

**LAW AREA NAME : WOMAN**  
**SECTION NAME : HINDU MARRIAGE LAW**  
**SUB SECTION NAME : DIVORCE**

## LAW IN BRIEF

The Hindus consider marriage to be a sacred bond. Prior to the Hindu Marriage Act of 1955, there was no provision for divorce. The concept of getting divorced was too radical for the Indian society then. The wives were the silent victims of such a rigid system. Now the law provides for a way to get out of an unpleasant marriage by seeking divorce in a court of law. The actual benefactors of such a provision are women who no longer have to silently endure the harassment or injustice caused to them by their husbands.

However, to prevent hasty divorces, the law lays down certain restrictions and grounds for obtaining a divorce. Before obtaining divorce, the parties may first obtain a decree for judicial separation after which divorce may be obtained.

## LAW IN DETAIL

**Judicial Separation:** Section 10 declares the right of either spouse to a marriage to obtain judicial separation on grounds of adultery, cruelty, desertion, conversion, unsound mind, venereal disease, incurable leprosy, renunciation of the world, presumption of death and failure to comply with a decree of restitution of conjugal rights. Apart from the aforementioned grounds, a Hindu wife may invoke the following grounds available exclusively for her viz., remarriage by husband, husband found guilty of rape, sodomy or bestiality, non-resumption of cohabitation etc., After a decree of judicial separation is passed, it is not obligatory for the petitioner to cohabit with the respondent; however, no spouse can contract another marriage until the marital bond is ended by a divorce decree.

**Divorce by mutual consent:** when the husband and wife both agree that their marriage cannot succeed, they may decide to get a divorce by mutual consent. It is not necessary to give any reason to the court for such a divorce. They must file a divorce petition in the District court. However the following should be considered:

- Both the husband and wife are living separately from last 1 year.
- Both of them had agreed that they cant stay together.
- None of them has been forced to give the application.

The court will not take any action on the application for 6 months so that the husband and wife can reconsider their decision. After a period of 6 months from the date of presentation of the petition and not later than 18 months, if the petition is not withdrawn, the court will grant the decree of divorce. The court must however be satisfied about the bonafides and consent of the parties.

If one of the parties withdraws the consent, the court makes an inquiry in this regard and if there is no consent at the time of the enquiry, it cannot pass the decree of divorce

**The grounds for obtaining divorce under section 13 are:**

- i. Adultery
- ii. Cruelty
- iii. Desertion
- iv. Conversion
- v. Unsound mind
- vi. Leprosy
- vii. Renouncing the world
- viii. Venereal disease
- ix. Presumed dead
- x. Judicial separation
- xi. Failure of Restitution decree

Exclusive grounds given to the Hindu wife are:

- i. Remarriage
- ii. Husband guilty of rape, sodomy or bestiality
- iii. Non-resumption of cohabitation
- iv. Repudiation of marriage

## **PROCESS FOR SOLUTION**

### **Complaint Under which Section ?**

Section 10: Judicial Separation

Section 13: Grounds for obtaining a divorce

Section 13-B: Divorce by mutual consent.

### **Whom to complain / where to complaint?**

**Section 19:** The District Court within the local limits of whose ordinary jurisdiction –

- i. the marriage was solemnized or
- ii. the husband and the wife reside at the time of the presentation of the petition or
- iii. the husband and wife last resided.

### **How to file the Case ?**

**Before filing a divorce case:**

- Divorce can be obtained only after the wife and husband have stayed together for a period of 1 year.

- A divorce case cannot be filed immediately after marriage or within 1 year of marriage.
- The wedding must have been solemnized as per Hindu rites and customs. The Saptapadi is an important component of a Hindu marriage.

**Section 20:** The petition should state the facts of the case clearly on the basis of which the relief is claimed. It should also state that there is no collusion between the petitioner and the other party to the marriage.

The statements made in the petition should be verified by the petitioner in the manner required by law and may be referred to as evidence at the hearing.

**Section 21:** The proceedings will be regulated by the Code of Civil Procedure, 1908

**Section 22:** The proceedings will be conducted in camera if either party so desires or if the court thinks so. Any matter relating to such proceeding must not be printed or published except with the permission of the court. Punishment for the same is fine up to Rs.1000.

**Section 23:** The relief asked for will be granted by the court if it is satisfied that:

- The grounds for granting relief exist and the petitioner is not in any way taking advantage of his or her own wrong or disability for the purpose of such relief.
- The petition is not presented or prosecuted in collusion with the respondent
- There has not been any unnecessary or improper delay in instituting the proceeding
- There is no legal ground for not granting relief
- The petitioner has not in any way condoned the act complained of or been part of such act.

**Sub-Section (2)** emphasizes that the court must firstly make an effort to bring about reconciliation between the parties before granting any relief under this Act.

**Section 24:** where the court feels that either the husband or wife has no independent income sufficient for his/her support and for court expenses, on an application by the concerned party, it may order the other party to pay the expenses of the proceeding and a monthly expenditure having regard to the income of both the petitioner and the respondent.

**Section 25:** The court may also grant permanent alimony and maintenance on an application by either of the parties.

**Section 26:** The court may also make necessary orders for the custody, maintenance and education of minor children of the parties during the course of the case and in the final decree.

## What Next ?

The enforcement of the relief ordered under this Act and appeals against the orders and decree made under this Act will be as per the procedure laid down under the law.

The parties who have obtained divorce in the lower court can remarry only if:

- The case has not been appealed to the High Court or
- The time-limit for filing an appeal before the High Court has expired or
- If an appeal has been filed before the High Court, the same has been dismissed.

If either of the party remarries during the above mentioned periods or when the case is pending before the court or when orders of judicial separation has been obtained, such a marriage will not have any legal sanctity. It will amount to committing the offence of bigamy.

Further, when the order for judicial separation is in vogue, any intercourse with the wife by the husband without her consent is punishable under section 376A of the Indian Penal Code with 2 years imprisonment.

## ALTERNATE REMEDIES

The woman who wants to divorce her husband may take the help of a friend or relative or a social worker or a social organization who or which may help her to reconcile with her husband. If that doesn't work, they will help her with the legal proceedings.

She may approach the legal services authority for free legal aid.

In some castes and communities divorce is granted by the village or caste Panchayat. There are some important things to remember about this kind of divorce:

- There must exist a recognized custom of divorce by the village or Caste Panchayat.
- The divorce must be by mutual consent of the parties. The Panchayat cannot give a divorce if only one party asks for it.
- The panchayat has to hear both the sides before granting a divorce
- If the panchayat gives a divorce without the consent of one of the party or if some other injustice is done, then a case can be filed in the court.