



## RELEVANT PROVISION OF THE HINDU MARRIAGE ACT, 1955

### CHAPTER III

#### RESTITUTION OF CONJUGAL RIGHTS AND JUDICIAL SEPARATION

9. Restitution of conjugal right. 1\*\*\* When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply, by petition to the district court, for restitution of conjugal rights and the court, on being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.

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1 The brackets and figure "(1)" omitted by Act 68 of 1976, s. 3.  
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1[Explanation.-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excuse for withdrawal from the society, the burden of proving reasonable excuse shall be on the person who has withdrawn from the society.]

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10. JUDICIAL SEPARATION. (1)Either party to a marriage, whether solemnized before or after the commencement of this Act, may present a petition praying for a decree for judicial separation on any of the grounds specified in sub-section (1) of section 13, and in the case of a wife also on any of the grounds specified in sub-section (2) thereof, as grounds on which a petition for divorce might have been presented.]

(2) 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.

### CHAPTER IV

## NULLITY OF MARRIAGE AND DIVORCE

11. Void marriages. Any marriage solemnized after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto 4[against the other party], be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of section 5.

12. Voidable marriages. (1)Any marriage solemnized, whether before or after the commencement of this Act, shall be voidable and may be annulled by a decree of nullity on any of the following grounds, namely:-

5[(a) that the marriage has not been consummated owing to the impotence of the respondent; or]

(b) that the marriage is in contravention of the condition specified in clause (ii) of section 5 ; or

(c) that the consent of the petitioner, or where the consent of the guardian in marriage of the petitioner 6[was required under section 5 as it stood immediately before the commencement of the Child Marriage Restraint (Amendment) Act, 1978], (2 of 1978) the consent of such guardian was obtained by force 1[or by fraud as to the nature of the ceremony or as to any material fact or circumstances concerning the respondent]; or

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

(2) Notwithstanding anything contained in sub-section (1), no petition for annulling a marriage-

(a) on the ground specified in clause (c) of sub-section (1) shall be entertained if-

(i) the petition is presented more than one year after the force had ceased to operate or, as the case may be, the fraud had been discovered; or

(ii) 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, as the case may be, the fraud had been discovered;

(b) on the ground specified in clause (d) of sub-section(1) shall be entertained unless the court is satisfied-

(i) that the petitioner was at the time of the marriage ignorant of the facts alleged;

(ii) that proceedings have been instituted in the case of a marriage solemnized before the commencement of this Act within one year of such commencement and in the case of marriages solemnized after such commencement within one year from the date of the marriage; and

(iii) that marital intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of the existence of 2[the said ground].

## **DIVORCE**

13. Divorce. (1) Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party-

1[(i) has, after the solemnization of the marriage, had voluntary, sexual intercourse with any person other than his or her spouse ; or

(ia) has, after the solemnization of the marriage, treated the petitioner with cruelty; or

(ib) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or]

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

1[(iii) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

Explanation.-In this clause,-

(a) the expression "mental disorder" means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia;

(b) the expression "psychopathic disorder" means a persistent disorder or disability of mind (whether or not including sub-normality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the other party, and whether or not it require or is susceptible to medical treatment; or]

(iv) has 2\* \* \* been suffering from a virulent and incurable from of leprosy; or

(v) has 2\* \* \* been suffering from venereal disease in a communicable from ; or

(vi) has renounced the world by entering any religious order; or

(vii) 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 it, had that party been alive.

1[Explanation.-In this sub-section, the expression "desertion" means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the wilful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly.]

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4[ (1-A) Either party to a marriage, whether solemnized before or after the commencement of this Act, may also present a petition for the dissolution of the marriage by a decree of divorce on the ground-

(i) that there has been no resumption of cohabitation as between the parties to the marriage for a period of 5[one year] or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties; or

(ii) that there has been no restitution of conjugal rights as between the parties to the marriage for a period of 5[one year] or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.]

(2) A wife may also present a petition for the dissolution of her marriage by a decree of divorce on the ground,-

(i) in the case of any marriage solemnized before the commencement of this Act, that the husband had married again before such commencement or that any other wife of the husband married before such commencement was alive at the time of the solemnization of the marriage of the petitioner:

Provided that in either case the other wife is alive at the time of the presentation of the petition ; or

(ii).that the husband has, since the solemnization of the marriage, been guilty of rape, sodomy or 6[bestiality; or]

[(iii) that in suit under section 18 of the Hindu Adoptions and Maintenance Act, 1956, (78 of 1956.) or in a proceeding under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974.) (or under the corresponding section 488 of the Code of Criminal Procedure, 1898), (5 of 1898.) a decree or order, as the case may be, has been passed against the husband awarding maintenance to the wife notwithstanding that she was living apart and that since the passing of such decree or order, cohabitation between the parties has not been resumed for one year or upwards;

(iv) that 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.

Explanation.-This clause applies whether the marriage was solemnized before or after the commencement of the Marriage Laws (Amendment) Act, 1976.] (68 of 1976.)

[13A. Alternate relief in divorce proceedings. In any proceeding under this Act, on a petition for dissolution of marriage by a decree of divorce, except in so far as the petition is founded on the grounds mentioned in clauses (ii), (vi) and (vii) of sub-section (1) of section 13, the court may, if it considers it just so to do having

regard to the circumstances of the case, pass instead a decree for judicial separation.

### **MUTUAL CONSENT**

13B. Divorce by mutual consent. (1) Subject to the provisions of this Act a petition for dissolution of marriage by a decree of divorce 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 Marriage Laws (Amendment) Act, 1976, (68 of 1976.) on the ground 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.

(2) On the motion of both the parties made not earlier than six months after the date of the 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 in the meantime, the court shall, on being satisfied, after hearing the parties and after 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 of divorce declaring the marriage to be dissolved with effect from the date of the decree.]

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1 Ins. by Act 68 of 1976 s. 8.  
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### **NO PETITION FOR DIVORCE TO BE PRESENTED WITHIN ONE YEAR OF MARRIAGE.**

14. No petition for divorce to be presented within one year of marriage. (1) Notwithstanding anything contained in this Act, it shall not be competent for any court to entertain any petition for dissolution of a marriage by a decree of divorce, 1[unless at the date of the presentation of the petition one year has elapsed] since the date of the marriage:

Provided that the court may, upon application made to it in accordance with such rules as may be made by the High Court in that behalf, allow a petition to be presented 1[before one year has elapsed] since the date of the marriage on the ground that the case is one of exceptional hardship to the petitioner or of exceptional depravity on the part of the respondent, but if it appears to the court at the hearing of the petition that the petitioner obtained leave to present the petition by any misrepresentation or concealment of the nature of the case, the court may, if it pronounces a decree, do so subject to the condition that the decree shall not have effect until after the 1[expiry of one year] from the date of the marriage or may dismiss the petition without prejudice to any petition which may be brought after the 1[expiration of the said one year] upon the same or

substantially the same facts as those alleged in support of the petition so dismissed.

(2) In disposing of any application under this section for leave to present a petition for divorce before the 1[expiration of one year] from the date of the marriage, 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 1[said one year].

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