

IN THE HON'BLE HIGH COURT OF KARNATAKA AT BANGALORE

W.P. 13112 / 2012 (GM – RES, PIL)

I.A No. \_\_\_\_\_

**IN THE MATTER OF:**

Mr. Shiv Kumar ... PETITIONER

And

Union of India & Ors. ... RESPONDENTS

**AND IN THE MATTER OF:**

Vimochana,

A society registered under the Societies Registration Act, 1860

33/1-9, Thyagraj Layout,

Jaibharath Nagar

Bangalore 560033

represented by its Secretary ... INTERVENOR/APPLICANT

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**APPLICATION FOR INTERVENTION UNDER SECTION \_\_\_\_\_ OF THE**  
**CODE OF CIVIL PROCEDURE 1908**

The Intervenor/Applicant above-named humbly submits as follows:

1. That this Application for Intervention is filed by 'Vimochana'. Vimochana is a society registered under the Societies Registration Act, 1860 and was formed in 1979 to protect and campaign for the rights of women. It was formed with an aim to seek a just and humane society by highlighting the need for a public forum that would stand for organised resistance to the increasing violence against women and would be assertive in challenging the pervading apathy to

the problems of women in the context of larger structures of violence and power.

2. It is submitted that Vimochana's interventions for the protection of women's rights have been at multiple levels. It works at the deeply personal level of listening to women who have been victims of various kinds of violence speak about their pain and trauma, and responding to them through the provision of shelter, counsel, legal, social and moral support. These interventions enable women to make choices that will allow them to live a life of dignity, free from violence. Vimochana also initiates negotiations with the family and community to harness their support in resolving the problem, and try to facilitate justice through the police stations and courts when all other options have been exhausted.
3. At another level, Vimochana has initiated campaigns to bring about changes in various social and institutional structures to make them more responsive to women's realities and experiences. At this level they have worked with the law and judiciary, the media, religious institutions, family and the community. In many instances Vimochana has resorted to various forms of public protest like morchas and dharnas when it has been necessary to pressure authorities to take action, or as a means of social boycott. Vimochana has initiated innovative forms of protest like the Women in Black Movement for Peace through which they attempted to articulate another political vision. While they are based in the city of Bangalore and are focused on issues related to violence against women, Vimochana also networks with other women's and human rights groups at the local, national and international levels to extend our political vision and to encourage more effective interventions at a broader level.
4. Vimochana's main objectives are:

- (i) To strengthen women's resistance to violence both within the home and within communities, cultures and politics
- (ii) To make families, communities and the state responsible for and responsive to the growing violence against women
- (iii) To create alternative spaces and fora for public debate and dialogue to bring about attitudinal and institutional changes in our society vis-à-vis discriminatory attitudes towards women
- (iv) To make visible the deeper connections between increasing violence in the personal sphere of the home and the increasing brutalization of the larger public polity
- (v) To infuse into public and political life the feminine ethic of care and compassion and draw in all sections of society to strive towards a world free from all forms of war, violence, intolerance and conflicts
- (vi) To affirm women's knowledges and wisdoms as also that of all marginalized and vulnerable communities victimized by the dominant politics of progress and development.

5. Towards this end, the present petition filed challenging the constitutionality of Section 10-A(1) of the Divorce Act, 1869 has great importance for the rights of women from the Christian community. The Preamble of the Divorce Act, 1869 states that it amends the law relating to the divorce of persons professing the Christian religion. This legislation has been amended a number of times to bring it in line with interpretations of various courts across India and the suggestions of the Law Commission of India.

6. In the year 2001, the Indian Divorce (Amendment) Act, 2001, the Divorce Act, 1869 was substantially amended and a new provision namely, Section 10-A was inserted in the statute. Section 10-A provides for 'Dissolution of marriage by mutual consent'. This provision entitled a Christian couple to file a petition for dissolution of their marriage by mutual consent on the ground that they have been living separately for *two years or more*, and that they have not been able to live together since then. In addition, they must mutually agree that their marriage should be dissolved.
7. That by virtue of Section 10-A(1), for the first time, dissolution of marriage by mutual consent could be availed of by persons professing Christianity as their religion. This was similar to entitlements of 'dissolution of marriage by mutual consent' for Hindus under Section 13-B of the Hindu Marriage Act, 1956, Parsis under Section 32-B of the Parsi Marriage and Divorce Act, 1936 and persons marrying under Special Marriage Act, 1954 under Section 28 of the said Act. However, all the statutes providing for dissolution of marriage by mutual consent before the Divorce Act, 1869 was amended in 2001, required that the couple should have been living separately for *one year or more* and not two years as the Divorce Act, 1869 mandated. As a result, an onerous condition of *two years* has been imposed on persons belonging to the Christian religion as compared to persons belonging to other religions and who have solemnized their marriage under statutes mentioned above.
8. It is submitted that this two-year requirement under the Divorce Act, 1869 creates an unreasonable classification based on religion and is arbitrary, fanciful and oppressive as it discriminates against Christians. This is violative of Articles 14, 21 and goes against the mandate of Article 44 of the Constitution of India.
9. It is submitted that the issue of unconstitutionality of Section 10-A(1) of the Divorce Act, 1869 has been considered by a Division Bench of the Hon'ble

High Court of Kerala in the case of *Saumya Ann Thomas v. Union of India*, ILR 2010 (1) Ker 804. In this case, the court held that Section 10-A was unconstitutional as it violated Articles 14 and 21 of the Constitution of India. In addition, the court also held that the law relating to 'dissolution of marriage by mutual consent' is a secular law and in furtherance of Article 44 which provides for a uniform civil code in India. In essence, Section 10-A was held as *ultra vires* the Constitution of India as the classification based on religion led to discrimination of Christians and placed an even more harsh condition on dissolution of their marriages by mutual consent. Also, that the minimum period of two years and above to approach a District Court for a divorce by mutual consent was unreasonable, arbitrary, fanciful and oppressive as it deprived Christians of their right to life and right to live with dignity.

10. The Applicant has therefore preferred this Intervention Application to support the rights of women from the Christian community, who are discriminated as against women from other religions, as having to wait for a period of two years or more in order to obtain a divorce by mutual consent under Section 10 of the Indian Divorce Act. On the other hand, women who have married under the Hindu Marriage Act 1955 or under the Special Marriage Act 1954 only have the requirement of waiting for a period of one year of separation in order to obtain a divorce by mutual consent. In cases where women are facing domestic violence, neglect and harassment at the hands of the husband, in many instances women do opt for a quick and amicable separation and dissolution of such violent marriages in the interest of their children or family members. In such cases, having to wait for a period of two years can be extremely onerous and even dangerous in many instances. Even where women are not facing violence, but are in marriages where they are completely incompatible with their partners, the requirement of waiting for a two year period of separation for Christians is completely arbitrary and

onerous, as there is only a one year period of separation required for persons married under the Hindu Marriage Act and the Special Marriage Act.

11. The Applicant submits that Section 10-A(1) of the Divorce Act, 1869 is unconstitutional as it creates an unreasonable classification against Article 14 of the Constitution of India. The Applicant submits that the impugned provision is unconstitutional as it deprives Christians of their right to life and right to live with dignity by interfering with their right to separate from their spouse in contravention of Article 21 of the Constitution of India making the provision unreasonable, arbitrary, fanciful, capricious and oppressive. The Applicant submits that the impugned provision is in keeping with the principle enshrined in Article 44 of the Constitution of India and is secular in nature. Therefore, creating different conditions for Christians than the ones available to persons belonging to other religions is against the spirit and essence of the Constitution of India. The impugned provision must be declared as unconstitutional and must be read down to reduce the condition of living separately for two years or more in Section 10-A(1) of the Divorce Act, 1869 to one year and bring it in line with other similar enactments, saving it from the vice of unconstitutionality.

12. Thus, this Applicant prays that it may be allowed to intervene so that it may bring in all these aspects before this Hon'ble Court from the perspective of the rights of women from the Christian community, and other related aspects.

### **PRAYER**

WHEREFORE, in light of the above facts and circumstances, the Applicant humbly prays that this Hon'ble Court may be pleased to:

- i. permit the Applicant to intervene in this matter in public interest;
- ii. make submissions at the time of arguments;
- iii. pass any other orders as this Hon'ble Court deems fit in the interest of justice.

ADVOCATE FOR THE APPLICANT

Place: Bangalore

Date:

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**AFFIDAVIT**

I, \_\_\_\_\_, the Secretary of Vimochana, a society registered under the Societies Registration Act, 1860, having its registered office at 33/1-9, Thyagraj Layout, Jaibharath Nagar Bangalore 560033, do hereby solemnly state and affirm as follows:

1. That I am the authorized signatory of the Applicant, and am fully conversant with the facts and circumstances of the case and as such I am competent to swear this affidavit.
2. That the contents of this Intervention Application, from paragraphs number 1 to 10 are true to the best of my knowledge and information.

**DEPONENT**

**VERIFICATION**

I, \_\_\_\_\_, the deponent above named do hereby verify and state that the contents of the above affidavit are true to the best of my knowledge, no part of it is false and nothing material has been concealed there from.

**DEPONENT**

Place: Bangalore

Date: