



2026:KER:47197

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

TUESDAY, THE 30<sup>TH</sup> DAY OF JUNE 2026 / 9TH ASHADHA, 1948

WP(C) NO. 8801 OF 2025

PETITIONER:

BY ADVS.  
ADV.JAYNA KOTHARI (SR.)  
KUM.THULASI K. RAJ  
SMT.APARNA NARAYAN MENON  
SMT.JOMOL JOY  
SMT.CHINNU MARIA ANTONY

RESPONDENTS:

- 1 UNION OF INDIA  
REPRESENTED BY THE SECRETARY,  
MINISTRY OF LAW AND JUSTICE ,  
4TH FLOOR A-WITH, SHASTRI BHAVAN,  
NEW DELHI, PIN - 110001
- 2 STATE OF KERALA  
REPRESENTED BY CHIEF SECRETARY TO GOVERNMENT  
SECRETARIAT,  
THIRUVANANTHAPURAM, PIN - 695001
- 3 SECRETARY TO GOVERNMENT  
DEPARTMENT OF REGISTRATION SECRETARIAT,  
THIRUVANANTHAPURAM, PIN - 695001



4

**BY ADV SHRI .M.JAYAKRISHNAN VAZHOOR, CGC**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
03.06.2026, THE COURT ON 30.06.2026 DELIVERED THE FOLLOWING:**



**“C.R.”**

**BECHU KURIAN THOMAS, J.**

-----  
**W.P.(C) No.8801 of 2026**  
-----

Dated this the 30<sup>th</sup> day of June, 2026

**JUDGMENT**

Petitioner, inter-alia, seeks for a declaration that section 3(3) of the Divorce Act, 1869 ought to be read in a manner that the jurisdictional District Court for filing petitions under the Act, would include the court within whose territorial limits the wife resides.

2. Petitioner's application for dissolving her marriage allegedly filed before the Family Court at Kalpetta has been rejected pointing out that the said court had no jurisdiction under section 3(3) of the Divorce Act, 1869 (for brevity 'the Act') to entertain the petition. Due to alleged severe domestic violence, petitioner claims to have been thrown out of her matrimonial home at Kasaragod and is presently residing with her parents at Wayanad and hence she filed the petition for divorce at the Family Court, Kalpetta, which was returned, stating lack of jurisdiction. Petitioner also alleges that her marriage was conducted at Kasaragod and she has three children in the said marriage and since they last resided together at their matrimonial home at Kasaragod, the jurisdiction as per the statute is only at Kasaragod which is creating serious prejudice to her. According to the petitioner,



2026:KER:47197

though amendments were made to the Hindu Marriage Act, 1955 as well as to the Special Marriage Act, 1954, providing jurisdiction to the place where the wife is residing, a corresponding amendment was not brought into the Act. Petitioner pleads that section 3(3) of the Act visibly demonstrates discrimination against women, and hence seeks for a direction in the form of a declaration that the wife is entitled to maintain a petition where she resides.

3. A counter affidavit has been filed on behalf of the first respondent stating that petitioner has not sought for any relief for striking down any statutory provision. It is stated that for striking down a provision as ultra vires, specific pleadings are required and a specific relief is also required to be sought for, which is conspicuously absent in the writ petition. It is also pleaded that if there is no ambiguity to the provision in a statute, the Court cannot look beyond the words of the statute and any meaning inconsistent with the explicit or implicit language used in the statute cannot be adopted. According to the first respondent, as the statute exists now, a petition for divorce can be maintained before the District Court where the marriage was solemnised or where the husband and wife reside or last resided together. It is also stated that the Indian Divorce (Amendment) Act of 2001, brought in certain amendments to the Act and even at that stage the Parliament did not deem it appropriate to bring in any change as is now suggested by the petitioner. Respondents contend that the personal laws governing different communities may vary and especially the law relating to divorce may not be in parity with other communities. Moreover, courts have no authority to direct the legislature to frame a law in a particular manner and the subject matter of personal laws is related to



2026:KER:47197

Entry 5 List III of the 7<sup>th</sup> Schedule to the Constitution of India. According to the respondents, Courts cannot issue a writ of mandamus to the legislature to enact a law on a particular subject and that the Central Government had requested the 21<sup>st</sup> Law Commission of India to undertake an examination of various issues relating to uniform civil code and to make recommendations thereof, which is being examined by the present Commission.

4. Adv.Jayna Kothari, learned Senior Counsel instructed by Adv. Thulasi K. Raj, learned counsel for the petitioner submitted that section 3(3) of the Act must be read in a manner that the jurisdictional District Court would include the court where the wife is residing on the date of presentation of the petition, as otherwise, it would result in serious prejudice to Christian women who intend to file for divorce. It was also submitted that the restriction on Christian women, unlike those to whom the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954 applies, is a discrimination based on religion and sex and hampers their right to equality, non discrimination and dignity under Article 14, 15 and 21 of the Constitution of India. Learned counsel also submitted that the provision as it presently remains, ignores the reality of Christian women who are thrown out of their matrimonial home, who do not have the resources to file cases before the jurisdiction where they last resided together with the husband or where their marriage was solemnised and would compel a deserted woman to travel long distances, in protracted litigations that too in a hostile jurisdiction. According to the learned Senior Counsel, the non-inclusion of the court where the wife resides as one of the jurisdictional courts, ignores the social reality and deprives a Christian woman of an equal treatment



2026:KER:47197

with women of other religions like Hindus. It was also submitted that the omission to bring in an amendment, as was done in the case of the Special Marriage Act, 1954 and the Hindu Marriage Act, 1955, is a constitutional violation of discrimination based on sex and religion. Reference was made to instances when the court has stepped in to overcome discriminatory treatment to women, as was done in the case of **Saumya Ann Thomas v. Union of India and Another** [2010 (1) KLT 869] and **Mary Sonia Zachariah v. Union of India** [1995 SCC Online Ker. 288]

5. The learned Senior Counsel further submitted that section 3(3) of the Act must be approached in the light of the changing social scenario to enable women to file petitions within the limits of the court where they are residing at the time of presentation of the petition. Reliance was also placed upon the decision in **Independent Thought v. Union of India and Another** [(2017) 10 SCC 800], to canvas for the proposition that a purposive and harmonious interpretation must be adopted to realign the provision with the constitutional promise of child and women protection. Reference was also made to the decision in **Abhiram Singh v. C.D. Commachan and Others** [(2017) 2 SCC 629] to contend that when the text of a statute does not reflect benefit for the people, a pragmatic view ought to be adopted. It was also submitted that when a literal reading of the statute leads to violation of the constitutional principles, the court must adopt a liberal interpretation. It was asserted that section 3(3) of the Act must be read as including the district court within whose jurisdiction the wife resides at the time of filing petition, thereby adding to the statute, words which are otherwise not existing.



6. Sri. M. Jayakrishnan, the learned Central Government Counsel appearing on behalf of the respondents, per contra, submitted that what has been argued on behalf of the petitioner is a measure of a legislative exercise and not a matter which falls within the authority of the court of law. The learned counsel asserted that in the absence of any challenge against section 3(3) of the Act, the court cannot add words into the statute nor can any interpretation be adopted, which goes against the explicit meaning of the provision. The learned counsel relied upon the decisions in **Raghunath Rai Bareja and Another v. Punjab National Bank and Others** [(2007) 2 SCC 230], **Nazeer v. Shameema** (2017 (1) KLT 300) and **Eldho Varghese v. Liya Jose** (2024 (5) KHC 528). The learned counsel also submitted that even when the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954 were amended in the year 2003, the Parliament did not deem it appropriate to amend the corresponding provision under the Act, thereby indicating an explicit intention not to bring such a provision into the Act. Relying upon the parliamentary discussions, it was submitted that the Law Minister had specifically, at the time of discussion, indicated that the intention of the legislature was not to bring in a parity between the three different statutes. Learned counsel also submitted that Article 14 cannot be brought in matters of personal laws of different religions and each religion in the matter of marriage and divorce has to be treated separately until and unless a uniform civil code comes into force.

7. The above rival contentions, calls upon this Court to consider whether section 3(3) of the Act must be interpreted in a manner that would enable a wife to file a petition under the Act, before the Family Court within whose jurisdiction she



resides at the time of filing of the petition for divorce. At this juncture, it is worthwhile to note that the petitioner has not questioned the validity of the provision but has only sought for a declaration to read section 3(3) of the Act in a manner that enables her to file petitions under the Act in the court within whose jurisdiction she presently resides.

8. The argument can be comprehended better on a reading of the provision.

Section 3(3) of the Act, is hence extracted as follows:

*"3(3) "District Court" means, in the case of any petition under this Act, the court of the District Judge within the local limits of whose ordinary jurisdiction, or of whose jurisdiction under this Act the marriage was solemnized or the husband and wife reside or last resided together."*

9. In other words, petitioner contends that the courts must read section 3(3) of the Act as including the words "or wife resides" before the words "or last resided together" in the provision.

10. The provision as it presently stands, stipulates three jurisdictions under which a petition under the Act can be filed i.e.,

- (i) the District Court (Family Court) within whose jurisdiction where the marriage was solemnised, or
- (ii) the District Court (Family Court) within whose jurisdiction where the husband and wife reside, or,
- (iii) the District Court (Family Court) within whose jurisdiction the husband and wife last resided together.

11. Applicants are entitled to choose the jurisdiction of any of the three courts mentioned above. The statutory provision defining the District Court is simple, plain and unambiguous. There is no absurdity or ambiguity, warranting a different



interpretation to be adopted. No disastrous situation will ensue by ascribing the plain meaning to the provision. When the statute is plain, clear and simple, the provisions as enacted, cannot be read down. The contention that words not otherwise included in the statute must be added, is not a legally tenable argument in the present context.

12. It is an elementary principle of interpretation that, when the words of a statute are plain or unambiguous i.e., they are susceptible to only one meaning, the courts are bound to give effect to such a meaning, irrespective of the consequences that may ensue. This principle has its roots in the concept that the intent of the law giver is expressed by the words used in a statute and when it is precise or does not lead to any ambiguous interpretation, the outcome of such a construction should not be a concern for the court. Recently, the Supreme Court reiterated the principle in **Rajendra Bihari Lal v. State of Uttar Pradesh** [2025 INSC 1249] that “.....*It is a settled position of law that the intention of the legislature should be construed from the plain text of the statute, and if the plain interpretation does not result into any absurdity or is not unworkable, then the courts should not depart from the meaning which is manifest from the plain text. It is only in cases where the text does not speak for itself, or more than one interpretation is possible, that the courts should resort to tools of statutory interpretation.....*” The same proposition was laid down in the decision in **Raghunath Rai Bareja** (supra).

13. Further, when the words of a statute are capable of only one construction, it is not open for the courts to adopt any other interpretation on the ground that such a construction would be more in tune with provisions of other statutes. Moreover,



2026:KER:47197

when the words are plain and are capable of only one meaning, the duty of the court is to give effect to that meaning and not to construe the statute in a manner which would otherwise have been an ideal situation in the opinion of the litigating parties.

14. The argument of the learned Senior Counsel for the petitioner that the court must read into section 3(3) of the Act the words “or wife resides” before the words “or last resided together” is not a method of interpretation or construction of a statute, but a mode of legislative exercise which does not fall within the realm of the Court's jurisdiction. The contention raised on behalf of the petitioner is to persuade this Court to incorporate a special provision for women under the Act, by giving an extended jurisdiction for women alone. Of course, the Constitution of India permits special provisions to be made for women, but that is a matter of legislative exercise and not for the courts to indulge in. Adding words to a statute is a legislative function. Courts are not permitted to enter into the field of legislation. Apart from it, the language of the section being clear, it does not require any interpretation or construction. The court's function of ascertaining the legislative intention arises only if there is any ambiguity in the provision or the literal construction of a provision may be contrary to the legislative purpose or objective or may result in disastrous or absurd consequences.

15. Further, amendments brought into the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954 in 2003, enabling a wife, to whom those statutes are applicable, can file a petition before the court within whose jurisdiction she resides, cannot be a reason for this Court to add words into the Act. It is relevant to note



2026:KER:47197

that, despite being aware about the special provisions brought into the Hindu Marriage Act and the Special Marriage Act by amendment, the Parliament did not deem it fit to bring in such a provision in respect of divorce petitions under the Act for Christian women. As rightly contended by the learned counsel for the respondents, when it comes to personal laws, the principle of equality, cannot be attracted between the different statutes governing those falling within different communities. Every legislative differentiation need not be necessarily discriminatory, especially when it relates to personal laws of different communities. Parliament undoubtedly possesses a wide power of classification and can legally enact laws operating differently for different categories of persons or groups of persons, to give effect to its policies. Reference to the decisions in **Nazeer @ Oyoor Nazeer v. Shemeema** [(2016) SCC OnLine Ker 41064] and that of the Full Bench of Andhra Pradesh High court in **Gogireddy Sambireddy V. Gogireddy Jayamma and Another** [AIR 1972 AP 156] are appropriate in this context.

16. The contention of the learned Senior Counsel on behalf of the petitioner, that the provision as it stands now is harsh on Christian women, is also not a ground to add words to the statute. Even if it is assumed, to appreciate the said contention, that section 3(3) of the Act as it stands is harsh, nevertheless principles of interpretation of statute does not permit harshness of a provision to be a reason to read it down or add words, when the plain meaning is unambiguous and perfectly valid. Further, inconvenience caused by a statute or a rule framed thereunder, can never be a ground for annulling the same. Reference to the decision of the Supreme Court in **Authorised Officer, Central Bank of India v. Shanmugavelu**



[(2024) 6 SCC 641] as well as that of a Division Bench of this Court in **Sarala Baby v. State of Kerala and Others** [2010 (2) KLT 66] are relevant in this context.

17. Though strong reliance was placed by the learned Senior Counsel on the decision in **Independent Thought v. Union of India and Another** [(2017) 10 SCC 800] a reading of the said judgment will reveal that the approach adopted by the Court was on account of the peculiar situation that arose in the said case. The principles laid down in that case are distinguishable for several reasons. First and foremost there was a challenge against Exception 2 to section 375 of Indian Penal Code, 1860 (for short 'IPC'), which provided that “*Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape*” (the said challenge is seen to have been give up during arguments), in the present case, there was never any challenge against section 3(3) of the Act. The Prohibition of Child Marriage Act, 2006, the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO'), the Juvenile Justice (Care and Protection of Children) Act, 2015 and the Protection of Human Rights Act, 1993, all regard, as is done universally, that a child is a person below the age of eighteen, while the IPC does not make it an offence to have sexual intercourse with a child between fifteen and eighteen if she is the wife of the person. Hence, instead of striking down the provision, which would have led to disastrous consequences, the Court interpreted the provision in a manner that made the age to be read as eighteen, to make it in accord with similar statutes. Further, the issue arose under the criminal law where the same action would have resulted in imputing criminality under different statutes, but not under the IPC. It was in such circumstances that the Supreme Court felt it



2026:KER:47197

appropriate to harmonize all the laws. Even in that deliberation, the Supreme Court had observed in paragraph 107 that reducing the age of consent to 15 is for the Parliament to decide and also that bringing the POCSO Act in consonance with Exception 2 to section 375 IPC would also require an amendment. Thus the principle of harmonization directed in **Independent Thought** (supra), cannot be made applicable in the instant case.

18. Similarly, the decisions in **Saumya Ann Thomas** (supra) and **Mary Sonia Zachariah** (supra) are both distinguishable. In the former, the Court found that the stipulation of a higher period of 'two years' of mandatory separate residence for those to whom the Divorce Act applies was unconstitutional and hence read down the provision to mean 'one year'. In the latter case, the Court found the 'adultery' in Section 10 of the Act to be unconstitutional and by applying the doctrine of severability, struck down those words. Those cases have no application to the facts of the present case.

19. It is relevant to mention at this juncture that the entire grievance of the petitioner stems from the fact that she is unable to file a petition before the Family Court at Kasaragod as she is presently residing in Wayanad. The said inability does not lead to any disastrous consequences, even if it is assumed that the petitioner's allegations are true. The petitioner has the option under section 24 of Code of Civil Procedure, 1908 to seek transfer of the case from one court to another, and if the Court is satisfied, nothing prevents such a transfer. In fact in the decision in **Eldho Varghese v.Liya Jose** (2024 (5) KHC 528) a Division Bench of this Court has observed that the provision of section 3(3) of the Act is only for the purpose of



2026:KER:47197

institution of the suit and there is no bar in the original petition being transferred, based on the principles of law applicable and the circumstances of each case, to other appropriate courts. Such an option is always available to either of the parties and depending upon the circumstances of each case, the court is always free to decide whether a petition ought to be transferred to another court or not.

20. In view of the above deliberations, the contentions raised by the petitioner are without merit. Notwithstanding the lack of merit, it is strange to note, and unfortunate too, that despite incorporating a provision enabling a wife to file a petition for divorce at the place where she resides at the time of filing the petition under the Special Marriage Act, 1954 and the Hindu Marriage Act, 1955, such a provision has not been incorporated in the Divorce Act 1869. There is no justifiable reason not to incorporate such a provision in the Act. Parliament had, in the past, brought out sweeping changes in matrimonial legislation applicable to other religions by incorporating progressive and realistic grounds for divorce taking into account the changes in the nature of the family and the matrimonial relationship in the modern set up. Nevertheless, a provision enabling the wife to file petitions in the place where she resides has not been brought into the statute book. Hence in the interests of women, who are governed by the Act, the Parliament ought to earnestly consider incorporating a provision similar to those in the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954, enabling the wife to file a petition under the Act before the competent court within whose jurisdiction she resides, at the time of filing the petition.

With the above observations, this writ petition is dismissed. The Registry of



2026:KER:47197

this Court is directed to send a copy of this judgment to the Ministry of Law and Justice, Government of India, for appropriate consideration of the observations made in the penultimate paragraph of this judgment.

**Sd/-  
BECHU KURIAN THOMAS  
JUDGE**

vps



APPENDIX OF WP(C) NO. 8801 OF 2025

PETITIONER'S/S' EXHIBITS

- Exhibit P1 TRUE COPY OF THE MARRIAGE CERTIFICATE OF THE PETITIONER DATED 20.06.2011.
- Exhibit P2 TRUE COPY OF THE FIR DATED 20.4.2023 BEARING NO. 166/2023 WAS REGISTERED AT THE THONDARNADU POLICE STATION.
- Exhibit P3 TRUE COPY OF THE PETITION UNNUMBERED O.P. FILED BY THE PETITIONER BEFORE THE FAMILY COURT, KALPETTA.
- Exhibit P4 TRUE COPY OF THE NOTE RETURNING THE PETITION.
- Exhibit P5 TRUE COPY OF THE MARRIAGE LAWS (AMENDMENT) ACT, 2003.