriage-

In case the Court is satisfied on the evidence that the case of the petition has been proved and does not find that the petition has been in any manner accessory to, or convincing 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 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 willfully separated himself or herself from the other party before the adultery complained of, and without reasonable excuse,

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

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

15. Relief in case of opposition on certain grounds-

In any said 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 adulteries, cruelty or

desertion or 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/her application the same relief to which he/she would have been entitled in case he/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.

16. Decrees for dissolution to be nisi-

Every decree for dissolution of marriage made by a High Court shall in the first instance, be 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 so being 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 cost 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 has separate property.

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

17. Power of High Courts 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 provision contained 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 (se 18-21)

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.

19. Grounds of Decree-

Such decree may be made on any of the following grounds-

- (1) Impotency of the respondent at the time of marriage and at the time of institution of the suits.
- (2) That the parties are within the prohibited degree of sanguinity (whether natural or legal) or affinity.
- (3) That either party was or 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 marriage, and the marriage with such former husband or wife was there in force.

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

20. Children of annulled marriage-

When a marriage is annulled on the ground that a former husband or wife was dead when a marriage is annulled on the ground of insanity, children begotten before 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.

Judicial separation

22. **Bar to decree for divorce a mensa et thoro**: but judicial separation obtained by husband and or wife, application for separation made by petition – application for judicial separation on any one of the grounds aforesaid may be made by the husband or wife by petition to the District Court.

24. Separated wife decreed 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 devalue upon her. Such property may be disposed of by her in all respects as an unmarried woman.

25. Separated wife deemed spinster for purposes of contract and suing. The husband will not be liable for any loss, in respect of any contract 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 such separation, in the exercise of any joint power given to herself and her husband.

26. Decree of separation obtained during absence of husband or wife may be reversed.

Protection orders.

27. Deserted wife may apply to Court for protection-

Any wife to whom section 4 of the Indian Succession Act 1865 (10 of E65) does not apply may when deserted by her husband, present a petition to the District 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 possess after such desertion, against her husband or his creditors, or any person claiming under him.

28. The Court may grant protection order

The Court if satisfied of the fact of such desertion, and the same was without reasonable excuse, and that the wife in 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 relevance thereon, be conclusive as to such time.

29. **Discharge or variation of orders-**

30. **Liability of husband seizing wife's property after notice of order.**

31. **Wife's legal position during continuance of order.**

VII. Restitution of Conjugal Rights-

32. **Petition for Restitution of Conjugal Rights.**

Whether husband or wife 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.

33. **Answer to petition-** nothing shall be pleaded in answer to the 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.

IX. Alimony

36. **Alimony pendente lite-**

In any suit under this Act, whether it be instituted by a husband or a wife, and whether or not she has obtained an order of protection the wife may present a petition for expenses of the proceedings and alimony pending the suit.

Such petition shall be served on the husband and the Court on being satisfied of the truth of the statements therein contained, may make such order on the husband (for the payment to the wife of expenses of the proceedings and alimony pending the suit as it may deem just.

37. **Power to order permanent alimony. Power to order monthly or weekly payment.**

38. **Court may direct payment of alimony to wife or to her trustee.**

X. Settlements

40. **Inquiring into existence of ante nuptial or post nuptial settlements-**

The District Court may, before passing a decree, for dissolution of the marriage or a decree of nullity of marriage inquire into) the existence of ante nuptial or post nuptial settlements made on the parties whose marriage is the subject of the decree, and may make such orders, with reference to the application of the whole or a portion of the property settled whether for the benefit of the husband or wife, or of the children (if any) of the marriage; or of both children and of parents, as to the Court seems fit, provided that the Court shall not make any order for the benefit of the parents or either of them at the expense of the children.

Custody of children

41. **Power to make orders as to custody of children in suit for separation**

42. **Power to make such orders after decree-**

43. **Power to make orders as to custody of children in suits for dissolution or nullity.**

44. **Power to make such orders after decree or confirmation.**

XII. Procedure

45. Code of Civil procedure to apply-
 46. Forms of petition and settlements-
 47. Petition to state absence of collusion-
 48. Suits on behalf of lunatics-
 49. Suits by minors-
 50. Service of petition-
 51. Mode of taking evidence.
 52. Competence of husband and wife to give evidence as to cruelty or desertion.
 53. Power to close doors.
 54. Power to adjourn,
 55. Enforcement of, and appeal from, orders and decrees-
- No appeal as to costs- that there shall be no appeal on the subject of costs only-
56. Appeal to the Supreme Court.

XIII. Re-marriage.

57. Liberty to parties to marry again-
58. English clergy men not compelled to solemnize marriage of person divorced for adultery.
59. **English minister refusing to perform ceremony to permit use of his Church-**
when any Minister of any Church or Chapel of the said Church refuses to perform such marriage service between any persons who but for such refusal would be entitled to have the same service performed in such Church or Chapel, such Minister shall permit any other Minister in Holy orders of the said Church, entitled to officiate within the diocese in which such Church or Chapel is situate, to perform such marriage service in such Church or Chapel.
60. **Decree for separation or protection-** order valid as to persons dealing with wife before reversal.
Indemnity of persons making payment to wife without notice or reversal of decree or protection order.
61. **Bar of suit for criminal conversation-**
After this Act comes into operation no person competent to present a petition under sections 2 and 10 shall maintain a suit for criminal conversation with his wife.
62. **Power to make rules-**
The High Court shall make such rules under this Act as it may from time to time consider expedient, and may from time after and add to the same, provided that such rules alternation and additions are consistent with the provisions of this Act and the (Code of C. p. c 1908).

Ms Margaret Mary George,
Advocate
E-3, 5/2 Nupur Kunj
Arera Colony,
Bhopal 462 016.