

A divorced wife's rights over property

The Marriage Laws (Amendment) Bill, 2013, seeks to introduce a special provision relating to share of a divorced wife and the children in the property owned by her husband



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The Hindu Marriage Act, 1955, that codifies and governs the law relating to solemnisation and dissolution of marriages among Hindus. Over the years the government has made several efforts to protect the interests of a divorced wife and her children. New laws have been enacted and amendments have been made in existing laws to bring about changes in the provisions of law relating to provisioning of maintenance of the divorced wife and her children.

With the intent to make marriage laws more women-friendly the government re-introduced The Marriage Laws (Amendment) Bill, 2013, with some modifications. The Rajya Sabha approved the recommendations given by the group of ministers (GOM) and passed the

bill in August this year.

In the present Act, under Section 13, various grounds for dissolution of marriage by a decree of divorce are provided, which include inter alia adultery, cruelty, desertion, conversion to another religion, unsoundness of mind, virulent and incurable form of leprosy, venereal disease in a communicable form, renunciation of marriage and not heard as being alive for a period of seven years or more. Section 13-B of the Act also provides for divorce by mutual consent of husband and wife as a ground for dissolution of marriage.

The bill inter alia seeks to introduce 'irretrievable break-

down of marriage' as a new ground for dissolution of marriage as Section 13 C, and waive the condition of moving second motion by both the parties in cases of divorce by mutual consent under Section 12 B of the Act.

Most importantly, the bill seeks to introduce a special provision relating to share of a

divorced wife and the children in the immovable and movable properties owned by her husband. As per amendments proposed in the bill, the court while deciding compensation to be paid by the husband to her wife and children in cases of dissolution of marriage on the grounds of 'irretrievable breakdown of marriage', can

include a share in the immovable property of the husband (other than inherited or inheritable immovable property) and share in the movable property of the husband, as the Court may deem just and equitable. It has also been proposed that while determining such compensation, the Court shall also take into consideration the value of

inherited or inheritable property of the husband.

Thus, though the compensation to be paid to the wife and children in case of divorce due to 'irretrievable breakdown of marriage', may include a share only in the self acquired property of the husband, the courts will have power to determine the amount of such compensation considering the value of inherited or inheritable property of the husband.

The bill proposes similar amendments in the Special Marriage Act, 1954.

Main highlights of the Bill inter alia include as under:

- Introducing 'irretrievable breakdown of marriage' as a new ground for divorce.
- Introducing a special provision relating to share of a divorced wife and the children in the immovable and movable property owned by her husband.
- Waiving of the condition of moving second motion by both the parties in cases of divorce by mutual consent under Section 12 B of the Act.
- The Bill proposes similar amendments in the Special Marriage Act, 1954.

The author is a senior partner of ZEUS Law Associates, a corporate commercial law firm. One of its areas of specialisation is real estate transactional/litigation work.



htestates LAW BOOK Sunil Tyagi

I want to purchase the ground floor of a two-storey property which in its entirety was jointly inherited by two siblings. The siblings' families reside on separate floors of this property. The owner who lives on the first floor is unwilling to join in the execution of the sale deed of the ground floor in my favour. What do I do?

-Sonakshi Jha

Since the property is jointly owned by two individuals, each individual has undivided share in the entire property which is not identifiable by metes and bounds, even though currently each individual may actually be residing on separate floors. Since you are planning to purchase only the ground floor, the sale deed in your favour for this specific portion of the property is required to be executed by both the owners, given that they both have joint and undivided share in the ground floor.

However, in case the joint owner who is occupying the first floor is unwilling to execute the sale deed in your favour in respect of his undivided ownership in the ground floor, the next suitable alternative is to purchase the ground floor after the entire property has been partitioned by metes and bounds.

What is the applicable stamp duty rate and registration fee on sale deed of a property purchased by a woman in Delhi?

-Snigdha Gupta

In Delhi, duty rate payable on sale deed/conveyance deed of an immovable property which is purchased by a woman or in favour of a woman is 4% (out of which 2% is towards stamp duty and 2% is towards corporation tax). Currently, registration fee for sale deed/conveyance deed of an immovable property in Delhi is one percent of the consideration amount set out in the document or of the value calculated as per prevailing circle rates - whichever amount is higher, and subject to a minimum fee of ₹1,000.

I am a Hindu male and own certain coparcenary properties. Can I write a Will for setting out succession of such coparcenary properties?

-Shobhit Kumar

Yes, you may make a testamentary disposition of your own undivided share in the coparcenary / ancestral property under your Will.

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My CIBIL score is 764 and I have an annual income of ₹8 lakh. Will I be eligible for a home loan of ₹20 lakh?

-Sahil Kaul

Generally a CIBIL score of over 750 is considered to be good enough to be eligible for any loan. Apart from a CIBIL score, the lender will determine your loan eligibility based on your age, your income, your regular household expenses and your existing loans, if any. Normally

lenders grant home loans up to maximum of 90% of the agreement value of the property as a home loan.

This means that your down payment will have to be at least 10% of the agreement value. Moreover, as per RBI guidelines, the bank will not take into account stamp duty and registration cost, while calculating the cost of the property. Therefore, in addition to 10% you will have to fully fund the cost of stamp

duty and registration charges.

Based on your income you should be able to get the required loan of ₹20 lakh easily if you have no other loan to service and assuming you are not more than 40 years old.

I want to take a loan of ₹20 lakh to reconstruct our old house. The house is in father's name. What shall I do and which bank will give me a loan.

-Mangal Singh

If your father owns the house you will be able to get a loan only if your father joins you as joint borrower. The lenders will treat this as a self-construction loan. You will need

to submit the approved plans and detailed cost estimates from an architect or a civil engineer and the loan will be provided on that basis.

Please note that as you are not an owner or co-owner in the property you will not be eligible for any tax benefits on the loan repayments even if the loan is sanctioned based on your income and you actually service this loan. The lender will also need to be reassured about the fact that the title will pass on to you after your father so that they are reassured that you will continue making the payment to them in the event of his demise.

Alternatively you can pur-

chase a part of the land on which the property is to be constructed from your father to become a joint owner of the property. This will also help you in availing tax benefits. Since not all lenders are comfortable in providing self-construction loans your choices will be limited.

You will need documentary proof of your income. In case of a salaried person, apart from the ITR and Form 16, it can be in the form of salary certificate backed by monthly credit entry in a bank account, PF deduction proof, etc.

I want to purchase a flat worth ₹50 lakh. My monthly income is

₹40,000. How much loan can I get from a bank? The down payment for flat is around ₹10 lakh.

-Rakesh Jha

For a flat that costs ₹50 lakh you will need a down payment of at least ₹13 lakh to ₹14 lakh as banks will finance only up to 80% of the agreement value. You will have to pay the stamp duty and registration charges yourself, as the banks no longer fund these charges. Based on your income of ₹40,000 pm, you will be eligible for home loan of approx. ₹18 lakh @ 10.25% pa for a tenure of 20 years.

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