

## JUDICIAL SEPARATION

- One step before granting a divorce

**Meaning :** Judicial Separation means suspension of Conjugal Rights for some time i.e., one year. **Section 10** of the Hindu Marriage Act deals with judicial separation. This section lays down:

**Section 10(1)** – '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 ground specified in sub-section (1) of Section 13, and in the case of a 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.

**Section 10(2)**- 'Where a decree for judicial separation has been passed, it shall 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 it just and reasonable to do so.'

- During the period of Judicial Separation, the parties to the marriage have no obligation to live together or cohabit with each other. During the course of judicial separation either party may be entitled to get maintenance from the other if the situation so warrants. But, during this period the husband or the wife would not acquire the competence to marry fresh. The right of fresh marriage would be available to them only after the dissolution of marriage.
- **Section 10** provides that either party to marriage 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 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.

Under the Marriage Laws(Amendment Act), 1976, the section has been completely overhauled. The grounds of Judicial Separation are virtually the same which have been provided to be grounds of divorce under **Section 13(1) and (2) of the Act** and accordingly the judicial separation, under the amended Act of 1976, can be obtained under following grounds:

- Before 1976, the grounds available for Judicial Separation were :
  - i) Desertion
  - ii) Cruelty
  - iii) Leprosy
  - iv) Venereal Disease
  - v) Insanity or Unsoundness of Mind
  - vi) Adultery.
- After the Amendment Act of 1976, the ground available for Divorce and Judicial Separation are common as detailed below:  
**Grounds available for both Husband and Wife:**
  - i) Adultery
  - ii) Cruelty
  - iii) Desertion
  - iv) Conversion

# Report On Judicial Separation

**Wenbin Ji**



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