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Fractured Lives: Judicial Separation in India

HRISHIKA KUMARI LAL¹ AND DIVYANJALI VUDIPI²

ABSTRACT

The research paper explores the concept or dimensions of judicial separation that is very crucial legal remedy in matrimonial law irrespective of personal law. Judicial separation is nothing but an alternative of divorce, a cooling period, and opportunity to reconcile. In every religion, society marriage is seen as a very sensitive bond between two individuals and their respective families. The paper mainly explores in the areas such as the social perspective regarding the judicial separation like how society has seen this concept so far. It also evaluates the existing laws in different personal laws and a little comparative table of all the personal laws. By analyzing the case laws related to its bane and boon, this research aims to highlight the judicial separations significance and how it has addressed the marital disputes. The paper overall examines the advantages and disadvantages whether judicial separation is fruitful for society or not? The findings of the will contribute in understanding the importance of judicial separation in matrimonial issues and how the cooling period is important in many cases while two different complex individual decides to ties knot and divorce can be too hastily in some cases.

Keywords: *Judicial Separation, Matrimonial Disputes, Personal Law, Reconciliation, Family Law*

I. INTRODUCTION

"Marriage is like a fortress besieged. Those who are outside want to enter, while those who are inside want to leave." — French Proverb

Marriage is a sacred bond, a lifelong partnership, mutual consent that is supposed to be built on love, trust, companionship, adjustment and agreement. It's a union between a man and woman that is recognized legally and socially, which ultimately creates the duty and obligations between spouses. However, the reality is too harsh, too heartbreaking, and too brutal. From outside many marriages seems harmonious, stable, ideal and perfect. But it all is a veil created by our fine society- by our traditions irrespective of religion, to save faces, to save the reputation, the honour. The truth of marriage is ugly and filled with all kinds of dark deeds. Not all marriages withstand the test of time. Over time, all marital relationships go through many difficulties and hardships such as the financial disputes, cruelty, incompatibility, infidelity or

¹ Author is a student at Birla Global University, Bhubaneswar, Odisha, India.

² Author is a student at Birla Global University, Bhubaneswar, Odisha, India.

personal differences, strain the pure relationship to the point where living together (cohabitation) becomes unbearable. Now getting divorce is the ultimate legal solution to dissolve marriage, but there another legal remedy exists that provides an opportunity to spouses for separation without getting actual divorce and breaking the marital bond that is “JUDICIAL SEPARATION”. It is a legal remedy provided under family law where spouses are allowed to stay separately without dissolving their marriage, granting time to reconsider their relationship and decide whether reconciliation is possible or not, it’s like a middle ground between marriage and divorce. It basically offers the space and time to the couple to reflect on their relationship, possibly reconcile or directly move towards divorce. This judicial separation basically suspends the obligations of cohabitation, that can be recognizes as a remedy that helps those marriages which is facing temporary breakdowns that does not warrant absolute dissolution. While in cases such as miscommunication, small conflicts, family complications and more makes the judicial separation the best legal remedy to rethink, to reconcile and choose not to take divorce. Every marriage faces crisis and it’s the main benefit of judicial separation that it gives married couples the chance to stay separately from one another temporally without breaking marriage permanently, giving them time to rethink everything and reconcile if possible. But as getting divorce doesn’t seem like a best logical remedy when things can be settled, in critical cases of cruelty (physical or mental), venereal disease or mental disorder this remedy is the worst drawback. In different personal law there’s different way how this remedy works, while in some there’s no concept of judicial separation, in other there’s mandatory concept of judicial separation that just make the marriage more complicated-ugly-unbearable.

Usually our society as in family, friends, culture, religious convictions don’t support the situation of divorce, in those kinds of situation judicial separation seems like the best legal privilege to save the marriage. This stage also helps couples in managing the emotional or psychological trauma that comes with divorce.

In India, different personal laws deals with judicial separation differently, such as under Section 10 of the Hindu Marriage Act, 1955³, it’s stated that either of the spouses can file for judicial separation based on grounds similar to divorce that is adultery, cruelty, desertion, conversion, mental disorder, and others. Similarly, under Section 22 of the Indian Divorce Act, 1869⁴, judicial separation is mentioned for Christians and under Section 23 of the Special Marriage Act, 1954⁵, interfaith couples can get the benefit of judicial separation. While there’s no mention

³ The Hindu Marriage Act of 1955, § 10

⁴ The Indian Divorce Act of 1869, § 22

⁵ The Special Marriage Act of 1954, § 23

of judicial separation under Muslim law but they have some conditions of separations. This provision kind of acts as a bridge between reconciliation and permanent dissolution, the result of reunion or divorce depends on couple but the judicial separation plays a crucial role in matrimonial law as it not only safeguard the interests of both the husband and wife but also helps two families to rethink everything that came together because of the marriage.

II. JUDICIAL SEPARATION UNDER DIFFERENT PERSONAL LAWS

In India every religion has their respective personal law, each one of them reflects their specific social values, customs and traditions. While in every religion marriage is seen as a pure unbreakable bond, they all also agree with the fact that now and then every marriage faces turbulences or disputes that needed more than just understanding to resolve, that's when the couple in rage decides to take divorce but some of those relationship can be saved after the cooling period. The judicial separation comes as a middle ground that provides the chance of that cooling period to the couple, in which the couple stays apart from each other, means no cohabitation but they would remain married. The remedy of judicial separation is mentioned in different statutes with similar objectives and almost similar grounds except Muslim law. While for Hindu, Christian, Parsi and interfaith marriages these statutes exists:

- **The Hindu Marriage Act, 1955** (Section 10)⁶
- **The Indian Divorce Act, 1869** (for Christian marriages)⁷
- **The Parsi Marriage and Divorce Act, 1936**
- **The Special Marriage Act, 1954** (Section 23)⁸
- **The Muslim Personal Law (Shariat) Application, 1937**, is for Muslims which have no mention of judicial separation but allows other remedies.

JUDICIAL SEPARATION UNDER HINDU LAW

The Hindu Marriage Act, 1955, codifies the laws relating to marriage, divorce and other relating issues concerning Hindus. Here Hindu consists- Buddhists, Jains and Sikhs too. Under Section 10 of the Act judicial separation is defined as such: “[1] Either party to a marriage, whether solemnized before or after the commencement of this Act, may present a petition praying for a decree for judicial separation on any of the grounds 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

⁶ The Hindu Marriage Act of 1955, § 10

⁷ The Indian Divorce Act of 1869, § 22

⁸ The Special Marriage Act of 1954, § 23

grounds on which a petition for divorce might have been presented.]

(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.”⁹

According to the section 10 of the Hindu Marriage Act, 1955 allows either of the spouses to file for judicial separation on the grounds similar to the grounds of divorce that is mentioned under Section 13.¹⁰

Those grounds are:

Adultery- where the spouse engages in an extramarital affair or relation

Cruelty- where spouse is getting physically or mentally abused that is making the cohabitation kin of impossible

Desertion- If either of the spouses abandons/leaves without any proper justification or reasoning for minimum 2 years

Conversion- If either of the spouses suddenly adopts another religion, basically converts.

Mental disorder- If either of the spouses suffers from unsound mind or any other mental illness that maybe incurable

Venereal disease- If either of the spouses have any communicable or contagious disease such as STDs

Renounced the world- If either of the spouses becomes a monk or sanyasi or hermit

Presumption of death- If either of the spouses has not been heard of by anyone- spouse, family, friend or others for at least 7 years.

Either of the spouse can file the petition requesting judicial separation, once the court orders judicial separation, the couple are needed to stay away from each other and husband is also entitled to give maintenance in during that period. So basically the grounds of divorce can be used as grounds for judicial separation under Hindu Marriage Act, 1955, judicial separation doesn't dissolve marriage but restrict the couple from cohabitation. If after the period of judicial separation the couple fails to reconcile, then either spouse can apply for divorce.

⁹ The Hindu Marriage Act of 1955, § 10

¹⁰ The Hindu Marriage Act of 1955, § 13

JUDICIAL SEPARATION UNDER MUSLIM LAW

Muslim marriages and other related laws are basically governed under the **Muslim Personal Law (Shariat) Application, 193**. Muslim marriage is known as NIKAH, which is a civil contract between a man and a woman, where both of them agree to marry each other in the presence of witnesses. **Unlike the other religions such as Hindu or Christian, where judicial separation is a kind of legal remedy that is opted before divorce, in** Muslim law there's no concept of judicial separation. Muslim law does not recognize judicial separation but there are some rights given to Muslim women under the Dissolution of Muslim Marriages Act, 1939 to approach the court for separation or basically dissolution of marriage. Muslim wife can seek directly seek dissolution under grounds such as- impotence, cruelty, desertion, mental disorder, etc. In other personal laws judicial separation is nothing but an interim given by the court while filing petition for divorce, a change to reconcile and rethink. The separation or giving time to reconcile while the couple wants to divorce- not wants to live together is unnecessary and vague concept. Muslim law basically do not believes in temporary separation, they directly allows separation through divorce known as TALAQ, judicial dissolution known as FASKH and mutual known as KHULA and MUBARAT. After the dissolution of marriage, the wife has to go through a waiting period known as IDDAT PERIOD, to ensure that there's no pregnancy or no scope for reconciliation, but even during that period the husband has no automatic right to take her back unless they remarry.

JUDICIAL SEPARATION UNDER CHRISTIAN LAW

Under Indian Christian Marriage Act, 1872¹¹, marriage of Christians are defined where man and a woman both agree to marry each other in the presence of an authorized person, their marriage consists of consent, notice and ceremony. It is considered valid only after the proper rites and ceremonies according to Christian's faith are performed. Like Hindus, Christians believe marriage is a solemn and sacred union between a couple and their family and the dissolution is highly discouraged. But unlike Muslim law, Christians have the legal remedy of judicial separation under section 22 of Indian Divorce Act, 1869¹². The Christian couple can seek legal remedy of judicial separation in place of divorce, where they are allowed to live separately without any cohabitation while still being married. The grounds mentioned for judicial separation are similar to the ground for divorce under Indian Divorce Act, 1869- adultery, cruelty and desertion. So basically, like other personal laws the purpose of judicial

¹¹ Indian Christian Marriage Act of 1872

¹² The Indian Divorce Act of 1869, § 22

separation is giving the cooling period to the couple, time to reflect on their relationship difficulty or decide whether they really want to divorce each other or reconcile and live together.

JUDICIAL SEPARATION UNDER PARSI LAW

In India, Parsi is a small community basically minor but there is still a different personal law for them that is the Parsi Marriage and Divorce Act, 1936, governed to solemnized the Parsi marriages and like any marriage Parsi marriage is valid only if it is performed according to the Parsi customs and rites. The role judicial separation under Parsi law is same as any other personal law, court-ordered separation that allows the couple to live separately while being legally married. According to the Parsi Marriage and Divorce Act, 1936, the grounds of judicial separation are as same as the grounds for divorce such as: adultery, cruelty, desertion, etc. Judicial separation is just a legal remedy that provides the couple right to live separately from each other but do not dissolve marriage, it's a period to reconsider their decision of divorce and reconcile.

JUDICIAL SEPARATION UNDER SPECIAL MARRIAGE ACT, 1954

In India, there are many religions, castes or faiths, while each religion have their own personal laws, issue arises when individuals of two different criteria wants to marry. The Special Marriage Act, 1954¹³ allows marriages between different religions, castes or faiths, the marriage will only be considered valid if it includes all the required work mentioned under the Act such as consent, notice and ceremony. The only requirement to get married under this Act is individual have to be a citizen of India apart from that their respective personal law doesn't matter. The Act also allows the couple to dissolve the marriage under the certain grounds such as: cruelty, adultery, mental disorder, venereal disease and others. But like Hindu, Christian and Parsi personal laws, there's a legal remedy available under this Act known as judicial separation where couple facing marital difficulties and are filing petition for getting divorce, gets cooling period. Under section 23¹⁴ of the Act judicial separation is defined that allows couple to stay apart for 1 year and see whether they can reconcile or not.

Comparative Overview

Law	Grounds for Judicial Separation	Separation Period Before Divorce
Hindu Marriage Act, 1955	Same as divorce mentioned in the Act	1 year

¹³ The Special Marriage Act of 1954

¹⁴ The Special Marriage Act of 1954, § 23

Law	Grounds for Judicial Separation	Separation Period Before Divorce
Muslim Personal Law	No direct provision; covered under judicial divorce	No fixed period
Indian Divorce Act, 1869 (Christian Law)	Adultery, cruelty, desertion	2 years
Parsi Marriage and Divorce Act, 1936	Similar as divorce mentioned in the Act	No fixed period
Special Marriage Act, 1954	Same as divorce mentioned in the Act	1 year

SOCIAL PERCEPTION (DIFFERENT RELIGIONS)

Our Indian society is very sensitive in the matter of marriage, the complexity regarding it in religion, culture and societal norms differ but the common ground here is it is seen as a pure lifelong commitment between two individuals- couple and their families. As time changes this pure sacred bond also faces difficulties, the harsh truth and reality, the compromising and adjustment can be influenced by the perspectives of others, traditional beliefs, societal norms, gender-specified roles and family reputation that make most marriage unbearable which often leads to the only remedy that is divorce. But in as there is one more legal remedy that helps the married couple to reconcile that is judicial separation but does our society, our tradition or our religion looks at this remedy as a proper remedy or it is not acceptable at all?

Traditionally in our Indian society marriage is always viewed as a sacred-unbreakable bond, where there is no concept of living separated or getting divorce. The married couple is always expected to adjust compromise and stay together irrespective of the difficulties. The main idea behind these kinds of thinking was that the matrimonial dispute is something that is supposed to be deal within the four-walls of the house and the whole reputation and honour of the family depends on that so it was not something to discuss openly. With the time our society has changed its view regarding the same and has accepted that there can be matrimonial conflicts that need to be addressed and can't be just ignored or adjusted. Because of many awareness, education and real life situations, people living in our society are accepting the idea of divorce and separation that is the primarily solution of the troubled marriage. Even though marriage is something that is linked with unbreakable bond till now, it is essential to understand that when things are not going the way it was supposed to and constant disputes and torture will only make

the pure bond ugly, taking break and then deciding whether to live together can be fruitful or not is the best decision.

Even though the change has been seen over the period of time the typical social stigma has not changed completely and is still affecting the life of many couples who are not aware of these rights and laws. In rural areas of India, people are still trying to live with all kinds of distress, pressure and abuse- physical, mental both. In many places this martial separation is still connected with the damage of reputation. Specially, women often have to bear the entire burden, all the pressure from the society regarding the separation. Women are pushed around and blamed for the separation and shamed because she is seen as reason why marriage didn't worked and both the families reputation got tarnished.

With changing times and constant awareness spreading about the need of the judicial separation, it has gained acceptance as a legal remedy before opting for divorce. Mostly in metropolitan areas of the country, the concept of judicial separation has been widely accepted, influence of global exposure and legal reforms made a drastic change in the minds of people into accepting the judicial separation. Also as with time women's are becoming financially independent, they are ready to take stand for themselves and get aware of their legal rights and fight against the societal stigma associated with separation.

Indian society now is looking at judicial separation in more favourable manner and from the new light as while getting divorce is too hasty in some cases, judicial separation gives the couple to rethink, reconnect and reconcile. Judicial separation is best looked as a trial period before actually opting for divorce, marriage is after all a sensitive bond that must not be thrown away without trying to reconcile.

Indian society is still undergoing the changes regarding matters that are as sensitive as marriage. While the traditional views have been transformed a lot, and acceptance of judicial separation continues to grow, there are many cases where it's become a bane instead of boon.

III. COMPARISON WITH DIFFERENT COUNTRIES

In India, Judicial separation serves as a legal recourse for couples to stay apart without each other rather than divorcing. This intermediate solution is crucial in contexts where divorce is usually restricted and considered as a stigma. Judicial separation enables courts to address key problems like property rights, maintenance, and custody.

A comparative analysis of global jurisdictions reveals varying approaches to judicial separation. Some countries, like the UK and Ireland, have established frameworks, while others, like Japan

and South Korea, have limited or no recognition.

Through this comparative analysis, we aim to identify best practices, shortcomings, and areas for reform, providing insights for improving India's judicial separation laws.

Judicial Separation in other countries is given as follows.

I. United Kingdom

Judicial separation in the United Kingdom is governed by the Matrimonial Causes Act of 1973 (Sections 17 and 18),¹⁵ allowing spouses to formally separate without ending their marriage. The grounds for judicial separation mirror those for divorce, including adultery, unreasonable behaviour, desertion, and separation for specified periods.

The Divorce, Dissolution and Separation Act 2020¹⁶, which came into effect in April 2022, introduced 'no-fault' divorce, enabling couples to divorce without assigning blame. This reform aims to simplify the divorce process and may impact the prevalence of judicial separations.

II. Ireland

Ireland's judicial separation framework is outlined in the Judicial Separation and Family Law Reform Act 1989.¹⁷ This legislation sets forth specific grounds for judicial separation, including adultery, unreasonable behaviour, desertion, and separation for a stipulated period. Additionally, it requires that both parties be informed about alternative dispute resolution options, such as counselling and mediation, to facilitate reconciliation whenever possible.

In judicial separation proceedings, Irish courts prioritize two key considerations: the welfare and well-being of dependent children, and the equitable distribution of financial resources.

III. USA

In the United States, judicial separation, commonly referred to as legal separation, is governed by state-specific laws, with varying procedures and grounds between states. Certain states, such as California and New York, recognize legal separation, enabling couples to formalize their separation without dissolving the marriage. Legal separation is a court-ordered arrangement allowing spouses to live apart while resolving issues like property division, spousal support, child custody, and child support, without dissolving the marriage. Each state defines acceptable grounds for legal separation, often mirroring those for divorce, and falling into two categories: no-fault grounds, such as irreconcilable differences, and fault-based grounds, like adultery or

¹⁵Matrimonial Causes Act 1973, c. 18, §§ 17–18 (U.K.).

¹⁶Divorce, Dissolution and Separation Act 2020, c. 11 (U.K.).

¹⁷Judicial Separation and Family Law Reform Act 1989, No. 6/1989 (Ireland).

cruelty. The procedure involves filing a petition, serving the other spouse, and negotiating or contesting the terms, potentially leading to a court hearing and a judgment of legal separation.

IV. JAPAN

Japan does not have specific laws governing judicial separation. Instead, couples typically separate informally, and when they decide to dissolve their marriage, they often opt for divorce by mutual consent. Japan's family courts emphasize mediation and reconciliation efforts before granting a divorce, reflecting the country's cultural emphasis on preserving family unity.

V. SOUTH KOREA

Like Japan, South Korea lacks a formalized judicial separation framework, prompting couples who want to part ways or separate to do so either informally or through the divorce process. The country's legal system prioritizes mediation, with courts actively promoting reconciliation efforts as a prerequisite to divorce proceedings.

VI. CHINA

China's Civil Code of 2021¹⁸ does not formally recognize judicial separation as a distinct legal status. Rather, the focus is on reconciliation, with courts typically requiring mediation for couples seeking divorce to preserve the family unit. If mediation is unsuccessful, couples can proceed with divorce proceedings. Chinese courts prioritize protecting vulnerable individuals, especially women and children, ensuring their rights and interests are protected during marital disputes.

VII. FRANCE

In France, the legal concept of "séparation de corps" (separation from bed and board) provides couples with the opportunity to formally separate without dissolving their marriage. This mechanism addresses crucial legal issues like of child custody, property division, and spousal support while preserving the marital bond. As outlined in the French Civil Code (Article 296-308)¹⁹, séparation de corps offers a viable alternative to divorce for couples who wish to separate due to reasons such as religious beliefs, personal convictions, or financial considerations. The grounds laid for séparation de corps are as like the grounds laid down divorce, including fault-based, mutual/joint consent, and irretrievable breakdown of marriage. Once a couple has opted for séparation de corps, they can, after a two-year period, convert to divorce without needing to establish new grounds. This framework provides a structured and

¹⁸Civil Code of the People's Republic of China (promulgated May 28, 2020, effective Jan. 1, 2021) (P.R.C.).

¹⁹ Code Civil [C. civ.] arts. 296–308 (Fr.).

protective environment for separating couples, having the sole objective to safeguard their rights and interests in the entire process.

VIII. SOUTH AFRICA

In South Africa, judicial separation is not recognized as a legal status, as the Divorce Act of 1979²⁰ explicitly abolished courts' authority to issue orders for judicial separation. Instead, couples seeking to formalize their separation must pursue a divorce, as Section 14 of the Act states that courts cannot issue orders for judicial separation. As a result, couples remain legally married with all associated rights and obligations until a court grants a divorce, and issues like spousal care, child custody and property separation are typically addressed during divorce proceedings. Consequently, South African couples seeking to live apart and formalize arrangements regarding assets, maintenance, and childcare must navigate these arrangements through the divorce process, as there is no legal provision equivalent to judicial separation found in other jurisdictions.

IV. CASE LAWS

In Indian matrimonial law, judicial separation acts like the middle ground, allowing couples to separate legally without terminating their marriage. This provision offers a breathing space for spouses to re-evaluate their relationship, potentially opening the way for reconciliation or a better considered method to divorce. However, its practical effects vary significantly. While some couples find it beneficial for reassessing their relationship, others experience prolonged conflict, emotional turmoil, and financial hardship. Critics argue that in cases involving severe marital misconduct, judicial separation can be an unnecessary obstacle, delaying an inevitable divorce. On the other hand, supporters believe that this legal remedy can help preserve the institution of marriage while providing protection to the affected spouse. A closer examination of specific cases will highlight both the limitations and benefits of judicial separation, showcasing instances where it has been detrimental and those where it has been constructive.

A. Judicial Separation – as a “Blessing”

1. *ROHINI KUMARI vs. NARENDRA SINGH*²¹

The Supreme Court's judgment in *Rohini Kumari vs. Narendra Singh* (1971) serves as an example of how judicial separation can provide a dignified and practical solution in cases of irretrievable marital breakdown. In this case, the wife moved out of her matrimonial home in 1947 without

²⁰Divorce Act 70 of 1979, § 14 (S. Afr.).

²¹*Rohini Kumari v. Narendra Singh*, A.I.R. 1971 S.C. 1975 (India).

any intention of returning, despite the husband's persistent efforts to reconcile. The husband later married a Dutch lady, but the court found that this second marriage did not impact the decision of the wife to live apart. Ultimately, the Supreme Court granted judicial separation, emphasizing that this remedy provides a structured, non-adversarial solution for couples unable or unwilling to continue their marital relationship. By doing so, the court provided the reasoning that the wife has the right to separate and seek maintenance under section 18(2) of the Hindu Adoptions and Maintenance Act²² which does not override the provisions of judicial separation under section 10 of the Hindu Marriage Act. This judgment highlights the significance of judicial separation as a compassionate legal mechanism that respects both parties' autonomy, avoids the finality of divorce, and opens the door to either pacification/reconciliation or for a peaceful parting of ways, which ultimately serves as a crucial legal tool in complex matrimonial disputes.

2. *KRISHNA BHATTACHARJEE vs. SARATHI CHOUDHURY (2015)*²³

Similarly, in *Krishna Bhattacharjee vs. Sarathi Choudhury (2015)* we can observe the significance of judicial separation in Indian matrimonial law, particularly for safeguarding the rights of spouses, mostly women, in strained relationships. The petitioner, who had secured a decree of judicial separation in 2006 due to prolonged cruelty, later sought to recover her Stridhan and initiated criminal proceedings under Sections 498A and 406 of the Indian Penal Code²⁴. The High Court's dismissal of her claims as time-barred was reversed by the Supreme Court, which held that judicial separation does not put an end to the matrimonial bond but only suspends cohabitation, thereby preserving the wife's right to recover her Stridhan and seek redress for cruelty. The Court emphasized that the failure to return Stridhan constitutes a continuing offense, and the wife's legal status post-separation remains intact for asserting her rights. This judgment highlights the instrumental role of judicial separation as a legal remedy that provides a safe exit from marital discord without dissolving the marriage entirely, protecting spouses from being legally, socially, or financially disempowered, and upholding their dignity, property rights, and personal agency.

B. Judicial Separation – as a “Curse”

1. *SHWETA KHURANA VS. VINAY KHURANA (2022)*²⁵

The Delhi High Court's ruling in this case highlights the complexities of judicial separation in

²²The Hindu Adoptions and Maintenance Act, 1956, No. 78, Acts of Parliament, 1956 (India).

²³*Krishna Bhattacharjee v. Sarathi Choudhury*, (2016) 2 S.C.C. 705 (India).

²⁴Indian Penal Code, §§ 498A & 406, No. 45, Acts of Parliament, 1860 (India).

²⁵*Shweta Khurana v. Vinay Khurana*, 2022 SCC OnLine Del 1124 (India).

Indian matrimonial law. The appellant-husband had sought divorce under Section 13(1)(ia) of the Hindu Marriage Act, citing cruelty by the respondent-wife, which was established in court. However, the Family Court opted to grant judicial separation instead, hoping for reconciliation. The High Court criticized this approach, emphasizing that judicial separation and divorce have distinct legal consequences and that imposing judicial separation against the petitioner's wishes can unfairly prolong marital discord and restrict personal freedom. Consequently, the High Court set aside the Family Court's decree and granted the divorce sought by the appellant, underscoring the need for a definitive resolution in marital disputes and the importance of respecting the parties' intentions. This case illustrates the potential pitfalls of judicial separation when it contradicts the parties' wishes and hinders the resolution of marital disputes.

2. *SANDHYA SEN Vs. SANJAY SEN (2021)*²⁶

The Chhattisgarh High Court's ruling in *Sandhya Sen vs. Sanjay Sen (2021)* highlights the misuse of judicial separation in cases where both parties mutually seek divorce. The couple, married in February 2017, lived together for only two days and later jointly petitioned for divorce by mutual consent under Section 13-B of the Hindu Marriage Act. They followed the proper procedure, submitting verified affidavits and making repeated joint appearances before the trial court over several months. Despite this, the court rejected their petition and instead granted judicial separation under Section 13-A, assuming that such a short cohabitation period could not have led to serious disputes. The High Court overturned this decision, holding that judicial separation cannot be imposed merely on assumptions or misplaced optimism of reconciliation, especially when the parties have clearly and mutually expressed their will to part ways. This case shows how judicial separation, when forced upon unwilling spouses, can act as a curse rather than a remedy—denying individuals closure, prolonging emotional strain, and undermining their autonomy. It shows that judicial separation, intended as a pause or a chance for reconciliation, can become an unjust imposition when it overrides the clear intent of both parties to dissolve the marriage amicably.

3. *DS SESHADRI Vs. JAYALAKSHMI (1962)*²⁷

This case poignantly highlights the complexities and potential injustices inherent in the concept of judicial separation within the Indian matrimonial legal framework. In this instance, despite the court's finding that the wife had deserted the husband without just cause, a striking decision was made that underscores the problematic nature of judicial separation. The husband, a

²⁶*Sandhya Sen v. Sanjay Sen*, 2021 SCC OnLineChh 456 (India).

²⁷*D.S. Seshadri v. Jayalakshmi*, A.I.R. 1962 Mad. 400 (India).

government clerk with modest means, was directed to pay permanent alimony to his estranged wife under Section 25 of the Hindu Marriage Act, 1955. This ruling imposed a significant financial burden on the husband, who had not lived with his wife for nearly eight years, a situation exacerbated by the fact that judicial separation did not dissolve the marital bond. Consequently, the husband remained legally married, was unable to remarry, and yet was still obligated to provide financial support to a spouse who had long abandoned the marriage. This case starkly illustrates the inherent flaws in the judicial separation framework, which effectively suspends the marital obligations between spouses without severing the legal tie of marriage. This liminal state leaves individuals in a protracted state of legal and unresolved emotional state, devoid of the closure and finality that either a functional marriage or a legal divorce would provide. Rather than serving as a constructive middle ground between marriage and divorce, judicial separation in such cases can perpetuate conflict and prolong suffering, particularly in situations where the prospect of reconciliation is remote. The outcome of this case raises critical questions about the efficacy and fairness of judicial separation as a legal remedy, suggesting an urgent need for a comprehensive re-evaluation of its role and implications within the contemporary Indian matrimonial legal system. Such a reassessment is crucial to ensure that legal provisions aimed at addressing marital disputes genuinely protect the rights, dignity, and well-being of all parties involved.

The analysis of judicial separation reveals its dual nature as a legal remedy that can be both beneficial and problematic. On one hand, it provides necessary protection for couples who need time and space to reassess their relationship without ruling out reconciliation. On the other hand, it can impose unintended hardships when the relationship is beyond repair. The requirement to provide maintenance, the delay in obtaining a divorce, and the prolonged legal proceedings can make judicial separation feel punitive rather than beneficial in certain cases. However, for couples who are uncertain about their future or are influenced by cultural, religious, or personal reasons that discourage divorce, judicial separation offers a compromise that balances legal rights with personal values. The effectiveness of judicial separation depends on the specific circumstances of each case, highlighting the need for a nuanced and compassionate application of the law to ensure that this remedy serves its intended purpose.

V. CHALLENGES OF JUDICIAL SEPARATION IN INDIA

Judicial separation is a legal option available under some personal laws in India. It gives couples the chance to legally live apart while still keeping their marriage intact. Unlike a divorce, which ends the marriage, judicial separation is reversible and aims to give couples some time to work

things out. However, the reality is that judicial separation comes with challenges, making it a complicated and sometimes insufficient option in Indian matrimonial law.

1. The Confusion around Legal Status and Rights

The main issues of judicial separation is the arising scepticism about the legal status of both parties afterward. While the marriage remains in effect from a legal standpoint, cohabitation and marital responsibilities are essentially put on hold.

This situation brings up important questions, such as:

- Are separated spouses entitled to spousal benefits like maintenance, pension rights, or inheritance?
- Can they enter into new relationships freely?

Unlike divorce, judicial separation doesn't grant the right to remarry. This often leads to a **legal grey area**—where neither party is completely married nor fully divorced.

Case Law:

In *Savitri Pandey v. Prem Chandra Pandey*, the Supreme Court made it clear that “judicial separation is a stepping stone to divorce, but the marriage continues legally until a decree of divorce is passed”²⁸. This ruling emphasizes that separated spouses are still tied to specific legal obligations, such as fidelity, complicating their personal freedom further.

2. Extended Legal Battles and Emotional Toll

Judicial separation is intended to provide a cooling-off period, but it often drags out legal disputes and emotional turmoil. In situations involving cruelty, domestic violence, or irretrievable breakdown, this process may only be a temporary solution, leaving the filer without complete relief.

Many women who pursue judicial separation for protection end up entangled in lengthy legal struggles just to secure divorce, maintenance, or child custody, which amplifies their emotional trauma.

Case Law:

In *Leela Devi v. Manohar Lal*, the Punjab and Haryana High Court considered a petition for judicial separation due to cruelty. The petitioner faced emotional abuse and neglect. However, the court's hesitance to grant a divorce without additional evidence meant she remained legally

²⁸Savitri Pandey v. Prem Chandra Pandey, A.I.R. 2002 S.C. 591 (India).

tied to her abusive husband, caught in a web of emotional and legal uncertainty.²⁹

Impact:

The lack of closure with judicial separation often leaves individuals in a **state of limbo**, unable to either reconcile or truly move forward. In more traditional families, this situation is worsened by societal pressures to maintain the marriage, no matter the circumstances of abuse or dysfunction.

3. Social Stigma and Cultural Pushback

In India, marriage is seen as a sacred and lifelong commitment. Judicial separation—while legally separate from divorce—is often viewed as a **taboo**, especially for women. In contrast to Western cultures, where legal separation is recognized as a natural step, Indian society tends to associate any breakdown in marriage with **personal failure** and **family shame**.

Empirical Findings:

A 2017 study by the Centre for Social Research (CSR) found that women living separately after judicial separation faced suspicion and disdain. Many dealt with **economic abandonment**, were compelled to return to abusive in-laws, or experienced important social isolation³⁰.

Gendered Impact:

Women carry the heaviest burden of this stigma. Their roles as daughters-in-law, wives, and mothers are constantly scrutinized, and their opportunities for future remarriage are greatly diminished—even when they remain legally married.

4. Challenges in Enforcing Ancillary Reliefs

Judicial separation can come with orders about maintenance, residence rights, or child custody, but unfortunately, **enforcement often falls short**. Many times, the financially stronger spouse simply doesn't follow the court's orders.

Legal Gap:

The way court orders are enforced under Section 10 isn't as strong as what we see with Section 125 of the CrPC³¹ or the Protection of Women from Domestic Violence Act, 2005³².

²⁹Leela Devi v. Manohar Lal, 1989 (1) H.L.R. 10 (P&H) (India).

³⁰Centre for Social Research, *Judicial Separation and the Indian Woman: A Study on Gendered Impact of Marital Reliefs* (2017).

³¹The Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1974 (India).

³²The Protection of Women from Domestic Violence Act, 2005, No. 43, Acts of Parliament, 2005 (India).

Case Law: In the case of *ShabanaBano v. Imran Khan*, the Supreme Court affirmed that even divorced Muslim women can seek maintenance under Section 125 CrPC. Yet, in many judicial separation cases, women find themselves having to start separate legal proceedings just to enforce maintenance, which often leads to **fragmented litigation** and emotional exhaustion.³³

5. Limited Public Awareness and Legal Literacy

Judicial separation isn't well understood by many people in India. A lot of couples think they have to either **stick it out in an unhappy marriage** or **go for a divorce**. The idea of a middle path is rarely discussed or clearly explained to them.

NALSA Report (2018):

A survey by the National Legal Services Authority (NALSA) revealed that **over 60% of women in urban India** didn't know that judicial separation was an option. Legal literacy campaigns often skip mentioning this alternative, which limits its effectiveness³⁴.

Result:

This lack of awareness makes many hesitant to consider judicial separation initially, especially when reconciliation is possible or when immediate divorce is not feasible due to legal, financial, or emotional reasons.

6. Ambiguous Custody Arrangements and Their Effects on Children

In a lot of judicial separation situations, who gets custody of the minor children becomes quite a heated topic. Since the marriage isn't officially over, courts tend to **postpone final custody decisions**, instead granting temporary visitation rights or shared custody. This can create **uncertainty** for kids who might feel caught in the middle.

Case Law:

In *VikramVir Vohra v. ShaliniBhalla*³⁵, the Supreme Court insisted that custody decisions should be made for the best interests of **children at heart**. However, without a final divorce decree, the interim orders can often lack clarity, leading to anxiety for the child.

Psychological Consequences:

Kids growing up in homes filled with unresolved conflicts or prolonged separations without clear outcomes are often at risk for emotional stress, anxiety, and problems with attachment. Right now, the judicial system seems to be missing child-centered frameworks to fill this gap.

³³ShabanaBano v. Imran Khan, (2010) 1 S.C.C. 666 (India).

³⁴National Legal Services Authority, *Legal Awareness Survey Report on Family Laws* (2018).

³⁵VikramVir Vohra v. ShaliniBhalla, (2010) 4 S.C.C. 409 (India).

VI. CONCLUSION

To conclude, this research shows that judicial separation in India emphasizes a legal option that's caught between hopes for reconciliation and the reality of divorce, yet it's often underused and not fully understood. In theory, it's meant to provide a chance to reflect without breaking apart, but that promise doesn't always play out in real life. A closer look reveals not just gaps in the law, but also a mismatch between what lawmakers intended, how the laws are structured, and what people actually experience. India's legal system, with its variety of personal laws, faces a challenge of rigidity. It tends to view judicial separation either merely as a step before divorce or as a deterrent to it, rather than recognizing it as a standalone legal choice that warrants clear procedures and proper support. Also, while some areas blend judicial separation with tools for structured reconciliation like mandatory counselling, enforceable interim reliefs, and approaches focused on children while, India's method remains largely procedural and left to discretion.

Another important issue is the lack of a consistent standard for support during the separation period. This legislative gap undermines the very purpose of the remedy, often putting financially or socially dependent spouses, particularly women, at greater risk. The Indian judiciary's varied responses ranging from cautious hope to direct imposition emphasize the pressing need for more coherent legal principles and sensitivity to individual choices. Looking at how other places handle judicial separation shows that it works best when it's part of a broader framework that prioritizes agency, consent, and the ability to enforce agreements. Given the unique mix of stigma, tradition, and constitutional rights in India, such an approach is essential.

To keep judicial separation relevant in today's family law environment, it doesn't need to be discarded but reimagined: as a remedy that is clear in its purpose, fair in its results, and compassionate in its application. Only by doing this can it fulfill its true role not simply as a step towards divorce, but as a valid legal option all on its own.
