

Bill No. XLI-C of 2010

THE MARRIAGE LAWS (AMENDMENT) BILL, 2013
(AS PASSED BY THE RAJYA SABHA)

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BILL

further to amend the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954.

BE it enacted by Parliament in the Sixty-fourth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Marriage Laws (Amendment) Act, 2013.

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

Short title and
commence-
ment.

CHAPTER II

AMENDMENTS TO THE HINDU MARRIAGE ACT, 1955

25 of 1955.

2. In the Hindu Marriage Act, 1955 (hereafter in this Chapter referred to as the Hindu
10 Marriage Act), in section 13B, in sub-section (2), the following provisos shall be inserted,
namely:—

Amendment
of section
13B.

15 “Provided that on an application being made by both the parties, the court may reduce
the period specified under this sub-section to a lesser period and the court may waive off the
requirement for moving the motion by both the parties, if it is satisfied that the parties to the
marriage are not in a position to reconcile their differences:

Provided further that where one of the parties fails to appear before the court within a period of three years from the date of presentation of the petition under sub-section (1), the court may, on an application made by the other party, waive the requirement of moving the motion by both the parties.”.

Insertion of new sections 13C, 13D and 13E.

3. After section 13B of the Hindu Marriage Act, the following sections shall be inserted, namely:—

Divorce on ground of irretrievable breakdown of marriage.

‘13C (1) A petition for the dissolution of marriage by a decree of divorce may be presented to the district court by either party to a marriage [whether solemnized before or after the commencement of the Marriage Laws (Amendment) Act, 2013], on the ground that the marriage has broken down irretrievably. 10

(2) The court hearing a petition referred to in sub-section (1) shall not hold the marriage to have broken down irretrievably unless it is satisfied that the parties to the marriage have lived apart for a continuous period of not less than three years immediately preceding the presentation of the petition.

(3) If the court is satisfied, on the evidence as to the fact mentioned in sub-section (2), then, unless it is satisfied on all the evidence that the marriage has not broken down irretrievably, it shall, subject to the provisions of this Act, grant a decree of divorce. 15

(4) In considering, for the purpose of sub-section (2), whether the period for which the parties to a marriage have lived apart has been continuous, no account shall be taken of any one period (not exceeding three months’ in all) during which the parties resumed living with each other, but no other period during which the parties lived with each other shall count as part of the period for which the parties to the marriage lived apart. 20

(5) For the purposes of sub-sections (2) and (4), a husband and wife shall be treated as living apart unless they are living with each other in the same household, and reference in this section to the parties to a marriage living with each other shall be construed as reference to their living with each other in the same household. 25

Wife’s right to oppose petition on ground of hardship.

13D. (1) Where the wife is the respondent to a petition for the dissolution of marriage by a decree of divorce under section 13C, she may oppose the grant of a decree on the ground that the dissolution of the marriage will result in grave financial hardship to her and that it would in all the circumstances, be wrong to dissolve the marriage. 30

(2) Where the grant of a decree is opposed by virtue of this section, then,—

(a) if the court finds that the petitioner is entitled to rely on the ground set out in section 13C; and

(b) if, apart from this section, the court would grant a decree on the petition, the court shall consider all the circumstances, including the conduct of the parties to the marriage and the interests of those parties and of any children or other persons concerned, and if, the court is of the opinion that the dissolution of the marriage shall result in grave financial hardship to the respondent and that it would, in all the circumstances, be wrong to dissolve the marriage, it shall dismiss the petition, or in an appropriate case stay the proceedings until arrangements have been made to its satisfaction to eliminate the hardship. 35 40

Restriction on decree for divorce affecting children.

13E. The court shall not pass a decree of divorce under section 13C unless the court is satisfied that adequate provision for the maintenance of children born out of the marriage has been made consistently with the financial capacity of the parties to the marriage. 45

Explanation.— In this section, the expression “children” means—

(a) minor children including adopted children;

(b) unmarried or widowed daughters who have not the financial resources to support themselves; and 50

(c) children who, because of special condition of their physical or mental health, need looking after and do not have the financial resources to support themselves.

5 ‘13F (I) Without prejudice to any custom or usage or any other law for the time being in force, the court may, at the time of passing of the decree under section 13C on a petition made by the wife, order that the husband shall give for her and children as defined in section 13E, such compensation which shall include a share in his share of the immovable property (other than inherited or inheritable immovable property) and such amount by way of share in movable property, if any, towards the settlement of her claim, as the court may deem just and equitable, and while determining such compensation the court shall take into account the value of inherited or inheritable property of the husband. 10

Special provision relating to share in immovable and movable property in proceedings under section 13C.

(2) Any order of settlement made by the court under sub-section (I) shall be secured, if necessary, by a charge on the immovable property of the husband.’

15 **4.** In section 21A of the Hindu Marriage Act, in sub-section (I), after the word and figures “section 13”, at both the places where they occur, the words, figures and letter “or section 13C” shall be inserted. Amendment of section 21A.

20 **5.** In section 23 of the Hindu Marriage Act, in sub-section (I), in clause (a), after the word and figure “section 5”, the words, figures and letter “or in cases where the petition is presented under section 13C” shall be inserted. Amendment of section 23.

CHAPTER III

AMENDMENTS TO THE SPECIAL MARRIAGE ACT, 1954

43 of 1954. **6.** In the Special Marriage Act, 1954 (hereafter in this Chapter referred to as the Special Marriage Act), in section 28, in sub-section (2), the following provisos shall be inserted, 25 namely:—

Amendment of section 28.

“Provided that on an application being made by both the parties, the court may reduce the period specified under this sub-section to a lesser period and the court may waive off the requirement for moving the motion by both the parties, if it is satisfied that the parties to the marriage are not in a position to reconcile their differences:

30 Provided further that where one of the parties fails to appear before the court within a period of three years from the date of presentation of the petition under sub-section (I), the court may, on an application made by the other party, waive the requirement of moving the motion by both the parties.”

35 **7.** After section 28 of the Special Marriage Act, the following sections shall be inserted, namely:— Insertion of new sections 28A, 28B and 28C.

‘28A. (I) A petition for the dissolution of marriage by a decree of divorce may be presented to the district court by either party to a marriage [whether solemnized before or after the commencement of the Marriage Laws (Amendment) Act, 2013] on the ground that the marriage has broken down irretrievably. Divorce on ground of irretrievable breakdown of marriage.

40 (2) The court hearing a petition referred to in sub-section (I) shall not hold the marriage to have broken down irretrievably unless it is satisfied that the parties to the marriage have lived apart for a continuous period of not less than three years immediately preceding the presentation of the petition.

45 (3) If the court is satisfied, on the evidence as to the fact mentioned in sub-section (2), then, unless it is satisfied on all the evidence that the marriage has not broken down irretrievably, it shall, subject to the provisions of this Act, grant a decree of divorce.

(4) In considering, for the purpose of sub-section (2), whether the period for which the parties to a marriage have lived apart has been continuous, no account shall be taken of any one period (not exceeding three months in all) during which the parties resumed living with each other, but no other period during which the parties lived with each other shall count as part of the period for which the parties to the marriage lived apart. 5

(5) For the purposes of sub-sections (2) and (4), a husband and wife shall be treated as living apart unless they are living with each other in the same household, and reference in this section to the parties to a marriage living with each other shall be construed as reference to their living with each other in the same household.

Wife's right to oppose petition on ground of hardship.

28B. (1) Where the wife is the respondent to a petition for the dissolution of marriage by a decree of divorce under section 28A, she may oppose the grant of a decree on the ground that the dissolution of the marriage will result in grave financial hardship to her and that it would, in all the circumstances, be wrong to dissolve the marriage. 10

(2) Where the grant of a decree is opposed by virtue of this section, then,—

(a) if the court finds that the petitioner is entitled to rely on the ground set out in section 28A; and 15

(b) if, apart from this section, the court would grant a decree on the petition, the court shall consider all the circumstances, including the conduct of the parties to the marriage and the interests of those parties and of any children or other persons concerned, and if, the court is of the opinion that the dissolution of the marriage shall result in grave financial hardship to the respondent and that it would, in all the circumstances, be wrong to dissolve the marriage, it shall dismiss the petition, or in an appropriate case stay the proceedings until arrangements have been made to its satisfaction to eliminate the hardship. 20

Restriction on decree for divorce affecting children.

28C. The court shall not pass a decree of divorce under section 28A unless the court is satisfied that adequate provision for the maintenance of children born out of the marriage has been made consistently with the financial capacity of the parties to the marriage. 25

Explanation.— In this section, the expression “children” means—

(a) minor children including adopted children; 30

(b) unmarried or widowed daughters who have not the financial resources to support themselves; and

(c) children who, because of special condition of their physical or mental health, need looking after and do not have the financial resources to support themselves. 35

Special provision relating to share in immovable and movable property in proceedings under section 28A.

28D. (1) Without prejudice to any custom or usage or any other law for the time being in force, the court may, at the time of passing of the decree under section 28A on a petition made by the wife, order that the husband shall give for her and children as defined in section 28C, such compensation which shall include a share in his share of the immovable property (other than inherited or inheritable immovable property) and such amount by way of share in movable property, if any, towards the settlement of her claim, as the court may deem just and equitable, and while determining such compensation the court shall take into account the value of inherited or inheritable property of the husband. 40

(2) Any order of settlement made by the court under sub-section (1) shall be secured, if necessary, by a charge on the immovable property of the husband.' 45

Amendment of section 40A.

8. In section 40A of the Special Marriage Act, in sub-section (1), after the word and figures “section 27”, at both the places where they occur, the words, figures and letter “or section 28A” shall be inserted.

RAJYA SABHA

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(As passed by the Rajya Sabha)