

## **JUDICIAL SEPARATION**

- It is a remedy which is lesser in degree than that of divorce. In judicial separation husband and wife are absolved from living together and performing matrimonial duties. However, the bond of marriage remains intact and the marriage is not dissolved.
- If the marital relations between the husband and wife are strained then either of them can seek remedy of judicial separation or divorce.
- In other words it can be said as a temporary suspension of marital ties.
- It Does not put an end to marriage, the real purpose of judicial separation is to enable the spouses, now relieved of their matrimonial duties towards each other, to reconsider their position, taste “single” living again and attempt in a less emotional and urgent atmosphere to piece their lives and their futures together once again.
- After **one year** of Judicial Separation ‘Divorce’ may be granted.
- Section 10 of Hindu Marriage Act provides for Judicial Separation.

### **Incidents of decree of judicial separation**

1. Marriage is not dissolved
2. Parties are not obligated to cohabit together
3. If there is no resumption of cohabitation between the parties to the marriage for the period of one year or upwards after the passing of decree of judicial separation it can be a ground for divorce

### **Section 10- Judicial Separation.**

- Either party to a marriage, whether solemnized before or after the commencement of this Act, may present a petition praying for a decree of judicial Separation on any of the grounds specified in sub-section **(1)**. **of section 13** and in the case of a wife on any of the grounds on which a petition for divorce might have been presented [**sec. 13(2)**].

- Where a decree for judicial separation has been passed, it should no longer be obligatory for the petitioner to cohabit with the respondent, but the Court may, on the application by petition of either party and on being satisfied of the truth of the statements made in such petition, rescind the decree, if it considers its just and reasonable to do so.
  - Under **section 10 (2)** if the parties take steps and if the court is satisfied by the truth of the statements, the court can rescind the decree of Judicial separation.
  - The grounds under section 13 are actually grounds for divorce but Section 13 (A) provides for alternate relief of Judicial Separation even when the case is filled for Divorce.
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#### **Section 13A - Alternate relief in divorce proceedings.**

- In any proceedings under this Act, on a petition for dissolution of marriage by a decree of divorce, except in so far as the petition is founded on the grounds mentioned in **clauses (ii), (vi) and (vii) of sub section (1) of section 13,** the court may, if it considers it just so to do having regard to the circumstances of the case, pass instead a decree of judicial separation.
- So except for Sub section **(ii)Conversion, (vi) Renunciation, (vii), Presumed Dead**

#### **Judicial Separation may be granted for the remaining grounds of divorce which are:**

- The other party has had **voluntary sexual intercourse** with any person other than his spouse **[adultery]**
- Treating the spouse with **cruelty**
- **Deserted** the spouse for a continuous period of **2 years** immediately preceding the petition.

- The spouse has been incurably of **unsound mind**, or has been suffering continuously or intermittently from mental disorder of such kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.
- The spouse is suffering from a **venereal disease** in communicable form

### **Additional Grounds for Wife Filing Of Judicial Separation [Section 13 (2)]**

- Husband marries again (**Bigamy**)
- After Marriage husband has been proven **guilty of Rape, sodomy or bestiality**.
- A decree against husband for **maintenance** has been passed under Section 18 of Hindu Adoption and maintenance act, 1956 or under Section 125 of Cr. P.C and the parties have not resumed cohabitation for one year or upwards.
- The marriage was solemnized before she attained the age of fifteen years and she repudiated the marriage between the ages of 15-18.
- Since a decree of separation does not irretrievably break the legal tie and chances of reconciliation are still kept alive, the courts, with deep concern over the increasing number of divorce cases and its impact on the parties, the children, the family and the society at large, sometimes grant a decree of judicial separation instead of divorce sought, depending of course, on the circumstances of the case.