

The marriages  
solemnized before  
the commencement  
of



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The section deals with judicial separation and the consequences that flow from it. A decree of judicial separation does not terminate the marriage but on the other hand it puts the obligation of conjugal duties to an end. After the decree neither spouse is under an obligation to cohabit with the other. The section applies also to Hindu marriages solemnized before the commencement of the Act. The Marriage Laws (Amendment) Act, 1976 has recasted Section 10(1) of the Act.

It now enables either party to a marriage to move for a decree of judicial separation on any one of the grounds specified in sub-section (1) of Section 13, and in the case of 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. Now, the grounds on which judicial separation and divorce can be sought are identical. Sub-section (2) of Section 10 preserves the right of the court to rescind the decree of judicial separation, if on the petition of either party; it is satisfied of the truth of the statements made in such petition.

The grounds, on which a decree of judicial separation can be obtained, are as follows: (1) That the other party, after solemnization of marriage, had voluntary sexual intercourse with any person other than his or her spouse, or (2) Other party treated the petitioner with cruelty, or (3) Other party has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition, or (4) Other party has ceased to be Hindu by conversion to another religion, or (5) Other party 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

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the petitioner cannot reasonably be expected to live with the respondent. In this clause, (a) the expression “ mental disorder” means mental illness, arrested on 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 requires or is susceptible to medical treatment, or (6) Other party has been suffering from a virulent and incurable form of leprosy; or (7) Other party has been suffering from venereal disease in a communicable form, or (8) Other party has renounced the world by entering any religious order, or (9) Other party 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.

**Explanation:**

(1) 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 induces the willful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expression shall be construed accordingly. (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, or provided that in either case the other wife is alive at the time of presentation of the petition, or (ii) That the husband, since the solemnization of the marriage been guilty of rape, sodomy or bestiality, or (iii) That in a suit under Section 18 of the Hindu Adoption and Maintenance Act, 1956, or in a proceeding under Section 125 of the Code of Criminal Procedure, 1973, 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, or (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. Under the Act, Section 10 does not provide any separate grounds for a decree of judicial separation.

Its provisions are to be read with Section 13 of Hindu Marriage Act (which provides grounds for divorce) and Section 13-A (which empowers the Court to grant judicial separation where divorce is prayed). The remedy of judicial separation is available in every case whether the marriage was solemnized before or after the commencement of this Act, e. g.,— (i) For husband or for wife On any ground on which he or she can seek a divorce under Section 13(i) of the Act. (ii) For wife Besides the above grounds she can have additional grounds available as mentioned in Section 13(2) of the Act. Thus grounds for divorce have become grounds for judicial separation.