

THE INDIAN DIVORCE (AMENDMENT) BILL, 2001

ACT NO. 51 OF 2001 [24th September, 2001.]

An Act further to amend the Indian Divorce Act, 1869.

BE it enacted by Parliament in the Fifty- second Year of the Republic of India as follows:-

1. Short title and commencement.-

(1) This Act may be called the Indian Divorce (Amendment) Act, 2001 .

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Amendment of section 1.- In section 1 of the Indian Divorce Act, 1869 (4 of 1869) (hereinafter referred to as the principal Act), the word " Indian" shall be omitted.

3. Amendment of section 3.- In section 3 of the principal Act,-

(a) in clause (3), for the words " or of whose jurisdiction under this Act", the words " or of whose jurisdiction under this Act the marriage was solemnized or" shall be substituted;

(b) clauses (6) and (7) shall be omitted.

4. Omission of section 7.- Section 7 of the principal Act shall be omitted.

5. Substitution of new section for section 10.- For section 10 of the principal Act, the following section shall be substituted, namely:-" 10. Grounds for dissolution of marriage.-

(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."

6. Insertion of new section 10A.- After section 10 of the principal Act, the following section shall be inserted, namely:- " 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 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."

7. Substitution of new section for section 11.- For section 11 of the principal Act, the following section shall be substituted, namely:- " 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."

8. Amendment of section 13.- In section 13 of the principal Act, the last paragraph shall be omitted.

9. Amendment of section 14.- In section 14 of the principal Act, in paragraph 4, the words "in the manner and subject to all the provisions and limitations in sections 16 and 17 made and declared" shall be omitted.

10. Amendment of section 15.- In section 15 of the principal Act,-

(a) the words "without reasonable excuse" shall be omitted;

(b) for the words "her adultery and cruelty", the words "her adultery or cruelty or desertion" shall be substituted;

(c) for the words "such cruelty", the words "such adultery, cruelty" shall be substituted.

11. Amendment of section 16.- In section 16 of the principal Act the words, "not being a confirmation of a decree of a District Court," shall be omitted.

12. Substitution of new section for section 17.- For section 17 of the principal Act, the following section shall be substituted, namely:- "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."

13. Omission of section 17A.- Section 17A of the principal Act shall be omitted.

14. Amendment of section 18.- In section 18 of the principal Act, the words " or to the High Court" shall be omitted.

15. Amendment of section 19.- In section 19 of the principal Act, in the last paragraph, for the words " jurisdiction of the High Court", the words " jurisdiction of the District Court" shall be substituted.

16. Omission of section 20.- Section 20 of the principal Act shall be omitted.

17. Amendment of section 22.- In section 22 of the principal Act, the words " without reasonable excuse" shall be omitted.

18. Amendment of sections 23, 27 and 32.- In sections 23, 27 and 32 of the principal Act, the words " or the High Court" shall be omitted.

19. Omission of section 34.- Section 34 of the principal Act shall be omitted.

20. Omission of section 35.- Section 35 of the principal Act shall be omitted.

21. Amendment of section 36.- In section 36 of the principal Act, the proviso shall be omitted.

22. Amendment of section 37.- In section 37 of the principal Act, for the portion beginning with the words " The High Court" and ending with the words " the husband shall", the words " Where a decree of dissolution of the marriage or a decree of judicial separation is obtained by the wife, the District Court may order that the husband shall" shall be substituted.

23. Omission of section 39.- Section 39 of the principal Act shall be omitted.

24. Amendment of section 40.- In section 40 of the principal Act, for the portion beginning with the words " The High Court" and ending with the words " may inquire into", the words "

The District Court may, before passing a decree for dissolution of the marriage or a decree of nullity of marriage, inquire into" shall be substituted.

25. Amendment of section 43.- In section 43 of the principal Act, for the portion beginning with the words" In any suit for obtaining" and ending with the words" deems proper", the words" In any suit for obtaining a dissolution of marriage or a decree of nullity of marriage instituted in a District Court, the Court may from time to time before making its decree, make such interim orders as it may deem proper" shall be substituted.

26. Amendment of section 44.- In section 44 of the principal Act, for the portion beginning with the words" The High Court" and ending with the words" may upon application", the words" Where a decree of dissolution or nullity of marriage has been passed, the District Court may, upon application" shall be substituted.

27. Amendment of section 45.- In section 45 of the principal Act, for the words" Code of Civil Procedure", the words and figures" Code of Civil Procedure, 1908 (5 of 1908)" shall be substituted.

28. Amendment of section 52.- In section 52 of the principal Act, for the portion beginning with the words" by a wife" and ending with the words" without reasonable excuse", the words" by a husband or a wife, praying that his or her marriage may be dissolved by reason of his wife or her husband, as the case may be, having been guilty of adultery, cruelty or desertion" shall be substituted.

29. Amendment of section 55.- In section 55 of the principal Act,-

(a) the first proviso shall be omitted;

(b) in the second proviso, for the words" Provided also", the words" Provided" shall be substituted.

30. Substitution of new section for section 57.- For section 57 of the principal Act, the following section shall be substituted, namely:-" 57. Liberty to parties to marry again.-

Where a decree for dissolution or nullity of marriage has been passed and either the time

for appeal has expired without an appeal having been presented to any court including the Supreme Court or an appeal has been presented but has been dismissed and the decree or dismissal has become final, it shall be lawful for either party to the marriage to marry again."

31. Amendment of section 62.- In section 62 of the principal Act, for the words " Code of Civil Procedure", the words and figures " Code of Civil Procedure, 1908 (5 of 1908)" shall be substituted.

32. Repeal.- The Indian and Colonial Divorce Jurisdiction Act, 1926 (16 and 17 Geo. 5, c. 40), the Indian and Colonial Divorce Jurisdiction Act, 1940 (3 and 4 Geo. IV C. 35) and the Indian Divorce Act, 1945 (9 Geo. VI C. 51) are hereby repealed.