

**Women Empowerment and Divorce by Mutual Consent Under the Foreign Marriage Act,
1969**

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Abstract:

Women empowerment is the most important and big issue in the entire world. The simple meaning of women empowerment is to make women stronger, confident and remove the gender bias. The Foreign Marriage Act, 1969 provides a provision of divorce by mutual consent but this provision clearly says that after presentation the joint divorce petition, spouses will wait for a long period of six months. While they are living separately and they are mutually agree for divorce. Thus, this waiting time is unnecessary for the parties especially women because in this period women cannot start a new life and this provision also violate Article 21 of the Constitution of India. This provision is a barrier in the path of women empowerment. Indian judiciary is also in favour of this issue and the Apex Court held that this cooling period should be waived. So, this provision of the Foreign Marriage Act, 1969 should be amended and this period of six months should be removed.

Keywords: Women empowerment, Foreign Marriage Act, 1969, Divorce by mutual consent, Article 21, Special Marriage Act, 1954.

The position of women is unique in every society and region whether developed, developing or underdeveloped. Unequal status of woman being offensive to human dignity and violative of right has emerged today as a fundamental crisis in human development the planet

over. The fight against unequal law and for equal opportunities by the western women in the late 19th century resulted in a series of various international conventions. In India, equality on the basis of sex and individuality of women has been recognised by the Constitution of India. But neither the Constitution nor the laws have been successful in changing the status of women. Tradition religion and law have conspired to form women subordinate to men. Women continue to be in an inferior position not because legal protection is missing but because social norms make them do so[1]. Judicial attitude towards women have been favourable but the fundamentalists have always opposed such decisions.

It is clear that a marriage solemnized under the Foreign Marriage Act, 1969[2] is a contract. The life of human beings is not static but dynamic. This always changes for the good, so the law must also change according to the wants of the society. As told by Sir Avigny, “Law develops with the development of the public, strengthens with the strength of the public and lastly withers away, when the country loses it’s nationality.” In an olden days divorce under the Foreign Marriage Act was abhorred and rare and this Act did not allow divorce except in specified conditions of the spouses. Further, due to social change economic prosperity and education, the Indian society also initiates western culture and life style and divorce is considered as a policy of insurance, providing an opportunity of relief and release to married couple who through no fault of their own without any moral blame have come into contact with unforeseen difficulties and calamities which make married life intolerable. In these circumstances the Foreign Marriage Act, 1969 was enacted and passed by the Parliament of India to provide matrimonial remedies in a foreign marriage which has been solemnized between spouses whom at least one party of marriage is a citizen of India. Further, a special arrangement have been made by this Act, that is Section 18 of this Act provides that the provisions of Chapter IV to VII of the Special Marriage Act, 1954[3] shall apply completely in relation to marriages solemnized under this Act and any other marriage solemnized in a foreign country. Section 28 of the Special Marriage Act contains a provision of divorce by mutual consent in a foreign marriage.

Its incorporation was necessitated by irretrievable break-down of marriage where the parties to the marriage clearly understand and conclude that there is no way to mend the marriage except by divorce. According to this Section such a petition has to be filed jointly by the spouses of a foreign marriage on the ground that the parties have been living separately for a period of one year or more before the presentation of the petition that they have not been able to live together and they have mutually agreed that the marriage should be dissolved. While considering the petition for divorce by mutual consent, the District Court has to satisfy itself in the first place that the consent of the parties has not been obtained by force, fraud or undue influence and secondly the said petition shall be posted for hearing not earlier than six months of the presentation of the petition and not later than eighteen months after that date[4].

Imposing a ruminating period of six months for the appearance and hearing of parties after the presentation of the petition under Section 28 defeats its very object of incorporation of the innovative proviso. Admittedly the petition for divorce by mutual consent should be filed jointly unless the spouses breathe together. Hopefully they come to the Court jointly to dissolve their marriage at the earliest so that they can forget all about their failed marriage and seek a new marital home or to live free of marital hazard for the rest of their lives. Instead the Court can very well hold the deferred enquiry on the day of presentation of the joint petition. It can examine the parties jointly and severally to verify the correctness of the versions of the spouses. Even in camera proceedings could be conducted in sensitive cases.

After making a through enquiry if the Court is satisfied that there is no fraud, force and undue influence in obtaining the consent of the parties, the Court can pass a decree of divorce on the day of presentation of the petition itself or can adjourn the petition to the next week for orders. In case the Court adjourns the petition for orders to a later date instead of passing orders on the date of presentation, the Court can very well direct the parties to appear on the date of the order. Keeping the matter in abeyance for six more months will not serve any useful purpose except to prolong the agony of the parties. It is significant to point out here that divorce had always been

relatively easy to get in certain American States with marriage treated as a contract rather than a sacrament.[5]

A major development in the history of divorce was the introduction of the “no fault” is to rid divorce litigation of recriminations, private detectives, lying and so on the cases where mutual consent is not forthcoming. All that this law requires is evidence that irreconcilable differences have caused an irremediable break-down of a marriage. Moreover placing statutory wait of six months on the couples who had filed joint petition for divorce by mutual consent under the Foreign Marriage Act is also violative of Article 21 of the Constitution of India, prescribing a compulsory wait of six months for obtaining divorce by mutual consent cannot be construed, by any stretch of imagination, as reasonable and within the reasonable restrictions as envisaged by the procedure established by law.

It is held by the Supreme Court in the case of Menaka Gandhi's case,[6] that the right to live is not mere animal existence. It is more pertinent to point out here that when the spouses themselves who were in the thick of things and know better than everyone else, mutually agree to dissolve their marriage on the ground that there is irretrievable break-down of marriage, that they have been living separately for one year or more and there is no viable solution for the troubled marriage, the right thing would be the granting of the decree of divorce after the presentation of the joint petition which follows much deliberation by both parties. If not, the rights of the parties to live with dignity and exercise their liberty will be greatly restricted. It will also amount to violation of Article 21. So it is high time for the Parliament to make suitable amendment in the Foreign Marriage Act, 1969 by deleting the words: “made not earlier than six months after the presentation date of the petition referred to in Subsection (i) and not after than eighteen months later the said date, if such petition is not withdrawn in the meantime.”

Further, various High Courts in recent times have suggested the waiving of the six months wait because waiting for time is a big problem especially for women. So, empowering woman, it is necessary to amend the provisions of the Foreign Marriage Act relating to divorce by mutual

consent and waiting time should be waived. On the other hand Andhra Pradesh High Court is the first to hold in *Re. Gandhi VenkataChittiAbbai*' case[7] that "the statutory period of six months prescribed under the Hindu Marriage Act, 1955 for taking divorce by mutual consent can be waived and the parties can be given liberty to part their company without waiting for this period." Likewise in *Arvind Kumar v. Dhara Sharma*,[8] Delhi High Court also has categorically pointed out that "if Section 13-B(2) of the Hindu Marriage Act is read as mandatory the very object of liberalising the policy of decree of divorce by mutual consent shall be frustrated more so when the spouses started living separately for a considerable time."

In the recent case of the *Amardeep Singh v. HarveenKaur*,[9] the Supreme Court held that "the waiver application can be filled after seven days of completion of the first motion with proper prayer for waive. It will be up to the Courts discretion to waive off the duration after the satisfaction of these lines. This section is directory but not mandatory so it shall be open to Court to consider facts and circumstances of the each case, where there is no possibility of spouses to resume cohabitation and decide the matter." Though marriages are made in haven divorces are decreed by the courts. Hence judiciary has raised its voice time and again to remove the agonizing six months wait. Seated far away from seeing the agony of the parties, the parliament has not chosen to suitably amend the provision of divorce by mutual consent of the Foreign Marriage Act, 1969 in keeping with the modern trends and to make women empowering and exigencies of the Indian society which is the crying need of the hour.

Though times have changed and technology has swept all areas of life, we are yet to overcome gender bias. This is due to the attitude of the fundamentalists about some false notions of manhood and womanhood. Any change in this regard raises a lot of controversies from the fundamentalists before whom the politicians have to bow in order to avoid losing their vote banks. In any field of our life an isolated approach cannot be successful. Similarly in this field the movement cannot come to a successful end unless men are directly involved in understanding the women's rightful place in society. According to George Bernard Shaw: "Liberty is

responsibility. It is not only responsibility but it is joint responsibility. When we are talking of human rights this must be enjoyed by everyone, men and women alike.[10]”

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