

## Judicial separation – Grounds for judicial separation

In India, marriage is considered as one of the best parts of a man and woman. According to the Hindu religion, the marriage is considered as the permanent relation between the husband and wife which is valid not for the present, but for a lifetime. That is why the marriage performed by following all rituals given under our religions.

However, it can clearly determine that marriage in ancient times and today time is taking different turns in the life of spouses. There are many issues occurring in day-to-day life in the tenure of marriage. Thus, the Hindu marriage act was introduced to give the justifiable right to married persons and the act also gives the right to revoke the marriage done between husband and wife. Here, we are going to talk about the judicial separation which is given under the law.

### What is Judicial Separation?

The judicial separation under Hindu law is given under **the Hindu Marriage Act, 1955**, in which, the spouses give one more chance to their marriage before going on the divorce proceedings. Judicial separation is a decree passed by the competent court in which, both husband and wife live separately for a specific period of time and get the time to resolve their issues and make the effort to save their marriage. It doesn't take the legal status of husband and wife. The provision of the judicial separation has been taken by the legislature because the marriage is considered as the "Hindu sacraments" under law, so it becomes the duty of the court to prevent the breakdown of the relationship bond between two families.

### Section 10 of the Hindu Marriage Act, 1955

The husband or the wife can seek for the Judicial separation under Section 10 of the Hindu marriage act, 1955, those who are married under the Hindu Marriage Act, 1955. The Separation can be claimed by filing the petition in the competent court for judicial separation. Once the court passed the order for separation, the spouses are no more bound to have cohabitation and both are allowed to live separately.

### Grounds for judicial separation under Hindu law

After knowing about the concept of judicial separation, the question arises in the mind that what are the grounds of judicial separation? Or, what are the circumstances where the judicial separation can be granted

#### Grounds for a judicial separation

- **Adultery**
- **Cruelty**
- **Desertion**
- **Conversion/Apostasy**
- **Unsound mind**

- **Leprosy**
- **Venereal Disease**
- **Renounced the World**
- **Civil death/Presumed death**
- **Bigamy**
- **Rape, sodomy or Bestiality**
- **Repudiation of marriage/A option of puberty**

Section 10 of the Hindu marriage act, either of the spouses can file the petition in the court for judicial separation on the bases of these grounds. So, let's discuss each ground given under Section 13 of The Hindu Marriage Act, which is important for granting the decree of judicial separation.

### **Adultery**

In simple, words, if any of the spouse whether the husband or wife, voluntarily( with his/her choice) get physical with any other person (after the marriage) except his/her partner whom he or she is married, is called adultery. If any of the spouses did this, the aggrieved party has the right to file the petition in the court. Section 497 of the Indian Penal Code gives the definition of Adultery.

**Case-** Revathi vs. Union of India and Ors

### **Cruelty**

Cruelty is when a spouse treats his or her spouse with cruelty and gives mental or physical pain, after the marriage has done between both the spouses. The aggrieved party who faces the cruelty can seek for the decree of separation.

**Case-** Shyamsundar Vs. Santadevi

### **Desertion**

If any of the spouses lives his or her spouse after the valid marriage continuously for the period not less than two years, without any reason, the other party can file the petition on the ground of desertion.

**Case-** Guru Bachan Kaur Vs. Preetam Singh,

### **Conversion to another religion**

If the husband or wife converts his/her religion after the marriage, other than Hindu, the second party can ask for the decree on the ground of conversion.

**Case-**Durga Prasad Rao Vs. Sudharshan Swami,

## **Unsound mind**

In the case of unsound mind or mental disease with one spouse, if it becomes difficult to stay together, in that circumstance, the other spouse can ask for the judicial separation.

**Case-** Anima Roy Vs. Prabadh Mohan Ray

## **Leprosy**

If any of the spouses is suffering from the disease which is incurable, the other spouse has the right to seek the decree of judicial separation.

## **Venereal Disease**

The disease which is incurable and communicable is called venereal disease. If any of the spouses is suffering from the venereal disease, the other party can file the petition for judicial separation.

## **Renounced the World**

If any of the spouses renounced the world (took the Sanyaas), then, his or her partner can file the petition for judicial separation.

## **Not been heard of as being alive for a period of seven years**

If any of the spouses, after the valid marriage had not been heard of that he is alive, for a period of not less than seven years, his or her partner can take the decree of separation.

## **Bigamy**

Bigamy is the state where one person is married to two people at the same time. In the situation, the other party can file the petition for judicial separation on the ground that his or her partner is married to another person.

## **Guilty of rape, bestiality or sodomy**

The wife can file the petition for the judicial separation if her husband is guilty in the case of bestiality, rape or sodomy.

## **Repudiation of marriage**

If the marriage of a girl is solemnized before the age of fifteen years, the girl can ask for the decree of separation. It will not affect the petition that the marriage was consummated or not.

## Advantages and Disadvantages of Judicial Separation

There are various Advantages and Disadvantages of Judicial Separation

### Advantages of judicial separation

- The decree of judicial separation can be used to take the divorce
- Benefits from the military can be kept.
- It gives some time to the spouses to enjoy life without staying with their spouse.
- It gives them time to the spouse to think that is they really want to breakdown the marriage or not.
- The parties get the chance to take the advice from their parents or relatives or any wise person who can advise for a better future.

### Disadvantages of judicial separation

- It is as complex as taking divorce
- The spouses feel so much stress as divorce
- It can be unnecessary for the relationship

### The Important question related to Judicial separation

#### Can you remarry during judicial separation?

No, none of the party can remarry during the judicial separation. You have to take the divorce before getting married again.

#### Is being separated a legal status?

During the separation, both the parties still carries the legal status of Husband and Wife, because they are not divorced yet.

## How is judicial separation different from divorce?

Both are different according to the law on many points like the legal status of marriage and presumption of reconciliation or marriage. So, let's know the difference between judicial separation and divorce

### Difference between judicial separation and divorce:

S. No	Judicial Separation	Divorce
1	It is defined under section 10 of Hindu marriage act.	The divorce is given under section 13 of the Hindu marriage act.
2	The party cannot marry after the legal	The parties are free to marry with any person

	separation.	after the decree of court.
3	There are possibilities of reconciliation.	No possibility of reconciliation after the decree of divorce.
4	The aggrieved party can file the petition at any time after the marriage	The divorce petition can only be filed after the completion of one year of marriage
5	There is only one stage of judgement that if the given ground satisfies, the decree can be passed	There is two-step process for divorce, first time for reconciliation, then divorce
6	It is a temporary suspension of marriage	Divorce brings the marriage to an end point.
7	Parties are still considered to be married with each other.	The parties are no more considered as husband and wife.

## Conclusion

The marriage is considered as the sacred relationship between husband and wife in India. But, there should always have an exit path from the relationship when someone is not happy with his partner. The Hindu marriage act does not allow the spouses to leave the relationship without any valid reason. There must be the valid ground on which the person can file the petition for judicial separation or divorce.