

## **DIVORCE ACT, 1869**

**4 of 1869**

**[26th February, 1869]**

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## **DIVORCE ACT, 1869**

**4 of 1869**

**[26th February, 1869]**

An Act to amend the law relating to Divorce and Matrimonial Causes 2

Preamble.-WHEREAS it is expedient to amend the law relating to the divorce of persons professing the Christian religion, and to confer upon certain Courts jurisdiction in matters matrimonial; it is hereby enacted as follows:-

INDIA CODE, VOL-II, (1856-1879)

### **CHAPTER 1 PRELIMINARY**

#### **1. Short title, commencement of Act :-**

This Act may be called the Indian Divorce Act, 1869 and shall come

into operation on the first day of April, 1869.

## **2. Extent of Act :-**

This Act extends to the whole of India except the State of Jammu and Kashmir.

Extent of power to grant relief generally.--Nothing hereinafter contained shall authorise any court to grant any relief under this Act except where the petitioner or respondent professes the Christian religion.

and to make decrees of dissolution.--or to make decrees of dissolution of marriage except where the parties to the marriage are domiciled in India at the time when the petition is presented, or of nullity.--or to make decrees of nullity of marriage except where the marriage has been solemnized in India and the petitioner is resident in India at the time of presenting the petition, or to grant any relief under this Act, other than a decree of dissolution of marriage or of nullity of marriage, except where the petitioner resides in India at the time of presenting the petition.

## **3. Interpretation clause :-**

In this Act, unless here be something repugnant in the subject or context,--

(1) "High Court".--"High Court" means with reference to any area--

(a) in a State, the High Court for that State;

(b) in Delhi, the High Court of Delhi;

(bb) in Himachal Pradesh, the High Court of Punjab & Haryana up to and inclusive of the 30th April, 1967 and the High Court of Delhi thereafter;

(c) in Manipur and Tripura, the High Court of Assam;

(d) in the Andaman and Nicobar Islands, the High Court at Calcutta;

(e) in the Laccadive, Minicoy and Amindivi Islands, the High Court of Kerala;

(ee) in Chandigarh, the High Court of Punjab and Haryana;

and in the case of any petition under this Act, "High Court" means the High Court for the area where the husband and wife reside or last resided together:

(2) "District Judge".--"District Judge" means a Judge of a principal civil court of original jurisdiction however designated;

(3) "District Court".--"District Court" means, in the case of any petition under this Act, the Court of the District Judge within the

local limits of whose ordinary jurisdiction, or of whose jurisdiction under this Act, the husband and wife reside or last resided together,

(4) "Court".--"Court" means the High Court or the District Court, as the case may be;

(5) "Minor children".--"minor children" means, in the case of sons of Native fathers, boys who have not completed the age of sixteen years, and, in the case of daughters of Native fathers, girls who have not completed the age of thirteen years: In other cases it means unmarried children who have not completed the age of eighteen years;

(6) "Incestuous adultery".--"incestuous adultery" means adultery committed by a husband with a woman with whom, if his wife were dead, he could not lawfully contract marriage by reason of her being within the prohibited degrees of consanguinity (whether natural or legal) or affinity;

(7) "Begamy with adultery".--"Begamy with adultery" means adultery with the same women with whom begamy was committed;

(8) "Marriage with another woman".--"marriage with another woman" means marriage of any person, being married, to any other person, during the life of the former wife, whether the second marriage shall have taken place within India or elsewhere;

(9) "Desertion".--"desertion" implies an abandonment against the wish of the person charging it; and

(10) "Property".--"property" includes in the case of a wife any property to which she is entitled for an estate in remainder or reversion or as a trustee, executrix or administratrix; and the date of the death of the testator or intestate shall be deemed to be the time at which any such wife becomes entitled as executrix or administratrix.

## **CHAPTER 2 JURISDICTION**

### **4. Matrimonial jurisdiction of High Courts to be exercised subject to Act :-**

Exception.--

The jurisdiction now exercised by the High Courts in respect of divorce a mensa et toro, and in all other causes, suits and matters matrimonial, shall be exercised by such Courts and by the District Courts subject to the provisions in this Act contained, and not otherwise; except so far as relates to the granting of marriage licences, which may be granted as if this Act had not been passed.

## **5. Enforcement of decrees or orders made heretofore by Supreme Court or High Court :-**

Any decree or order of the late Supreme Court of Judicature at Calcutta, Madras or Bombay sitting on the ecclesiastical side, or of any of the said High Court sitting in the exercise of their matrimonial jurisdiction, respectively, in any cause of matter matrimonial, may be enforced and dealt with by the said High Courts, respectively, as hereinafter mentioned, in like manner as if such decree or order had been originally made under this Act by the Court so enforcing or dealing with the same.

## **6. Pending suits :-**

All suits and proceedings in causes and matters matrimonial, which when this Act comes into operation are pending in any High Court, shall be dealt with and decided by such Court, so far as may be, as if they had been originally instituted therein under this Act.

## **7. Court to act on principles of English Divorce Court :-**

Subject to the provisions contained in this Act, the High Courts and District Courts shall, in all suits and proceedings hereunder, act and give relief on principles and rules which, in the opinion of the said Courts, are as nearly as may be conformable to the principles and rule on which the Court for Divorce and Matrimonial Causes in England for the time being acts and gives relief:

Provided that nothing in this section shall deprive the said Courts of jurisdiction in a case where the parties to a marriage professed the Christian religion at the time of the occurrence of the facts on which the claim to relief is founded.

## **8. Extraordinary jurisdiction of High Court :-**

The High Court may, whenever it thinks fit, remove and try and determine as a Court of original jurisdiction any suit or proceeding or proceeding instituted under this Act in the Court of any District Judge within the limits of its jurisdiction under this Act.

Power to transfer suits.--The High Court may, also withdraw any such suit or proceeding, and transfer it for trial or disposal to the Court of any other such District Judge.

## **9. Reference to High Court :-**

When any question of law or usage having the force of law arises at any point in the proceedings previous to the hearing of any suit under this Act by a District Court or at any subsequent stage of such suit, or in the execution of the decree therein or order thereon, the Court may, either of its own motion or on the application of any of the parties, draw up a statement of the case and refer it, with the Courts own opinion thereon, to the decision of the High Court.

If the question has arisen previous to or in the hearing, the District Court may either stay such proceedings, or proceed in the case pending such reference, and pass a decree contingent upon the opinion of the High Court upon it.

If a decree or order has been made, its execution shall be stayed until the receipt of the order of the High Court upon such reference.

### **CHAPTER 3 DISSOLUTION OF MARRIAGE**

#### **10. Grounds for dissolution of marriage :-**

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(1) Any marriage solemnized, whether before or after the commencement\* 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.

### **10A. Dissolution of marriage by mutual consent :-**

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(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\* 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.

### **11. Adulterer to be co-respondent :-**

Upon any such petition presented by a husband, the petitioner shall make the alleged adulterer a co-respondent to the said petition, unless he is excused from so doing on one of the following grounds, to be allowed by the Court--

(1) that the respondent is leading the life of a prostitute, and that the petitioner knows of no person with whom the adultery has been committed;

(2) that the name of the alleged adulterer is unknown to the petitioner, although he has made due efforts to discover it;

(3) that the alleged adulterer is dead.

**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.

**13. Dismissal of petition :-**

In case the Court, on the evidence in relation to any such petition, is satisfied that the petitioners 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.

When a petition is dismissed by a District Court under this section, the petitioner may nevertheless, present a similar petition to the High Court.

**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 in the manner and subject to all the provisions and limitations in sections sixteen and seventeen made and declared:

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.

### **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 suit instituted by a husband, of his adultery, cruelty, or desertion without reasonable excuse, or; in case of such suit instituted by a wife, on the ground of her adultery and cruelty, 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 such cruelty or desertion.

### **16. Decrees for dissolution to be decree nisi :-**

Every decree for a dissolution of marriage made by a High Court not being a confirmation of a decree of a district Court, 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 directs, 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 costs 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.

### **17. Confirmation of decree for dissolution by District Judge**

:-

Every decree for a dissolution of marriage made by a District Judge shall be subject to confirmation by the High Court.

Cases for confirmation of a decree for dissolution of marriage shall be heard (where the number of the Judges of the High Court is three or upwards) by a Court composed of three such Judges, and in case of difference, the opinion of the majority shall prevail, or (when the number of the Judges of the High Court is two) by a Court composed of such two Judges, and in case of difference the opinion of the Senior Judge shall prevail.

The High Court, if it thinks further enquiry or additional evidence to be necessary, may direct such enquiry to be made, or such evidence to be taken.

The result of such enquiry and the additional evidence shall be certified to the High Court by the District Judge, and the High Court shall thereupon, make an order confirming the decree for dissolution of marriage, or such other order as to the Court seems fit:

Provided that no decree shall be confirmed under this section till after the expiration of such time, not less than six months from the pronouncing thereof, at the High Court by general or special order from time to time directs.

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 eight, and the High 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 sixteen 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.

**17A. Appointment of officer to exercise duties of Kings Proctor :-**

The Government of the State within which any High Court exercises jurisdiction, may appoint an officer who shall, within the jurisdiction of the High Court in that State, have the like right of showing cause why a decree for the dissolution of a marriage should not be made absolute or should not be confirmed, as the case may be, as is exercisable in England by the Kings Proctor; and the said Government may make rules regulating the manner in which the right shall be exercised and all matters incidental to or consequential on any exercise of the right.

**CHAPTER 4 NULLITY OF MARRIAGE**

**18. Petition for decree of nullity :-**

Any husband or wife may present a petition to the District Court or to the High Court, praying that his or her marriage may be declared null and void.

**19. Grounds of decree :-**

Such decree may be made on any of the following grounds:

- (1) that the respondent was impotent at the time of the marriage and at the time of the institution of the suit;
- (2) that the parties are within the prohibited degrees of consanguinity (whether natural or legal) or affinity;
- (3) that either party was a lunatic or idiot at the time of the marriage;
- (4) that the former husband or wife of either party was living at the time of the marriage, and the marriage with such former husband or wife was then in force.

Nothing in this section shall affect the jurisdiction of the High Court to make decrees of nullity of marriage on the ground that the consent of either party was obtained by force or fraud.

**20. Confirmation of District Judges decree :-**

Every decree of nullity of marriage made by a District Judge shall be subject to confirmation by the High Court, and the provisions of section seventeen, clauses one, two, three and four, shall, mutatis

mutandis apply to such decree.

**21. Children of annulled marriages :-**

Where a marriage is annulled on the ground that a former husband or wife was living, and it is adjudged that the subsequent marriage was contracted in good faith and with the full belief of the parties that the former husband or wife was dead, or when a marriage is annulled on the ground of insanity, children begotten before the decree is made shall be specified in the decree, and shall be entitled to succeed, in the same manner as legitimate children, to the estate of the parent who at the time of the marriage was competent to contract.

**CHAPTER 5 JUDICIAL SEPARATION**

**22. Bar to decree for divorce a mensa et toro; but judicial separation obtainable by husband or wife**

:-

No decree shall hereafter be made for a divorce a mensa et toro, but the husband or wife may obtain a decree of judicial separation, on the ground of adultery, or cruelty, or desertion without reasonable excuse for two years or upwards, and such decree shall have the effect of a divorce a mensa et toro under the existing law, and such other legal effect as hereinafter mentioned.

**23. Application for separation made by petition :-**

Application for judicial separation on any one of the ground aforesaid, may be made by either husband or wife by petition to the District Court or the High Court; 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 judicial separation accordingly.

**24. Separated wife deemed spinster with respect to after-acquired property :-**

In every case of a judicial separation under this Act, the wife shall, from the date of the sentence, and whilst the separation continues, be considered as unmarried with respect to property of every description which he may acquire, or which may come to or devolve upon her.

Such property may be disposed of by her in all respects as an unmarried woman, and on her decease the same shall, in case she dies intestate, go as the same would have gone if her husband had been then dead:

Provided that, if any such wife again cohabits with her husband, all such property as she may be entitled to when such cohabitation takes place shall be held to her separate use, subject, however, to any agreement in writing made between herself and her husband whilst separate.

**25. Separated wife deemed spinster for purposes of contract and suing :-**

In every case of a judicial separation under this Act, the wife shall, whilst so separated, be considered as an unmarried woman for the purposes of contract, and wrongs and injuries, and suing and being sued in any civil proceeding; and her husband shall not be liable in respect of any contract, at or costs entered into, done, omitted or incurred by her during the separation:

Provided that where, upon any such judicial separation, alimony has been decreed or ordered to be paid to the wife, and the same is not duly paid by the husband, he shall be liable for necessaries supplied for her use:

Provided also that nothing shall prevent the wife from joining, at any time during such separation, in the exercise of any joint power given to herself and her husband.

**26. Decree of separation obtained during absence of husband or wife may be reversed :-**

Any husband or wife, upon the application of whose wife or husband, as the case may be, a decree of judicial separation has been pronounced, may, at any time thereafter, present a petition to the Court by which the decree was pronounced, praying for a reversal of such decree, on the ground that it was obtained in his or her absence, and that there was reasonable excuse for the alleged desertion, where desertion was the ground of such decree.

The Court may, on being satisfied of the truth of the allegations of such petition, reverse the decree accordingly; but such reversal shall not prejudice or affect the rights or remedies which any other person would have had, in case it had not been decreed, in respect of any debts, contracts, or acts of the wife incurred, entered into, or done between the times of the sentence of separation and of the

reversal thereof.

## **CHAPTER 6 PROTECTION ORDERS**

### **27. Deserted wife may apply to Court for protection :-**

Any wife to whom Section 4 of the Indian Succession Act, 1865 (10 of 1865), does not apply, may, when deserted by her husband, present a petition to the District Court or the High Court, at any time after such desertion, for an order to protect any property which she may have acquired or may acquire, and any property of which he may have become possessed or may become possessed after such desertion, against her husband or his creditors, or any person claiming under him.

### **28. Court may grant protection order :-**

The Court, if satisfied of the fact of such desertion, and that the same was without reasonable excuse, and that the wife is maintaining herself by her own industry or property, may make and give to the wife an order protecting her earnings and other property from her husband and all creditors and persons claiming under him. Every such order shall state the time at which the desertion commenced, and shall, as regards all persons dealing with the wife in reliance thereon, be conclusive as to such time.

### **29. Discharge or variation of orders :-**

The husband or any creditor of, or person claiming under him, may apply to the Court by which such order was made for the discharge or variation thereof, and the Court, if the desertion has ceased, or if for any other reason it thinks fit so to do, may discharge or vary the order accordingly.

### **30. Liability of husband seizing wife's property after notice of order :-**

If the husband, or any creditor of, or person claiming under, the husband, seizes or continues to hold any property of the wife after notice of any such order, he shall be liable, at the suit of the wife (which she is hereby empowered to bring), to return or deliver to her the specific property, and also to pay her a sum equal to double its value.

### **31. Wife's legal position during continuance of order :-**

So long as any such order of protection remains in force, the wife shall be and be deemed to have been, during such desertion of her, in the like position in all respects, with regard to property and contracts and suing and being sued, as she would be under this Act if she obtained a decree of judicial separation.

## **CHAPTER 7 RESTITUTION OF CONJUGAL RIGHTS**

### **32. Petition for restitution of conjugal rights :-**

When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, either wife or husband may apply, by petition to the district Court or the High 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.

### **33. Answer to petition :-**

Nothing shall be pleaded in answer to a petition for restitution of conjugal rights, which would not be ground for a suit for judicial separation or for a decree of nullity of marriage.

## **CHAPTER 8 DAMAGES AND COSTS**

### **34. Husband may claim damages from adulterer :-**

Any husband may, either in a petition for dissolution of marriage or for judicial separation, or in a petition to the District Court or the High Court limited to such object only, claim damages from any person on the ground of his having committed adultery with the wife of such petitioner.

Such petition shall be served on the alleged adulterer and the wife, unless the court dispenses with such service, or directs some other service to be substituted.

The damages to be recovered on any such petition shall be ascertained by the said Court, although the respondents or either of them may not appear.

After the decision has been given, the Court may direct in what manner such damages shall be paid or applied.

### **35. Power to order adulterer to pay costs :-**

Whenever in any petition presented by a husband the alleged adulterer has been made a co-respondent, and the adultery has been established, the Court may order the co-respondent to pay the whole or any part of the costs of the proceeding:

Provided that the co-respondent shall not be ordered to pay the petitioners costs--

(1) if the respondent was, at the time of the adultery, living apart from her husband and leading the life of a prostitute, or

(2) if the co-respondent had not, at the time of the adultery, reason to believe the respondent to be a married woman.

Power to order litigious intervenor to pay costs.--Whenever any application is made under Section 17, the Court, if it thinks that the applicant had no grounds or no sufficient grounds for intervening, may order him to pay the whole or any part of the costs occasioned by the application.

## **CHAPTER 9 ALIMONY**

### **36. Alimony pendente lite :-**

In any suit under this Act, whether it be instituted by a husband or a wife, and whether or not she has obtained an order of protection, the wife may present a petition for alimony pending the suit.

Such petition shall be served on the husband; and the Court, on being satisfied of the truth of the statements therein contained, may make such order on the husband for payment to the wife of alimony pending the suit as it may deem just:

Provided that alimony pending the suit shall in no case exceed one-fifth of the husbands average net income for the three years next preceding the date of the order, and shall continue, in case of a decree for dissolution of marriage or of nullity of marriage, until the decree is made absolute or is confirmed, as the case may be.

### **37. Power to order permanent alimony :-**

The High Court may, if it thinks fit, on any decree absolute declaring a marriage to be dissolved, or on any decree of judicial separation obtained by the wife,

and the District Judge may, if he thinks fit, on the confirmation of any decree of his declaring a marriage to be dissolved, or on any decree of judicial separation obtained by the wife,

order that the husband shall, to the satisfaction of the Court,

secure to the wife such gross sum of money, or such annual sum of money for any term not exceeding her own life, as, having regard to her fortune (if any), to the ability of the husband, and to the conduct of the parties, it thinks reasonable; and for that purpose may cause a proper instrument to be executed by all necessary parties.

Power to order monthly or weekly payments.--In every such case the Court may make an order on the husband for payment to the wife of such monthly or weekly sums for her maintenance and support as the Court may think reasonable:

Provided that if the husband afterwards from any cause becomes unable to make such payments, it shall be lawful for the Court to discharge or modify the order, or temporarily to suspend the same as to the whole or any part of the money so ordered to be paid, and again to revive the same order wholly or in part, as the Court seems fit.

### **38. Court may direct payment of alimony to wife or to her trustee :-**

In all cases in which the Court makes any decree or order for alimony, it may direct the same to be paid either to the wife herself, or to any trustee on her behalf to be approved by the Court, and may impose any terms or restrictions which to the Court seem expedient, and may from time to time appoint a new trustee, if it appears to the Court expedient so to do.

## **CHAPTER 10 SETTLEMENTS**

### **39. Power to order settlement of wifes property for benefit of husband and children :-**

Whenever the Court pronounces a decree of dissolution of marriage or judicial separation for adultery of the wife, if it is made to appear to the Court that the wife is entitled to any property, the-Court may, if it thinks fit, order such settlement as it thinks reasonable to be made of such property or any part thereof, of the benefit of the husband, or of the children of the marriage, or of both.

Any instrument executed pursuant to any order of the Court at the time of or after the pronouncing of a decree of dissolution of marriage or judicial separation, shall be deemed valid notwithstanding the existence of the disability of coverture at the time of the execution thereof.

Settlement of damages.--The Court may direct that the whole or any part of the damages recovered under section thirty-four shall be settled for the benefit of the children of the marriage, or as a provision for the maintenance of the wife.

#### **40. Inquiry into existence of ante-nuptial or post-nuptial settlements**

:-

The High Court after a decree absolute for dissolution of marriage or a decree of nullity of marriage, and the District Court after its decree for dissolution of marriage or of nullity of marriage has been confirmed, may inquire into the existence of ante-nuptial or post-nuptial settlements made on the parties whose marriage is the subject of the decree and may make such orders with reference to the application of the whole or a portion of the property settled whether for the benefit of the husband or the wife or of the children (if any) of the marriage or of both children and parents as to the Courts seems fit:

Provided that the Court shall not make any order for the benefit of the parents or either of them at the expense of the children.

### **CHAPTER 11 CUSTODY OF CHILDREN**

#### **41. Power to make orders as to custody of children in suit for separation :-**

In any suit for obtaining a judicial separation the Court may from time to time before making its decree make such interim orders and may make such provision in the decree as it deems proper with respect to the custody, maintenance and education of the minor children the marriage of whose parents is the subject of such suit and may, if it thinks, fit direct proceedings to be taken for placing such children under the protection of the said Court.

#### **42. Power to make such orders after decree :-**

The Court after a decree of judicial separation may upon application (by petition) for this purpose make from time to time all such orders and provision with respect to the custody, maintenance and education of the minor children the marriage of whose parents is the subject of the decree or for placing such children under the protection of the said Court as might have been made by such decree or by interim orders in case the proceedings for obtaining

such decree were still pending.

**43. Power to make orders as to custody of children in suits for dissolution or nullity :-**

In any suit for obtaining a dissolution of marriage or a decree of nullity of marriage instituted in or removed to a High Court, the Court may from time to time before making its decree absolute or its decree (as the case may be) make such interim orders and may make such provision in the decree absolute or decree.

and in any such suit instituted in a district Court, the Court may from time to time, before its decree is confirmed, make such interim orders, and may make such provision on such confirmation, as the High Court or District Court (as the case may be) deems proper with respect to the custody, maintenance and education of the minor children, the marriage of whose parents is the subject of the suit,

and may, if it thinks fit, direct proceedings to be taken for placing such children under the protection of the Court.

**44. Power to make such orders after decree or confirmation :-**

The High Court after a decree absolute for dissolution of marriage or a decree of nullity of marriage, and the District Court after a decree for dissolution of marriage, or of nullity of marriage has been confirmed, may, upon application by petition for the purpose, make from time to time all such orders and provision, with respect to the custody, maintenance and education of the minor children, the marriage of whose parents was the subject of the decree, or for placing such children under the protection of the said Court, as might have been made by such decree absolute or decree (as the case may be), or by such interim orders as aforesaid.

**CHAPTER 12 PROCEDURE**

**45. Code of Civil Procedure to apply :-**

Subject to the provisions herein contained, all proceedings under this Act between party and party shall be regulated by the Code of Civil Procedure.

**46. Forms of petitions and statements :-**

The forms set forth in the schedule to this Act, with such variation as the circumstances of each case require, may be used for the respective purposes mentioned in such schedule.

**47. Petition to state absence of collusion :-**

Every petition under this Act for a decree of dissolution of marriage, or of nullity of marriage, or of judicial separation shall state that there is no any collusion or connivance between the petitioner and the other party to the marriage.

Statements to be verified.--The statements contained in every petition under this Act shall be verified by the petitioner or some other competent person in manner required by law for the verification of plaints, and may at the hearing be referred to as evidence.

**48. Suits on behalf of lunatics :-**

When the husband or wife is a lunatic or idiot, any suit under this Act (other than a suit for restitution of conjugal rights) may be brought on his or her behalf by the committee or other person entitled to his or her custody.

**49. Suits by minors :-**

Where the petitioner is a minor, he or she shall sue by his or her next friend to be approved by the Court; and no petition presented by a minor under this Act shall be filed until the next friend has undertaken in writing to be answerable for costs.

Such undertaking shall be filed in Court, and the next friend shall thereupon be liable in the same manner and to the same extent as if he were a plaintiff in an ordinary suit.

**50. Service of petition :-**

Every petition under this Act shall be served on the party to be affected thereby, either within or without India, in such manner as the High Court by general or special order from time to time directs:

Provided that the Court may dispense with such service altogether in case it deems necessary or expedient so to do.

**51. Mode of taking evidence :-**

The witnesses in all proceedings before the Court, where their attendance can be had, shall be examined orally, and any party may offer himself or herself as a witness, and shall be examined, and may be cross-examined and re-examined, like any other witness:

Provided that the parties shall be at liberty to verify their respective cases in whole or in part by affidavit, but so that the deponent in every such affidavit shall, on the application of the opposite party, or by direction of the Court, be subject to be cross-examined by or on behalf of the opposite party orally and after such cross-examination may be re-examined orally as aforesaid by or on behalf of the party by whom such affidavit was filed.

**52. Competence of husband and wife to give evidence as to cruelty or desertion :-**

On any petition presented by a wife, praying that her marriage may be dissolved by reason of her husband having been guilty of adultery coupled with cruelty, or of adultery coupled with desertion without reasonable excuse, the husband and wife respectively shall be competent and compellable to give evidence of or relating to such cruelty or desertion.

**53. Power to close doors :-**

The whole or any part of any proceeding under this Act may be heard, if the Court thinks fit, with closed doors.

**54. Power to adjourn :-**

The Court may from time to time adjourn the hearing of any petition under this Act, and may require further evidence thereon if it seems fit so to do.

**55. Enforcement of, and appeal from, orders and decrees :-**

All decrees and orders made by the Court in any suit or proceeding under this Act shall be enforced and may be appealed from, in the like manner as the decrees and orders of the Court made in the exercise of its original civil jurisdiction are enforced and may be appealed from, under the laws, rules and orders for the time being in force:

Provided that there shall be no appeal from a decree of a District

Judge for dissolution of marriage or of nullity of marriage; nor from the order of the High Court confirming or refusing to confirm such decree.

No appeal as to costs.--Provided also that there shall be no appeal on the subject of costs only.

### **56. Appeal to the Supreme Court :-**

Any person may appeal to the Supreme Court from any decree (other than a decree nisi) or order under this Act of a High Court made on appeal or otherwise,

and from any decree (other than a decree nisi) or order made in the exercise of original jurisdiction by Judges of a High Court or of any Division Court from which an appeal shall not lie to the High Court,

when the High Court declares that the case is a fit one for appeal to the Supreme Court.

## **CHAPTER 13 RE-MARRIAGE**

### **57. Liberty to parties to marry again :-**

When six months after the date of an order of a High Court confirming the decree for a dissolution of marriage made by a District Judge have expired,

or when six months after the date of any decree of a High Court dissolving a marriage have expired, and no appeal has been presented against such decree to the High Court in its appellate jurisdiction,

or when any such appeal has been dismissed,

or when in the result of any such appeal any marriage is declared to be dissolved,

but not sooner, it shall be lawful for the respective parties to the marriage to marry again, as if the prior marriage had been dissolved by death:

Provided that no appeal to the Supreme Court has been presented against any such order or decree.

When such appeal has been dismissed, or when in the result thereof the marriage is declared to be dissolved, but not sooner, it shall be lawful for the respective parties to the marriage to marry again as if the prior marriage had been dissolved by death.

### **58. English clergyman not compelled to solemnize marriage of persons divorced for adultery :-**

No clergyman in Holy Orders of the Church of England shall be compelled to solemnize the marriage of any person whose former marriage has been dissolved on the ground of his or her adultery, or shall be liable to any suit, penalty or censure for solemnizing or refusing to solemnize the marriage of any such person.

**59. English Minister refusing to perform ceremony to permit use of his Church :-**

When any Minister of any Church or Chapel of the said Church refuses to perform such marriage-service between any person who but for such refusal would be entitled to have the same service performed in such Church or Chapel, such Minister shall permit any other Minister in Holy Orders of the said Church, entitled to officiate within the diocese in which such Church or Chapel is situate, to perform such marriage-service in such Church or Chapel.

**CHAPTER 14 MISCELLANEOUS**

**60. Decree for separation or protection order valid as to persons dealing with wife before reversal :-**

Every decree for judicial separation or order to protect property, obtained by a wife under this Act shall, until reversed or discharged, be deemed valid, so far as necessary, for the protection of any person dealing with the wife.

No reversal, discharge or variation of such decree or order shall affect any rights or remedies which any person would otherwise have had in respect of any contracts or acts of the wife entered into or done between the dates of such decree or order, and of the reversal, discharge or variation thereof.

Indemnity of persons making payment to wife without notice of reversal of decree or protection order.--All persons who in reliance on any such decree or order make any payment to, or permit any transfer or act to be made or done by, the wife who has obtained the same shall, notwithstanding such decree or order may then have been reversed, discharged or varied, or the separation of the wife from her husband may have ceased, or at some time since the making of the decree or order been discontinued, be protected and indemnified as if, at the time of such payment, transfer or other act, such decree or order were valid and still subsisting without variation, and the separation had not ceased or been discontinued,

unless, at the time of the payment, transfer or other act, such persons had notice of the reversal, discharge or variation of the decree or order of the cessation or discontinuance of the separation.

### **61. Bar of suit for criminal conversation :-**

After this Act comes into operation, no person competent to present a petition under sections two and ten shall maintain a suit for criminal conversation with his wife.

### **62. Power to make rules :-**

The High Court shall make such rules under this Act as it may from time to time consider expedient, and may from time to time alter and add to the same:

Provided that such rules, alterations and additions are consistent with the provisions of this Act and the Code of Civil Procedure.

All such rules, alterations and additions shall be published in the official Gazette.

### **SCHEDULE 1**

#### **SCHEDULE OF FORMS**

No. 1.--PETITION BY Husband for a dissolution of marriage with damages against corespondent, by reason of adultery.

(See Sections 10 and 34)

In the (High) Court of

[or To the To the Honble Mr. Justice Judge of.]

The day of 19.....

The petition of A.B. OF SHEWETH,

1. That your petitioner was on the day of one thousand eight hundred and, lawfully married to C.B., then C.D., spinster at [1]

2. That from his said marriage, your petitioner lived and cohabited with his said wife at and at, in and lastly at, in and that your petitioner and his said wife have had issue of their said marriage, five children, of whom two sons only survive, aged respectively twelve and fourteen years.

3. That during the three years immediately preceding the day of one thousand eight hundred and X.Y. was constantly with a few exceptions, residing in the house of your petitioner at aforesaid, and that on diverse occasions during the said period, the dates of which are unknown to your petitioner, the said C.B. in your petitioners said house committed adultery with the said X.Y.

4. That no collusion or connivance exists between me and my said wife for the purpose of obtaining a dissolution of our said marriage or for any other purpose.

Your petitioner, therefore, prays that this (Honble) Court will decree a dissolution of the said marriage, and that the said X.Y. do pay the sum of rupees 5,000 as damages by reason of his having committed adultery with your petitioners said wife, such damages to be paid to your petitioner, or otherwise paid or applied as to this (Honble) Court seems fit.

(Signed) A.B.2

### Form of Verification

I, A.B., the petitioner named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

1. (a) If the marriage was solemnized out of India, the adultery must be shown to have been committed in India.
2. (b) The petition must be signed by the petitioner.