



## Section 10A of the Divorce Act, 1869

**For Prelims:** Fundamental Rights, Secularism, Universal Declaration of Human Rights,

**For Mains:** Significance of Uniform Marriage Code, Right to Judicial Remedy.

### Why In News?

Recently, the **Kerala High Court** stated that the stipulation of the period of one year or more for filing a divorce petition by mutual consent under **Section 10 A** of the **Divorce Act, 1869** violates **fundamental rights** and is unconstitutional.

- The court suggested to the **Union government** that there should be a **uniform marriage code** in India to promote the **common welfare** and **good of spouses** in **matrimonial disputes**.

### Why did the Court Strike Down Section 10A of the Indian Divorce Act, 1869?

- The **Section 10A** is discriminatory because of the reason that **different communities in equal circumstances** are given **different treatment**.
- The legislature cannot take away **liberty** without adequately safeguarding the interest of the individuals whose interests to seek remedy are affected even if such legislation intends to achieve laudable objectives.
- The **right to a judicial remedy** curtailed by **statutory provisions**, which is a **violation of a fundamental right**.
  - The right to life encompasses **judicial remedy** as well.

### What is the Source of Section 10A of the Indian Divorce Act, 1869?

- The **one-year** period is stipulated in **Section 28(1)** of the **Special Marriage Act**, **Section 13B (1)** of the **Hindu Marriage Act** and **Section 32B (1)** of the **Parsi Marriage and Divorce Act**.
- Earlier **the Section 10A of the Indian Divorce Act** mandated a **2-years** waiting period for the application of divorce.
- The **Kerala High Court** itself, in **Saumya Ann Thomas v. The Union of India & Ors. (2010)** held that the stipulation of a period of two years as the minimum mandatory period under Section 10A was arbitrary and oppressive and the period of two years has to be read as one year.
- **Article 8** of the **Universal Declaration of Human Rights** declares that everyone has the right to an **effective remedy** by the **competent national Tribunals** for acts violating **fundamental rights** granted by the **constitution** or by **law**.

### What is the Universal Declaration of Human Rights?

- The **Universal Declaration of Human Rights (UDHR)** is a **milestone** in the history of **human rights**.
- The Declaration was proclaimed by the **United Nations General Assembly** in **Paris, December 1948** on **Human Right Day**.

- Every year **Human Rights Day** is celebrated on **10<sup>th</sup> December** all around the world.
- It sets out, for the **first time, fundamental human rights** to be universally protected.
- Everyone is entitled to all the **rights and freedoms** set forth in this Declaration, without distinction of any kind, such as **race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status**.
- All human beings are born **free and equal in dignity and rights**. They are endowed with **reason and conscience** and should act towards one another in a **spirit of brotherhood**.

## Conclusion

- The basic motive behind the mandated **one-year period** to apply for the divorce is basically intended to provide the proper time to the couples to understand each other and different family culture. It is not necessary that in every matrimonial case this approach works with the same outcome so there should be some other remedial measures to get rid of toxic marital relationships.
- The **Kerala High Court** is basically trying to **conserve the right to dignified life** of the couples who are facing **severe hardship** in their **married life**.

**Source: IE**

PDF Reference URL: <https://www.drishtiias.com/printpdf/section-10a-of-the-divorce-act-1869>

