

## Divorce Act, 1869

### Chapter 3 - Dissolution of Marriage

---

#### <sup>1</sup> [10. Grounds for dissolution of marriage

(1) Any marriage solemnized, whether before or after the commencement<sup>2</sup> 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 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."].

---

1. Substituted by Act 51 of 2001, section 5, for section 10 (w.e.f. 3-10-2001).

2. 3rd October, 2001.

---

#### **Section 10A - Dissolution of marriage by mutual consent**

---

#### <sup>1</sup>[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<sup>2</sup>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." ]

---

1. Inserted by Act 51 of 2001, section 6, (w.e.f. 3-10-2001).

2. 3rd October, 2001.

---

#### **Section 11 - Adulterer or adulteress to be co-respondent**

---

#### <sup>1</sup> [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.".]

---

1. Substituted by Act 51 of 2001, section 7, for section 11 (w.e.f. 3-10-2001).

---

### **Section 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**

---

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.

<sup>1</sup> [\*\*\*]

---

1. Last paragraph omitted by Act 51 of 2001, section 8 (w.e.f. 3-10-2001).

---

### **Section 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<sup>1</sup>[\*\*\*]:

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

---

1. Certain words omitted by Act 51 of 2001, section 9 (w.e.f. 3-10-2001).

---

### **Section 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<sup>1</sup>[\*\*\*], or, in case of such a suit instituted by a wife, on the ground of<sup>2</sup>[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<sup>3</sup>[such adultery, cruelty] or desertion.

---

1. The words "without reasonable excuse," omitted by Act 51 of 2001, sec.10 (w.e.f. 3-10-2001).

2. Substituted by Act 51 of 2001, section 10, for "her adultery and cruelty" (w.e.f. 3-10-2001).

### **Section 16 - Decrees for dissolution to be nisi**

---

Every decree for dissolution of marriage made by a High Court<sup>1</sup>[\*\*\*] 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 direct, 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 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 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.

---

1.The words "not being a confirmation of a decree of a District Court" omitted by Act 51 of 2001, section 11 (w.e.f. 3-10-2001).

---

### **Section 17 - Power of High Court to remove certain suits**

---

#### **<sup>1</sup> [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.]

---

1. Substituted by Act 51 of 2001, section 12, for section 17 (w.e.f 3-10-2001).

---

### **Section 17A - Appointment of officer to exercise duties of King's Proctor (Repealed)**

---

#### **<sup>1</sup> [<sup>2</sup> 17A. Appointment of officer to exercise duties of King's Proctor**

[Rep. by the Indian Divorce (Amendment) Act, 2001 (52 of 2001), section 13 (w.e.f 3-10-2001).]]

---

1. Inserted by Act 15 of 1927 , section 2.

2. Substituted by the A.O. 1937.

---

---

---