

CNR : KLHC010537092026



2026:KER:64014

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MRS. JUSTICE PREETA A.K.

WEDNESDAY, THE 19<sup>TH</sup> DAY OF AUGUST 2026/28TH SRAVANA, 1948

W.A.NO.1407 OF 2026

AGAINST THE JUDGMENT DATED 30.06.2026 IN W.P(C).NO.8801 OF 2025  
OF HIGH COURT OF KERALA

APPELLANT(S)/PETITIONER:

BY ADV.SMT.JAYNA KOTHARI (SR.)  
BY ADV.KUM.THULASI K. RAJ  
BY ADV.SMT.CHINNU MARIA ANTONY  
BY ADV.SMT.MANJIMA  
BY ADV.SRI.TARUN PHILIP  
BY ADV.SRI.SARATH K.P.

RESPONDENT(S)/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



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4       JOSE  
          AGED 37 YEARS  
          S/O.ULAHANNAN, KUZHIKATTUKUNNEL HOUSE, KAMMADAM,  
          MANDAPAM P O KASARGODE DISTRICT - 671 326  
          NOW RESIDING AT KUZHIKATTUKUNNEL HOUSE,  
          NEELESHWARAN VIA, PERIYANGANAN P.O.,  
          KURUJERI, KASARGODE, PIN - 671314

          BY SRI.M.JAYAKRISHNAN, CGC, HCLSC PANEL ADVOCATE  
          BY SRI.T.P.SAJID, SENIOR GOVERNMENT PLEADER

          THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON  
13.08.2026, THE COURT ON 19.08.2026 DELIVERED THE FOLLOWING:



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"C.R."**J U D G M E N T****Dr. A.K. Jayasankaran Nambiar, J.**

The petitioner in W.P.(C).No.8801 of 2025 is the appellant before us, aggrieved by the judgment dated 30.06.2026 of a learned Single Judge, dismissing her writ petition.

2. The brief facts necessary for disposal of this writ appeal are as follows:

The appellant/writ petitioner had approached this Court through the writ petition aforementioned aggrieved by the rejection by the Family Court at Kalpetta of an application submitted by her for dissolution of her marriage. The Family Court had placed reliance on Section 3(3) of the Divorce Act, 1869 [hereinafter referred to as the "Act"] to reject the application on the ground that the court had no jurisdiction to entertain the application. The pleadings in the instant case would reveal that the appellant had left her matrimonial home at Kasaragod consequent to suffering severe domestic violence and is presently residing with her parents at Wayanad. 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 was only at



Kasaragod. It was the case of the appellant/writ petitioner before the writ court that although 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 was residing, a corresponding amendment was not brought to the Divorce Act, 1869, and hence, the provisions of Section 3(3) of the Divorce Act demonstrated a discrimination against women, which required to be corrected at the instance of this Court through a declaration that a wife is also entitled to maintain a petition for dissolution of marriage before the Family Court having jurisdiction over her place of residence. The learned Single Judge, who considered the writ petition, took note of the averments in the counter affidavit filed on behalf of the 1<sup>st</sup> respondent and taking note of the fact that the appellant/writ petitioner had not challenged the statutory provisions, found as follows at paragraphs 10 to 16:

“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.



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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, 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 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**



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**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."

3. In the appeal before us, Smt.Jayna Kothari, the learned senior counsel, instructed by Smt.Thulasi K. Raj, the learned counsel for the appellant, while reiterating her contentions before the writ court, submits that Section 3(3) of the Act has to be read in a manner that would enable the jurisdictional District Court, where the wife was residing on the date of presentation of the petition for annulment of marriage, to entertain the same for otherwise, it would result in serious prejudice to Christian women, who intend to file for divorce. It is her submission that the provision, as it presently stands, ignores the reality of Christian women who are thrown out of their matrimonial home and who do not have the resources to file cases before the court having jurisdiction over the place they last resided together as husband and wife or where their marriage was solemnized. It was her further contention that the non-inclusion of the court where the wife resides as one of the jurisdictional courts under Section 3(3) of the Act, effectively



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ignores the social reality and deprives a Christian woman of equal treatment with women of other religions.

4. Per contra, it is the submission of Sri.M.Jayakrishnan, the learned Central Government Counsel appearing on behalf of the 1<sup>st</sup> respondent that, as rightly observed by the learned Single Judge, in the absence of a challenge to the statutory provisions, it was not permissible for this Court to read words into a Statute and effectively amend the Statute. It is pointed out that although the Parliament had substantially amended the Divorce Act through the Indian Divorce (Amendment) Act, 2001, it had deliberately retained the language of clause 3 of Section 3 of the Act without alteration, and hence, changes to matrimonial jurisdiction cannot be made through judicial expansion of the statutory language, when the express provisions of the Statute clearly indicate a contrary intention.

5. We have considered the rival submissions and also examined the relevant statutory provisions. Section 3(3) of the Act reads as follows:

**“3. Interpretation-clause:-** In this Act, unless there be something repugnant in the subject or context,-

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- (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



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marriage was solemnized or, the husband and wife reside or last resided together.”

6. As already noticed by the learned Single Judge in the impugned judgment, the provision, as it presently stands, stipulates three courts before which a petition under the Act can be filed, namely,

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

7. It is not in dispute that the applicants may choose any of the three courts aforementioned for filing the application for dissolution of marriage. On the facts of the instant case, we find that the marriage of the appellant was solemnized in Kasaragod and she and her husband last resided together at Kasaragod. However, ever since she left her matrimonial home, she has been residing with her parents at Wayanad, whereas her husband continues to reside at Kasaragod. Thus, while for the purposes of the first and third limbs of the definition of 'District Court' under Section 3(3) of the Act, the jurisdictional family court would be the court at Kasaragod, the question that arises for consideration here is whether the second limb of the definition can be seen as separately conferring an option to both the husband and the wife to approach the family court having jurisdiction over the place of their separate residence?



8. In the impugned judgment, the learned Single Judge understood the arguments of the learned senior counsel for the appellant as seeking a declaration that the word “and” appearing in the second limb of the definition under Section 3(3), should be read as “or”, so as to enable both the husband and the wife to separately approach the respective family courts having jurisdiction over the place of their separate residence in connection with their matrimonial grievances. Keeping in mind the principle of separation of powers envisaged under the Constitution of India, and finding that courts ought not to embark upon a legislative exercise that was within the exclusive domain of a legislative body, the learned judge found that the clear statutory provisions could not be amended through a process of judicial interpretation.

9. In the appeal before us, however, the learned senior counsel points out that a vital aspect of her arguments before the writ court was not appreciated by the learned Single Judge. She clarifies that the prayer in the writ petition was not for a declaration that the word “and” appearing in the second limb of the definition under Section 3(3), should be read as “or” but rather for a declaration that Section 3(3) of the Act must be read in a manner that the jurisdictional District Court for filing petitions under the Act would include “*where the wife is the petitioner, the jurisdictional District Court where she is residing on the date of*



*presentation of the petition*". The said declaration, she argues, does not require the court to engage in a legislative activity of amending the Statute, but simply requires the court to interpret the statutory provision in a manner consistent with constitutional precepts and the objects of the Statute in question. She points out that when the Constitution of India envisages special provisions to be made for women to achieve substantive gender equality, and the *pari materia* provisions in other matrimonial statutes have been suitably amended to enable the wife, where she is the petitioner, to file a petition before the jurisdictional District Court where she is residing on the date of presentation of the petition, an interpretation of the second limb of the definition in Section 3(3) in a restrictive manner that prevents a christian woman from so approaching the jurisdictional District Court where she is residing on the date of presentation of the petition, has to be avoided.

10. We find force in the arguments of the learned senior counsel. It is trite that an interpretation of a statutory provision must be in a manner that avoids legislative surplusage or an unconstitutional result. If the jurisdictional District Court under the second limb of Section 3(3) is taken to be the same as the District Court within whose jurisdiction the husband and wife last resided together, then the second limb would have to be treated as an instance of legislative surplusage. It is a settled principle of interpretation of statutes that the court must always



assume that a legislature will not use words or phrases that are unnecessary or result in surplusage. Thus, the second limb must be seen as conferring a jurisdiction on other District Courts, different from that within whose jurisdiction the husband and wife last resided together, if as a matter of fact, they are residing separately in places within the jurisdiction of those courts. To treat the same District Court as the one referred to in both - the second and third limbs of Section 3(3) - would tantamount to treating the phrases "*within whose jurisdiction the husband and wife reside*" and "*within whose jurisdiction the husband and wife last resided together*" as meaning the same thing, which would be impermissible. For instance, in the present case, the marriage of the appellant was solemnized in Kasaragod and she and her husband last resided together at Kasaragod. However, ever since she left her matrimonial home, she has been residing with her parents at Wayanad, whereas her husband continues to reside at Kasaragod. If the second limb is seen as conferring jurisdiction only on the District Court within whose jurisdiction the husband continues to reside, then it will tantamount to ignoring the District Court within whose jurisdiction the wife actually resides in the backdrop of the statutory provision that confers jurisdiction on the District Court within whose jurisdiction "the husband and wife reside".

11. We are also of the view that when confronted with an ambiguous provision such as the above, we must resort to a purposive



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interpretation of the provision so as to give it a meaning that would make it align with the object of the Divorce Act and also render it compatible with the provisions of our Constitution. As was observed by the Supreme Court in **Gita Hariharan v. Reserve Bank of India - [(1999) 2 SCC 228]**, “if on one construction a given statute will become unconstitutional whereas on another construction, which may be open, the statute remains within the constitutional limits, the court will prefer the latter on the ground that the legislature is presumed to have acted in accordance with the Constitution and courts generally lean in favour of the constitutionality of the statutory provision”. In the instant case, the meaning to be given to the phrase “*within whose jurisdiction the husband and wife reside*” in the second limb of Section 3(3) of the Act has to be determined by placing the said provision in the context of the objects sought to be achieved by the said Act as also in the backdrop of the constitutional guarantee of gender equality envisaged for women under our Constitution. When doing so we have to bear in mind that Article 15(3) of the Constitution envisages the making of special provisions for women and children so that the ideal of substantive gender equality is realised. Acting on the mandate of Article 15(3) many amendments have also been carried out in other matrimonial statutes. Axiomatically, therefore, when the *pari materia* provisions in other matrimonial statutes have been suitably amended to enable the wife, where she is the petitioner, to file a petition before the jurisdictional District Court where she is residing on the date of



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presentation of the petition, an interpretation of the second limb of the definition in Section 3(3) of the Act in a restrictive manner that prevents a christian woman from so approaching the jurisdictional District Court where she is residing on the date of presentation of the petition, would be discriminatory to christian women and has to be avoided.

12. The same would be the result if we apply the interpretation technique that requires us to treat a statute as “always speaking”. As observed by the Supreme Court in **Dharani Sugars and Chemicals Limited v. Union of India and Others - [(2019) 5 SCC 480]**, whenever a change in social conditions produces a novel situation, which was not in contemplation at the time when the statute was first enacted, the court must not assume that the enactment does not apply to the new circumstances. Proceeding thus, we cannot ignore the parallel developments under our constitutional law while interpreting the statutory provisions under the Divorce Act. To treat a statute as always speaking, we have to take the statutory provisions as adhering to constitutional ideals and concepts as interpreted dynamically by the courts from time to time.

13. The upshot of the above discussions is that we are of the view that the impugned judgment of the learned Single Judge, to the extent it dismisses the writ petition of the appellant herein without granting the declaration as sought for by the appellant, to read Section 3(3) of the



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Act as enabling her to file petitions under the Act in the court within whose jurisdiction she presently resides, ought to be set aside, and we do so.

Resultantly, we allow this Writ Appeal, by declaring that Section 3(3) of the Act, and in particular, the second limb to the definition of “District Court” that clarifies that “the District Court (Family Court) within whose jurisdiction the husband and wife reside”, shall be seen as enabling a wife, when she is the petitioner, to present a petition under the Act before a District Court (Family Court) having jurisdiction over the place where she resides at the time of presenting the petition, notwithstanding that the said place may be different from the place where her marriage was solemnized or where she and her husband last resided together or where her husband presently resides.

**Sd/-**  
**DR. A.K.JAYASANKARAN NAMBIAR**  
**JUDGE**

**Sd/-**  
**PREETA A.K.**  
**JUDGE**

**prp/**