

AMENDMENT – Divorce on ground of irretrievable breakdown of marriage

AS INTRODUCED IN THE RAJYA SABHA

Bill No. XLI of 2010

THE MARRIAGE LAWS (AMENDMENT) BILL, 2010

A BILL

further to amend the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954.

BE it enacted by Parliament in the Sixty-first Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title and commencement.

1. (1) This Act may be called the Marriage Laws (Amendment) Act, 2010.
- (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

CHAPTER II

AMENDMENTS TO THE HINDU MARRIAGE ACT, 1955

Amendment of section 13B.

2. In the Hindu Marriage Act, 1955 (hereafter in this Chapter referred to as the Hindu Marriage Act), in section 13B, in sub-section (2), for the words, brackets and figure “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petition referred to in sub-section (1) and not later than eighteen months after the said date, if the petition is not withdrawn in the meantime”, the words, brackets and figure “Upon receipt of a petition under sub-section (1)” shall be substituted.

Insertion of new sections 13C, 13D and 13E.

3. After section 13B of the Hindu Marriage Act, the following sections shall be inserted, namely:—

Divorce on ground of irretrievable breakdown of marriage.

13C (1) A petition for the dissolution of marriage by a decree of divorce may be presented to the district court by either party to a marriage [whether solemnized before or after the commencement of the Marriage Laws (Amendment) Act, 2010], on the ground that the marriage has broken down irretrievably. (2) The court hearing a petition referred to in sub-section (1) shall not hold the marriage to have broken down irretrievably unless it is satisfied that the parties to the marriage have lived apart for a continuous period of not less than three years immediately preceding the presentation of the petition. (3) If the court is satisfied, on the evidence, as to the fact mentioned in sub-section (2), then, unless it is satisfied on all the evidence that the marriage has not broken down irretrievably, it shall, subject to the provisions of this Act, grant a decree of divorce. (4) In considering, for the purpose of sub-section (2), whether the period for which the parties to a marriage have lived apart has been continuous, no account shall be taken of any one period (not exceeding three months' in all) during which the parties resumed living with each other, but no other period during which the parties lived with each other shall count as part of the period for which the parties to the marriage lived apart. (5) For the purposes of sub-sections (2) and (4), a husband and wife shall be treated as living apart unless they are living with each other in the same household, and reference in this section to the parties to a marriage living with each other shall be construed as reference to their living with each other in the same household.

Wife's right to oppose petition on ground of hardship.

13D. (1) Where the wife is the respondent to a petition for the dissolution of marriage by a decree of divorce under section 13C, she may oppose the grant of a decree on the ground that the dissolution of the marriage will result in grave financial hardship to her and that it would in all the circumstances be wrong to dissolve the marriage. (2) Where the grant of a decree is opposed by virtue of this section, then,— (a) if the court finds that the petitioner is entitled to rely on the ground set out in section 13C; and (b) if, apart from this section, the court would grant a decree on the petition, the court shall consider all the circumstances, including the conduct of the parties to the marriage and the interests of those parties and of any children or other persons concerned, and if, the court is of the opinion that the dissolution of the marriage shall result in grave financial hardship to the respondent and that it would, in all the circumstances, be wrong to dissolve the marriage, it shall dismiss the petition, or in an appropriate case stay the proceedings until arrangements have been made to its satisfaction to eliminate the hardship.

Restriction on decree for divorce affecting children

13E. The court shall not pass a decree of divorce under section 13C unless the court is satisfied that adequate provision for the maintenance of children born out of the marriage has been made consistently with the financial capacity of

the parties to the marriage.
Explanation.— In this section, the expression “children” means—
(a) minor children;
(b) unmarried or widowed daughters who have not the financial resources to support themselves; and
(c) children who, because of special condition of their physical or mental health, need looking after and do not have the financial resources to support themselves.’.

Amendment of section 21A.

4. In section 21A of the Hindu Marriage Act, in sub-section (1), after the word and figures “section 13”, at both the places where they occur, the words, figures and letter “or section 13C” shall be inserted.

Amendment of section 23.

5. In section 23 of the Hindu Marriage Act, in sub-section (1), in clause (a), after the word and figure “section 5”, the words, figures and letter “or in cases where the petition is presented under section 13C” shall be inserted.

CHAPTER III

AMENDMENTS TO THE SPECIAL MARRIAGE ACT, 1954 – Act 43 of 1954.

Amendment of section 28.

6. In the Special Marriage Act, 1954 (hereafter in this Chapter referred to as the Special Marriage Act), in section 28, in sub-section (2), for the words, brackets and figure “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 words, brackets and figure “Upon receipt of a petition under sub-section (1)” shall be substituted.

Insertion of new sections 28A, 28B and 28C.

7. After section 28 of the Special Marriage Act, the following sections shall be inserted, namely:—

Divorce on ground of irretrievable breakdown of marriage.

‘28A. (1) A petition for the dissolution of marriage by a decree of divorce may be presented to the district court by either party to a marriage [whether solemnized before or after the commencement of the Marriage Laws (Amendment) Act, 2010] on the ground that the marriage has broken down irretrievably.

(2) The court hearing a petition referred to in sub-section (1) shall not hold the marriage to have broken down irretrievably unless it is satisfied that the parties to the marriage have lived apart for a continuous period of not less than three years immediately preceding the presentation of the petition.

(3) If the court is satisfied, on the evidence, as to the fact mentioned in sub-section (2), then, unless it is satisfied on all the evidence that the marriage has not broken down irretrievably, it shall, subject to the provisions of this Act, grant a decree of divorce.

(4) In considering, for the purpose of sub-section (2), whether the period for which the parties to a marriage have lived apart has been continuous, no account shall be taken of any one period (not exceeding three months in all) during which the parties resumed living with each other, but no other period during which the parties lived with each other shall count as part of the period for which the parties to the marriage lived apart.

(5) For the purposes of sub-sections (2) and (4), a husband and wife shall be treated as living apart unless they are living with each other in the same household, and reference in this section to the parties to a marriage living with each other shall be construed as reference to their living with each other in the same household.

Wife's right to oppose petition on ground of hardship.

28B. (1) Where the wife is the respondent to a petition for the dissolution of marriage by a decree of divorce under section 28A, she may oppose the grant of a decree on the ground that the dissolution of the marriage will result in grave financial hardship to her and that it would, in all the circumstances, be wrong to dissolve the marriage.

(2) Where the grant of a decree is opposed by virtue of this section, then,—

(a) if the court finds that the petitioner is entitled to rely on the ground set out in section 28A; and

(b) if apart from this section the court would grant a decree on the petition, the court shall consider all the circumstances, including the conduct of the parties to the marriage and the interests of those parties and of any children or other persons concerned, and if, the court is of the opinion that the dissolution of the marriage shall result in grave financial hardship to the respondent and that it would in all the circumstances be wrong to dissolve the marriage, it shall dismiss the petition, or in an appropriate case stay the proceedings until arrangements have been made to its satisfaction to eliminate the hardship.

Restriction on decree for divorce affecting children.

28C. The court shall not pass a decree of divorce under section 28A unless the court is satisfied that adequate provision for the maintenance of children born out of the marriage has been made consistently with the financial capacity of the parties to the marriage.

Explanation.— In this section, the expression “children” means—

(a) minor children;

(b) unmarried or widowed daughters who have not the financial resources to support themselves; and
(c) children who, because of special condition of their physical or mental health, need looking after and do not have the financial resources to support themselves.’.

Amendment of section 40A.

8. In section 40A of the Special Marriage Act, in sub-section (1), after the word and figures “section 27”, at both the places where they occur, the words, figures and letter “or section 28A” shall be inserted.

STATEMENT OF OBJECTS AND REASONS

The Hindu Marriage Act, 1955 was enacted on the 18th May, 1955 to amend and codify the law relating to marriage among Hindus. Similarly, the Special Marriage Act, 1954 was enacted on the 9th October, 1954 to provide a special form of marriage in certain cases, for the registration of such and certain other marriages and for divorce. The provisions of the said Acts have proved to be inadequate to deal with the issue where there has been irretrievable breakdown of marriage and therefore a need has been felt for certain amendments therein.

2. In view of the demand from various quarters for making irretrievable breakdown of marriage as a ground for divorce under the Hindu Marriage Act, 1955, the Central Government referred the matter to the Law Commission of India for its consideration. The Law Commission in its 71st Report titled “The Hindu Marriage Act, 1955 — Irretrievable Breakdown of Marriage as a Ground of Divorce” submitted in April, 1978 had examined the issue in detail and recommended amendments to the Hindu Marriage Act, 1955 to make irretrievable breakdown of marriage as a new ground for granting a decree of divorce among the Hindus. Accordingly, a Bill, namely, the Marriage Laws (Amendment) Bill, 1981, further to amend the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954, was introduced in Lok Sabha on the 27th February, 1981. However, before the Bill could be considered and passed by Lok Sabha, the Seventh Lok Sabha was dissolved on 31st December, 1984, and hence the Bill lapsed.

3. Subsequently, the Hon’ble Supreme Court in *Ms. Jorden Diengdeh vs. S.S. Chopra* (AIR 1985 SC 935) had pointed out the necessity to introduce irretrievable breakdown of marriage and mutual consent as grounds for grant of divorce in all cases. Similarly in *Naveen Kohli vs. Neelu Kohli* (AIR 2006 SC 1675), the Hon’ble Supreme Court recommended to the Union of India to seriously consider bringing an amendment in the Hindu Marriage Act, 1955 to incorporate irretrievable breakdown of marriage as a ground for divorce.

4. Further, the 18th Law Commission of India suo motu took up the matter and in its 217th Report titled ‘Irretrievable Breakdown of Marriage —Another Ground for Divorce’ presented to the Government in March, 2009 recommended

that 'Irretrievable breakdown of marriage' should be incorporated as another ground for grant of a decree of divorce under the afore- said Acts.

5. Having regard to the recommendations of the Law Commission of India and the observations of the Hon'ble Supreme Court as aforesaid and the demand from various quarters, it is proposed to amend the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954 so as to provide for irretrievable breakdown of marriage as a ground of divorce thereunder subject to certain safeguards to the wife and affected children.

6. At present, a petition for grant of a decree of divorce on the ground of mutual consent could be presented by both the parties to the marriage together before the court under sub-section (1) of section 13B of the Hindu Marriage Act, 1955 and similarly under sub-section (1) of section 28 of the Special Marriage Act, 1954. Under sub-section (2) of section 13B and that of section 28 respectively, the parties have to move a motion jointly not earlier than six months after the date of presentation of the petition referred in sub-section (1) and not later than eighteen months after the said date for the said purpose. It has been observed that in several cases one of the parties do not turn up for filing the motion jointly with the other party under sub-section (2) of section 13B of the Hindu Marriage Act, 1955 or under sub-section (2) of section 28 of the Special Marriage Act, 1954, as the case may be, leading the party desirous of obtaining a decree of divorce hapless and remediless. In order to mitigate such hardships and to allow divorce in cases of complete failure of such marriages, it is proposed to amend sub-section (2) of section 13B of the Hindu Marriage Act, 1955 and sub-section (2) of section 28 of the Special Marriage Act, 1954, respectively, by doing away with the aforesaid condition of moving motion subsequently.

7. In case the wife happens to be the respondent in respect of a petition for grant of a decree of divorce on the ground of irretrievable breakdown of marriage under the proposed new section 13C of the Hindu Marriage Act, 1955 or under the proposed new section 28A of the Special Marriage Act, 1954, as the case may be, the wife is entitled to oppose the grant of a decree of divorce on the ground that a dissolution of the marriage will result in grave financial hardship to her. Similarly, provision has been made to restrict grant of a decree of divorce on the ground of irretrievable breakdown of marriage if the court is satisfied that adequate provision for the maintenance of children born out of the marriage has not been made consistently with the financial capacity of the parties to the marriage.

8. The Bill seeks to achieve the above objects.

NEW DELHI;M. VEERAPPA MOILY.

The 13th July, 2010.ANNEXURE
EXTRACTS FROM THE HINDU MARRIAGE ACT, 1955 (25 OF 1955)

13B. (1)
(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.

21A. (1) Where—
(a) a petition under this Act has been presented to a district court having jurisdiction by a party to a marriage praying for a decree for judicial separation under section 10 or for a decree of divorce under section 13, and
(b) another petition under this Act has been presented thereafter by the other party to the marriage praying for a decree for judicial separation under section 10 or for a decree of divorce under section 13 on any ground, whether in the same district court or in a different district court, in the same State or in a different State, the petitions shall be dealt with as specified in sub-section (2).

23. (1) In any proceeding under this Act, whether defended or not, if the court is satisfied that—
(a) any of the grounds for granting relief exists and the petitioner except in cases where the relief is sought by him on the ground specified in sub-clause (a),
sub-clause (b) or sub-clause (c) of clause (ii) of section 5 is not in any way taking advantage of his or her own wrong or disability for the purpose of such relief, and

then, and in such a case, but not otherwise, the court shall decree such relief accordingly.

EXTRACTS FROM THE SPECIAL MARRIAGE ACT, 1954 (43 OF 1954)

28. (1)
(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 district court

shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnized under this Act, and that the averments in the petition are true, it may, by mutual consent, transfer the petition to the district court in which the proceedings were commenced. Power to transfer petitions in certain cases. Decree in proceedings. Divorce by mutual consent.

are true, pass a decree declaring the marriage to be dissolved with effect from the date of the decree.

40A. (1) Where—
 (a) a petition under this Act has been presented to the district court having jurisdiction by a party to the marriage praying for a decree for judicial separation under section 23 or for a decree of divorce under section 27, and
 (b) another petition under this Act has been presented thereafter by the other party to the marriage praying for decree for judicial separation under section 23, or for decree of divorce under section 27 on any ground whether in the same district court or in a different district court, in the same State or in a different State, the petition shall be dealt with as specified in sub-section (2).

Power to transfer petitions in certain cases. RAJYA SABHA
 A BILL further to amend the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954.

(Shri M. Veerappa Moily, M.P.)