

- DAYANAND COLLEGE OF LAW, LATUR
- FAMILY LAW I
- LLB 1ST

THE HINDU MARRIAGE ACT,1955

- **Preamble** –
- This Act is passed to amend & to codify the law relating to marriage among Hindus. It lays down rules relating to –
 - a) solemnization & requirements of valid Hindu Marriage,
 - b) restitution of conjugal rights, judicial separation, nullity of marriage, divorce, legitimacy of children & other allied matters.

- **Short Title & Extent**

- **S.1 -**

- a) This Act may be called the “Hindu Marriage Act, 1955”.
- b) It extends to the whole of India except the State of Jammu & Kashmir & applies to Hindus domiciled in the territories to which this Act extends who are outside the said territories.
- c) The Act received the assent of the President on 18-9-1955 & came into operation on that day.

Who is a Hindu-

HINDUS UNDER CODIFIED LAW

- Under Section 2 (1) of Hindu Marriage act, 1955 any person would be considered a 'Hindu' for the purpose of law if he is:
- A person who is Hindu by Religion in any of its forms or developments, which includes a Virashaiva, a Lingayat or a follower of the Brahma, Parthana or Arya Samaj.
- a person professing the Hindu, Buddhist, Jain or Sikh religion.

(Also mentioned in Constitution of India- Article 25, Explanation II)

➤ a person who is not a Christian, Muslim, Parsi or Jew by religion will be governed by Hindu law unless it is proved that such person will not be governed by Hindu Law.

➤ Any Child legitimate or illegitimate both of whose parents are Hindus, Buddhists, Jains or Sikhs is Hindu.

➤ Any person who is a convert to the Hindu, Buddhist, Jain or Sikh Religion

□ **Perumal v. Ponnuswami (1971)**

- Perumal(Hindu man) married Annapazham (Christian lady), they were married as per Hindu ceremonies and rights and they also entered into an agreement that they shall be, henceforth, governed by Mitakshara Law.
- Later they got separated and Annapazaham started living separately with their son (ponnuswami)

➤ Ponnuswami later filled a suit for half of the property of his father Perumal, Perumal contended that the marriage with Annapazaham was illegal as she was Christian and Ponnuswami which was brought up by her cant claim Joint Family Rights.

➤ Supreme court said that Annapazaham and ponnuswami both are hindus because Annapazaham was still living as a hindu after separation and ponnuswami was also raised as a hindu.

- Supreme court held that Intention to become Hindu and further conduct shall be proof of conversion to hinduism, no formal ceremonies are necessary for conversion.
- In case there is a difference of religion as between the spouses in the Indian patriarchal set-up, usually the father's religion is appended to the child.
- That however is not the requirement of law and it is merely a customary practice that is not obligatory.
- If only one of the parents of a child is a Hindu then the pointer for determination of his religion is not the time of birth but the upbringing of the child.

- if he is being brought up as a member of only his Hindu mother's tribe or community, then notwithstanding that his father was a non-Hindu, he will carry his mother's religion and Hindu law can be applied to him.
- For example, Sanjay Gandhi, son of a Parsi father and a Hindu mother was a Hindu at the time of his death as he was brought up as a member of his mother's (Indira Gandhi's) community.

- **B) Conditions of Marriage under HMA,1955**

- **Sec.5 of HMA**

- A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled:
- **Neither party has a living spouse** at the moment of marriage
- At the time of marriage, neither party
 - a. **Is giving consent because of unsoundness of mind**
 - b. **Suffering from mental disorder** of such a kind or to an extent where **he/she is unfit for marriage and the procreation of children**

- Is subject to recurrent attacks of insanity
Bridegroom is **21** years, **bride** is **18** years
- Parties are **not within degrees of prohibited relationship** unless the custom or usage governing each of them permits for such a marriage.
- Parties **are not sapindas** of each other, **unless custom or usage permits**.

Section 3 (1)-Sapinda

- I. "Sapinda relationship" with reference to any person extends as far as the third generation! (inclusive) in the line of assent through the mother, and the fifth (inclusive) in the line of assent through the father, the line being traced upward in each case from the person concerned, who is to be counted as the first generation

II. two persons are said to be "sapindas" of each other if one is a lineal ascendant of the other within the limits of sapinda relationship, or if they have a common lineal ascendant who is within the limits of sapinda relationship with reference to each of them.

Rules for sapinda-

- Always goes upwards
- Mother-3 generation
- Father-5th generation
- Full/half/uterine relationship
- Legitimate/illegitimate relationship
- Blood/adoption relationship

Section 3 (g) Degrees of prohibited relationship

two persons are said to be within the degrees of Prohibited relationship

- i. if one is a lineal descendant of the other, or
- ii. if one was the wife or husband of a lineal ascendant or descendant of the other; or
- iii. if one was the wife of the brother or of the fathers or mothers brother or of the grand fathers. or grandmothers brother of the other,
or

iv. if the two are brother and sister, uncle and niece aunt and nephew, or children of brother and sister or of two brothers or of two sisters;

Rules for Prohibited relationship-

1. Full/half/uterine relationship
2. Legitimate/illegitimate relationship
3. Blood/adoption relationship

Sec. 7-Ceremonies for a Hindu Marriage.

- 1) A Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto.
- 2) Where such rites and ceremonies include the Saptapadi (that is the taking of seven steps by the bridegroom and the bride jointly before the fire), the marriage becomes complete and binding when the seventh step is taken.

- 3) **Saptapadi** as well as **Kanyadan** is not a **mandatory** ceremony to make a Hindu Marriage valid.
- 4) If some ceremonies took place which usually take place in a marriage, it is immaterial whether certain specific ceremonies like saptapadi or kanyadan took place or not.

Sec. 8- Registration of Hindu Marriages

Object-

- I. To preserve records of marriage,
- II. To facilitate furnishing proof of marriage in marital disputes
- III. To give legal status to wedlock
- IV. To strengthen the institutions of marriage
- V. To provide conclusive proof of such marriage
- VI. To curb social evils of child marriage & dowry.

1. All rules made under this section shall be laid before the State legislature, as soon as may be, after they are made.
2. Registration not mandatory- validity of marriage remains unaffected- contravention of this provision attracts penalty of 25/.
3. Notwithstanding anything contained in this section the validity of any Hindu Marriage shall in no way be affected by the omission to make the entry.

Gullipilli Sowria Raj v. Bhandaru Pavani (2009)

Christian man and Hindu women

Marriage is not valid even after registration, under

HMA only two Hindus can get married

Registration under HMA does not make a marriage

between a Hindu and non-Hindu valid

Special Marriage act is for that purpose.

Registration of a Hindu Marriage is not compulsory

Matrimonial Remedies

1. Restitution of Conjugal Rights (s/9)
2. Judicial Separation (s/10)
3. Void & Voidable Marriage (s/11&12)
(Nullity & Annulment of Marriage)
4. Divorce (s/13)
5. Divorce by Mutual Consent (s/13-B)

Restitution of Conjugal Rights

Section 9-Hindu Marriage Act, 1955

But we can also find provision for the same in

- Special Marriage Act, 1954 (**Section 22**)
- Indian Divorce Act (**Section 26**)
- Parsi Marriage and Divorce act (**Section 34**)

Conditions-

The husband or wife may get a decree for restitution of conjugal rights, where the wife or husband, as the case may be,

- a) has withdrawn from the society of other
- b) without reasonable excuse
- c) the court is satisfied of the truth of the statements made in the petition
- d) there is no legal ground why the application should not be granted.
- e) Marriage must be valid under s/5 of HMA,1955.

The Decree for Restitution of Conjugal Rights will be issued under **Order XXI Rule 32 of C.P.C**

Four Conditions for this Decree have to be fulfilled:

(i) The other spouse has withdrawn from the society of the petitioner.

-Withdrawing from society of other means without any reason terminating an existing relationship with the intention of forsaking the other, and permanently or indefinitely abandoning such relationship.

Even if husband and wife are living apart but maintain a regular social and conjugal (relationship relating to marriage) relationship it would not constitute 'withdrawing from society of other'

(ii) There is no reasonable excuse for such withdrawal. Should the respondent allege reasonable excuse, the burden of proof lies on him/her.

-The wife working and not resigning her job to live with the husband a reasonable excuse as long as she maintains a regular and frequent social and conjugal relationship.

(iii) The court's satisfaction as to the truth of the statements made in the petition.

(iv) No legal grounds exist for refusing the decree.

Constitutional validity of Section 9

3 very important Landmark Cases are there which discuss the constitutionality of Section 9

T Sareetha v. T Venkatta Subbaiah (1983)

- Andhra Pradesh High Court termed this section as violative of Article 21, 19 and 14, called it 'uncivilised', 'barbarous' and 'an engine of oppression
- The reasoning was that sexual cohabitation is integral part of the decree of Restitution of Conjugal right, So the decree basically makes the choice for the other person not only to live with their 'spouse' but also have sexual intercourse with him.

- The decree is taking away the autonomy of a person over its own body and nothing can conceivably be more degrading to human dignity and monstrous to human spirit than to subject a person by the long rope of the law to a positive sex act.

- It is violative of Article 14 because though it treats a man and a woman equally but the husband and wife are not on the same footing in society so it is not justice to treat them equally.

Harvinder Kaur v. Harmander Singh (1984)

- Delhi High Court took a very different approach on Section 9 and not only upheld the validity of it but also discussed its advantages.
- Court said introducing Constitutional law in family law is like "introducing a bull in a china shop"
The "Restitution' is not only of sexual intercourse but it is for cohabitation and there is nothing barbarous or coercive about it.
- The court said that 'A disproportionate emphasis on sex, almost bordering on obsession, has coloured the views of the learned judge.

- The court cited Section 23(2) and 23(3) which provides measures to reconcile the couple before giving a decree of divorce. Court called Section 9 as the 'litmus test' for divorce, if the restitution decree is disobeyed, it is a ground for divorce.
- So section 9 provides 2 purposes, first is the attempt of reconciliation and second as a measure of divorce because the law gives the parties a ground for divorce under Section 13 (1 A) if they don't resume cohabitation for 1 year after the decree of restitution is passed by court'

Saroj Rani v. Sudershan Kumar (1984)

- In this case the supreme court agreed with Harvinder Kaur v. Harmander Singh.
- Court discussed that the financial sanction by way of attachment of properties which has been provided for disobedience of the decree (under Order XXI Rule 32 of CP.C), is only an inducement for the parties to live together in order to give them an opportunity to settle their differences amicably.
- Court said the right of the husband or the wife to the society of the other spouse is not merely a creature of the statute. Such a right is inherent in the very institution of marriage itself There are sufficient safeguard in Sec. 9 to prevent it from being a tyranny.

Mode of Execution of decree for restitution of conjugal rights-

- Order 21 Rules 32 & 33 of CPC, 1908 – if such decree is not obeyed, the decree may be enforced by attachment of his property or by his detention in civil prison or by both. Where such attachment remains in force for 1 year & party still not obeys such decree, the decree holder may apply for sale of attached property for compensation.
- Court does not physically compel party to restore cohabitation. It is a step for getting divorce u/s 13 after the expiry of 1 year from the date of decree of RCR.

The following grounds have been held to be valid considerations for living separately, disentitling the other spouse to a decree for restitution of conjugal rights:

- a) Grossly indecent behavior.
- b) Extravagance of living on the part of the wife effecting the financial position and prospects of the husband.
- c) Excessive drinking carried to such a degree as to render it possible for the duties of married life to be discharged.
- d) Persistence in a false charge against the respondent of having committed an unnatural offence.
- e) Refusal of marital intercourse without sufficient reason.

- f) Apprehension of violence due to development of insanity in the petitioner
- g) Agreement to live separately;
- h) Misconduct approaching cruelty but falling short of it. Where the wife used to be habitually beaten by the husband and neglected to be provided with food the Court held that the attitude of the husband amounted to legal cruelty and constituted a ground for refusal of a decree under Section 9 of the Act.
- i) Imputation of unchastity persisted in by the husband.

Judicial Separation

- Does not put an end to marriage, the real purpose of judicial separation is to enable the spouses, now relieved of their matrimonial duties towards each other, to reconsider their position, taste "single" living again and attempt in a less emotional and urgent atmosphere to piece their lives and their futures together once again.
- After one year of Judicial Separation "Divorce' may be granted.
- Section 10 of Hindu Marriage Act provides for Judicial Separation.

Section 10. Judicial Separation.

- (1) Either party to a marriage, whether solemnized before or after the commencement of this Act, may present a petition praying for a decree of judicial separation on any of the grounds specified in sub-section (1) of section 13 and in the case of a wife on any of the grounds on which a petition for divorce might have been presented.
- (2) Where a decree for judicial separation has been passed, it should no longer be obligatory for the petitioner to cohabit with the respondent,

but the Court may, on the application by petition of either party and on being satisfied of the truth of the statements made in such petition, rescind the decree, if he considers it just and reasonable to do so.

Under Section 10 (2) if the parties take steps and if the court is satisfied by the truth of the statements, the court can rescind the decree of Judicial separation.

The grounds under Section 13 are actually grounds for divorce but **Section 13(A) provides for alternate relief of Judicial Separation even when the case is filled for Divorce.**

Section 13A. Alternate relief in divorce proceedings.

In any proceedings under this Act, on a petition for dissolution of marriage by a decree of divorce, except in so far as the petition is founded on the grounds mentioned in clauses (i), (vi) and (vii) of sub-section (1) of section 13, the Court may, if it considers it just so to do having regard to the circumstances of the case, pass instead a decree of judicial separation

So except for Sub section **(ii) Conversion, (vi) Renunciation, (vii), Presumed Dead**

incidents and effects of judicial separation.-

1. That the marriage tie is not dissolved.
2. That after the passing of the decree of judicial separation, the husband and Wife are not bound to live together or dine together as judicial separation is separation from bed and board.
3. After the decree of judicial separation it will not be obligatory for the parties to cohabit with each other.
4. It does not prevent the parties from subsequently resuming cohabitation and living together as husband and wife as originally they did. It is not necessary for them to undergo the ceremony of marriage again because their original marriage still subsists in spite of the decree of judicial separation.

5. if either spouse marries during that period, he or she will be guilty of bigamy and will be liable for punishment prescribed by Section 17 of this Act.
6. The petitioner, if she be the wife, becomes entitled to alimony from the position of the marriage due obligations husband, and if he is the husband he can claim maintenance from wife under Section 25 of this Act.
7. The wife shall, from the date of the decree and till separation continues, be considered as a *feme sole*, i.e. "independent woman" with respect to property of every description.
8. The mutual rights and obligations arising from the marriage are suspended and the rights and duties prescribed by the decree are substituted therefore.

A) Grounds for both husband & wife-

- i) Adultery
- ii) Cruelty
- iii) Desertion
- iv) Conversion
- v) Unsoundness of mind
- vi) Leprosy
- vii) Venereal disease
- viii) Renunciation of world
- ix) Presumed death

i) Adultery-

Where the other party has, after the solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse. under the Marriage Laws (Amendment) Act, 1976, the expression "living in adultery" has been dispensed with and it has been replaced by a simple requirement of adultery, that is, Voluntary sexual intercourse with any person other than his or her spouse. And thus, even a single act of adultery may be sufficient now for the relief under this head.

ii) Cruelty-

Where the other party has treated the petitioner with cruelty.

iii) Desertion-

Where the other party has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition.

Desertion in the context of matrimonial law represents a legal conception. It is difficult to give a comprehensive definition of the term. The essential ingredients of desertion in order that it may furnish a ground for relief are:

1. The factum of separation;
2. The intention to bring cohabitation permanently to an end
3. The element of permanence which is a prime condition requires that both these essential ingredients should continue during the entire statutory period of not less than two years.

The expression "desertion" means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party and includes the willful neglect of the petitioner by the other party to the marriage.

iv) Conversion-

Where the other party has ceased to be a Hindu by conversion to another religion.

v) Unsoundness of mind-

Where the other party has been of incurable unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

The expression 'mental disorder' means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind. and includes schizophrenia. Further, the expression psychopathic disorder means a persistent disorder or disability of mind which results in abnormally aggressive or seriously irresponsible conduct on the part of the other party, and whether or not it requires or is susceptible to medical treatment

vi) Leprosy-

Where the other party has been suffering from a virulent and an incurable form of leprosy.

vii) Venereal disease-

Where the other party has been suffering from venereal disease in a communicable form.

viii) Renunciation of world-

Where the other party has renounced the world by entering any religious order.

ix) Presumed death-

Where the other party has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of it had that party been alive.

B) Grounds available for wife alone-

i) Bigamy

ii) Rape, sodomy or bestiality

iii) Non-resumption of cohabitation after decree or
order of maintenance

iv) Option of puberty

i) Bigamy-

In the case of any marriage solemnized before the commencement of this Act, that the husband had married again before such commencement or that any other wife of the husband married before such commencement was alive at the time of the solemnization of the marriage of the petitioner

ii) Rape, Sodomy or Bestiality-

That the husband has since the solemnization of the marriage, been guilty of rape or sodomy or bestiality

iii) Non-resumption of cohabitation after decree or order of maintenance-

That where a suit under Section 18 of the Hindu Adoptions and Maintenance Act or in a proceeding under Section 125 of the Code of Criminal Procedure, 1973, a decree or order, as the case may be. has been passed against the husband awarding maintenance to the wife and that since the passing of such decree or order, cohabitation between the parties has not been resumed for one year or upwards

iv) Option of puberty-

That her marriage was solemnized before she attained the age of fifteen years and she has repudiated the marriage after attaining the age of fifteen years but before attaining the age of eighteen years.

3. VOID & VOIDABLE MARRIAGE(SS.11&12)

VOID (S. 11)

Marriage violating any one conditions mentioned u/s 5 of Act such as-

1. Monogamy (S. 5(i))
2. Prohibited degree relationships (S. 5(iv))
3. Sapinda Relations (S. 5(v))

Effects- Since inception marriage is void & no marriage at all i.e. void ab initio

Children-A/c to S/16 children born out of void marriage deemed to be legitimate, even if decree of nullity has been passed declaring marriage as null & void. They can claim to the property of parents & not to the property of other relations.

- **Women** – The parties of void marriage do not become husband & wife so it does not give rise to mutual rights & obligations with each other. The court merely passes a decree declaring a marriage as void.
- The parties may perform another marriage without getting a decree declaring their marriage as void & neither will be guilty of bigamy.
- A wife cannot claim maintenance u/s 125 of Cr.P.C.,1973

- **VOIDABLE MARRIAGE (S. 12)**

- It is one which can be avoided at the option of one of the parties to marriage & remains valid for all practical purpose.
- poses until & unless its validity is questioned.
- Aggrieved party can repudiate marriage by filing a petition for annulment of marriage under any of following
- **grounds-**
 - 1) Impotency
 - 2) Unsoundness of mind
 - 3) Use of force or fraud to obtain consent &
 - 4) Pregnancy by some other at the time of marriage

- **1)Impotency –**
- Inability to have conjugal intercourse or incapacity to consummate marriage. It may be mental or physical. The mental impotency relates with psychological repugnance to sexual act whereas physical impotency refers to structural defects in the organs.
- **Case – Rajinder v. Shanti AIR 1978 P&H 181**
Wherein it was held that if impotency is curable either by treatment or by surgical operation & the respondent is willing for such operation or treatment it would not amount impotency.

2) Unsoundness of Mind-

- After the amendment of 1976, following three circumstances of unsoundness where either party at the time of marriage –
 - A)** is incapable of giving a valid consent
 - B)** though capable of giving a valid consent, has been suffering from mental disorder leading to be unfit for marriage & procreation of children or
 - C)** has been subject to recurrent attacks of insanity or epilepsy.

Alka Sharma v. Abhinesh Chandra Sharma,

- The Madhya Pradesh High Court held that even schizophrenic state of mind would constitute a ground of mental disorder of such a nature which would be sufficient for granting a decree of nullity under this section.
- In this case the wife was found so cold, frigid and nervous on first night of marriage that no consummation could take place. She was unable to handle domestic appliances and she also urinated in presence of all family members.
- It was held that the wife suffered from schizophrenia and the husband was entitled to decree of nullity of marriage.

3. Consent obtained by Force or Fraud –

- **Force-** The expression "force" has not been defined in the Act. This expression has been given a wide connotation in the context of marriage. It means not only the actual use of force, but threat to use force also. If the consent has been induced or compelled as a result of an apprehension of injury threatened or inflicted, it would be regarded to have been obtained by force. -
- **Case- Rice v. Rice** –a woman was forced to marry a man who showed a pistol threatening to blow out her brain, it was held that the consent was obtained by force.

Nand Kishore v. Snt. Munni Bai,

The Madhya Pradesh High Court has held that the terms force and fraud mean those conditions in which there is absence of real consent. The term fraud has been used in the sense which lacks the element of consent and there is an intention to defraud. Here it is not to be understood in that sense in which has been used in Section 17 of the Indian Contract Act.

In Som Dutt v. Smt. Raj Kumari

decided by the Punjab High Court, the husband sought annulment of marriage for fraud committed upon him by his wife in concealing her true age from him and thereby inducing him to marry a woman much older than him in age. It was held that the marriage was liable to be annulled due to gross matrimonial fraud committed upon the husband with regard to the age of his wife.

4. Pregnancy at the time of marriage-

- If the wife is pregnant by some other at the time of marriage, husband can file a petition for decree of nullity of marriage on following
- **conditions-**
 - A) He was ignorant of the fact
 - B) Proceedings have been instituted **within 1 year** of marriage
 - C) Marital intercourse with consent of petitioner has not taken place.

DISTINCTION BETWEEN VOID & VOIDABLE MARRIAGE

VOID MARRIAGE

1. Sec. 11 of HMA, 1955
2. Void marriage is void ab initio.
3. Marriage does not exist in the eyes of law.
4. The court simply passes decree of nullity since it has no existence.

VOIDABLE MARRIAGE

1. Sec. 12 of HMA, 1955
2. It is valid until court annuls it.
3. Marriage exists & continues to be valid unless challenged u/s 12.
4. The court passes decree after considering necessary conditions.

VOID MARRIAGE

- **5.** Parties can remarry without decree of nullity from the court.
- **6.** Wife cannot claim maintenance u/s 125 of Cr.P.C.
- **7.** Parties are criminally liable.
- **8.** First wife as well as third party affected can bring a suit in court for declaring it void.

VOIDABLE MARRIAGE

- 5.** Parties can not do so.
- 6.** Wife can claim maintenance.
- 7.** Parties are not laid down with penalty.
- 8.** Only the parties have a right to apply for annulment of marriage.

DIVORCE (SEC. 13)

Meaning –

- It is a process by which marriage is dissolved.
- Parties are free to remarry.
- Petition for divorce can not be filed within 1 year of marriage.
- A petition for divorce is to be filed in District Court.

In Ishwar Singh v. Smt. Hukam Kaur,

- it was held that mere severance of all connections with wife because of his ill-health and allowing her to remarry any person she likes cannot amount to divorce within the meaning of Section 13 of the Act, because a divorce which could result in the dissolution of a solemnized marriage has to be obtained by one of the two parties on presentation of a petition from a competent court.
- So long as such a divorce has not been obtained, the marriage subsists, and therefore second marriage cannot be contracted by a Hindu.
- Grounds for divorce laid down in the provisions of the Hindu Marriage Act are the only grounds under which divorce could be granted to the parties governed by the same and the court is not free to create a new ground of

When parties can file for divorce -

Under Section 14 of Hindu Marriage Act, parties can not file for divorce unless at the time of petition one year has elapsed since the date of marriage. (Exceptional cases can be heard)

When can divorced parties remarry - Under section 15 if there lies no appeal to the decree of divorce or if the time period of filling an appeal has expired then the parties can remarry.

The remedies available for Divorce Under Hindu law can be divided into three parts.

Grounds Available to both
Husband and Wife sec
13(1)

- ADULTERY
- CRUELTY
- DESERTION
- CONVERSION
- MENTAL DISORDER
- VENEREAL DISEASE
- RENUNCIATION
- PRESUMED DEAD

SECTION 13 (1-A)

- No resumption of cohabitation for one year or more after Judicial Separation Decree
- No restitution of conjugal rights for one year or more after passing decree

GROUND'S Available Only
To Wife Section 13(2)

- Husband married again (BIGAMY)
- Husband proven guilty of Rape, Bestiality or Sodomy
- Maintenance Decree passed under 125 Cr.P.C. OR sec. 18 of HAMA and no cohabitation for 1 year or more
- Marriage solemnized when wife was U-15 and she repudiated the marriage before she was 18.

Mutual
Consent
Divorce
Section 13-B

Grounds Available For Husband & Wife Both Section 13 (1)

1. Adultery
2. Cruelty
3. Desertion
4. Conversion
5. Insanity
6. Leprosy
7. Venereal Disease
8. Renunciation of World
9. Unheard for 7 years
10. After decree of judicial separation
11. After decree for RCR

1. Adultery section [13 (1) (i)]

Sexual Intercourse (Voluntary) with any person other than his or her spouse.

Sec. 497 IPC provides that a person having sexual intercourse with wife of another is punishable for imp. for **5 years/fine/both.**

- It is a ground only against adulterer
- Even single instance lays good ground

➤ adultery is held to be not a crime.

➤ But it is still a ground for divorce.

Recently in **Joseph Shine Vs. Union of India (2018)**

adultery is held to be not a crime.

But it is still a ground for divorce

2. Cruelty[section 13 (1)(1-a)]

It was a ground only for JS but after 1976 it is available for both JS & divorce.

S. 498-A IPC (1983)- Cruelty implies -

i) such willful conduct likely to drive woman to commit suicide or to cause grave injury or danger to life, limb or health (mental/physical) of woman or

ii) mental/physical harassment of woman aiming to coerce her/related person to meet unlawful demand for any property or valuable security.

It may be physical or mental.

Narayan Ganesh Dastane v. Sucheta Narayan Dastane (1975)

Court laid down tests for determining whether the case qualifies for cruelty or not.

The tests laid down in determining whether a given conduct amounts to legal cruelty is as follows:

1. The alleged acts constituting cruelty should be proved according to the law of evidence
2. There should be an apprehension in the Petitioner's mind of real injury or harm from such conduct
3. The apprehension should be reasonable having regard to the condition of the parties
4. The Petitioner should not have taken advantage position
5. The Petitioner should not have condoned the acts of cruelty

Although the term 'cruelty' has not been defined in the Act, yet for the purposes of establishing an act of cruelty it should be so serious and weighty that cohabitation becomes impossible. It should be somewhat more serious than ordinary wear and tear of routine marital life. In **Indira Gangele v. S.K. Gangele**, only some misunderstanding between parties was established. It was held that merely saying that parties are unhappy is not enough, not even unruly temper of a spouse or whimsical nature of a spouse is enough. Wherever cruelty is to be examined the entire background of the life of the parties to marriage has to be considered. In matters of divorce continuous acts of cruelty has to be established

In **V. Bhagat v. D. Bhagat**,

it was observed that mental cruelty in Section 13(1)(ia) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. Mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner.

Naveen Kohli v. Neelu Kohli,

- the Apex Court reiterated the well-established view that to constitute cruelty, the conduct complained of should 'grave and weighty so as to come to the conclusion that the petitioner spouse cannot be reasonably expected to live with the other spouse.
- It has to be noted that ordinary wear and tear of life should not be confused with cruelty. The courts should help to preserve marriages.
- Too much should not be made out of petty instances of things said or done, until parties have had time to know each other and settle down.

➤ Where the spouses had differences in their early period of marriage but after the birth of a son, no serious incidents or problems deserving consideration have taken place the husband seeking divorce on the ground of cruelty could not succeed.

➤ The temperament of spouses may not be conducive to each other and it may result in petty quarrels but that could not be held to be a ground of divorce.

3. DESERTION[section 13(1) (1-b)

- Where the petitioner has been deserted continuously for a period not less than two years immediately preceding the presentation of the petition for judicial separation or divorce, such petition may be granted.
- The expression 'desertion' means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party and includes the willful neglect of the petitioner by the other party to the marriage. There must be marriage.
- "Desertion" means withdrawing from the matrimonial obligation, i.e., not permitting or allowing and facilitating the cohabitation between the parties.

Bipinchandra Jaisinghbal Shah Vs. Prabhavati (1957)

it was said that 'desertion could be concluded by inference only. whether desertion has happened or not depends upon the facts and circumstances of the case

The following could be used to prove desertion:

1. One party has abandoned the other party
2. By abandoning married life has ended and that is the intention behind abandoning
- 3 No reasonable ground for abandoning

4. No consent of the person deserted

5 The deserted person has not given any cause to the desertor so that he/she may behave in this way.

6 Desertion has been for more than 2years before the application for divorce is made.

4. Conversion

- Conversion to another religion is one of the ground for divorce. Under Section 10 which provides for judicial separation, conversion to another religion is now a ground for a decree for judicial separation after the Act was amended by Marriage Laws (Amendment) Act, 1976.
- Change of religion does not ipso facto dissolve the marriage performed under the Hindu Marriage Act between two Hindus.

- Apostasy does not bring to an end the civil obligations or the matrimonial bond, but apostasy is a ground for judicial separation under Section 10 of the Hindu Marriage Act.
- A decree for divorce can be obtained by a petitioner where the opposite party has ceased to be a Hindu by conversion to another religion e.g., Islam, Christianity, Judaism or Zorostrianism

5. Unsound mind or mental disorder

- To an extent that the other party cannot be expected to live with the spouse.
- Now under the Amendment Act of 1976 incurable unsoundness of mind or continuous or intermittent mental disorder of such a nature as to disable the petitioner to live reasonably, with the respondent makes the petitioner eligible to get a decree of divorce.
- The term 'mental disorder has been very widely interpreted so as to include mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia.

- In **Ram Narain Gupta v. Smt. Rameshwari Gupta**,
- the Supreme Court elaborately described about the degree of mental disorder which will enable an aggrieved party to a marriage to obtain a decree of divorce.
 - The court held that the context in which the idea of unsoundness of 'mind' and "mental disorder" occur in the section as grounds for dissolution of a marriage, require the assessment of the degree of the "mental disorder".
 - Its degree must be such as that the spouse seeking relief cannot reasonably be expected to live with the other, All mental abnormalities are not recognized as grounds for decree of divorce.

➤ It the mere existence of any degree of mental abnormality Could justify dissolution of a marriage, few marriages would, indeed, survive in law.

Schizophrenia" true is said to be difficult mental affliction.

➤ Not all schizophrenias are characterized by the same intensity of the disease. The mere branding a person as schizophrenic therefore will not suffice for purposes of Section 13 (1) (i1).

6. Leprosy [Section 13(1)(iv)].-

Here the spouse presenting the petition has to show that the other spouse has been suffering from a virulent and incurable form of leprosy.

In **Swarajya Laxmi v. Dr. G.G. Padma Rao**, the Supreme Court held that lepromatous leprosy is virulent. This type of leprosy is malignant and contiguous. It is also an incurable form of leprosy and entitles the other spouse to a decree for divorce. The petitioner brought the divorce petition against the respondent on the ground of lepromatous leprosy and it was decreed.

7. Venereal disease [Section 13(1)(v)].-

It is essential for petitioner to prove that the opposite party has been suffering from venereal disease in a communicable form. We note that for divorce it is not specifically required that the disease shall not have been contracted from the petitioner, but this requirement is to be supplied from the "own wrong" provision of Section 23(1)(a).

8. Renunciation of world [Section 13(1)(vi)].-

- Renunciation of world is regarded tantamount to civil death and therefore it is given as a ground for a decree of divorce.
- A person, however, does not become a sanyasi by merely declaring himself a 'sanyasi or by wearing clothes of sanyasi. He or she must perform the ceremonies necessary for entering the class of sanyasi, without such ceremonies he cannot be regarded dead for worldly purposes

9. Presumed death [Section 13(1) (vii)].-

➤ The clause provides that either party may seek divorce on this ground if the other party has not been heard of as being alive, for a period of seven years or more by those persons who would naturally have heard of it, had that party been alive.

➤ Thus the aggrieved party may marry again and have legitimate children. If the second marriage is performed on the basis of presumption of death without getting a decree of divorce, no person other than the missing spouse can question the validity of the second marriage.

Case- Gurdit Singh v. Mansingh, (1977) 1 SCC 791
Once divorce is obtained under this ground & if the spouse makes appearance no offence of bigamy is committed & validity of second marriage can not be challenged.

10- Non-resumption of cohabitation after decree for judicial separation [Section 13(1-A) (1)].-

➤ provides that either party to a marriage may present a petition for dissolution of the marriage by a decree of divorce on the ground that there has been no resumption of cohabitation between the parties to the marriage for a period of one year or more after the passing of a decree for judicial separation in a proceeding to which they were parties.

➤ A party will be entitled to a decree of divorce if a decree of judicial separation has already been passed and the other party has not resumed cohabitation within one year thereafter.

➤ Cohabitation does not necessarily depend on whether there is sexual intercourse between husband and wife. If there is sexual intercourse, it is very strong evidence—it may be conclusive evidence—that they are cohabiting, but it does not follow that because they do not have sexual intercourse they are not cohabiting.

➤ Cohabitation implies something different from mere residence. It must mean that the husband and wife have begun acting as such and have resumed their status and position as husband and wife.

11. Failure to comply with the decree for restitution of conjugal rights [Section 13(1-A)].-

- A party will be entitled to a decree of divorce also when a decree for restitution of conjugal rights has been passed and it has not been complied with within one year of the passing of such a decree.
- The spouse who fails to comply With it would do so at his or her risk and it would not be necessary for the aggrieved spouse to prove that he or she had made positive efforts to make the other party comply with the same and it would suffice to show that there was no compliance with the decree.

➤ Where the wife in good faith came to settle with the husband after passing of the decree of restitution of conjugal rights and stayed with him for some time but later on due to ill-treatment of the husband, she had to leave the husband's place, it cannot be said that the wife was guilty of non-compliance of the decree of restitution of conjugal rights.

➤ Hence the husband under the circumstances would not be entitled to get a decree of divorce against the wife on that basis.

In the case of Smt. Bimla Devi v. Bakhtawar Singh,

➤ it has been held that the provisions of Section 23 (1) (a) cannot be invoked to refuse the relief under Section 13(1-A)(ii) on the ground of non-compliance of a decree of restitution of conjugal rights where there has not been restitution of conjugal rights as between the parties to the marriage for a period of one year or onwards after the passing of decree for restitution of conjugal rights in proceeding in which they were parties.

Grounds available to wife alone-

- **1. Bigamy**
- **2. Sexual Offences (Rape, Sodomy or Bestiality)-**
 - Rape (Sec. 375 IPC)
 - Sodomy & Bestiality (Sec. 377 IPC)
- **3. Order/Decree of Maintenance-**
- **4. Repudiation of Marriage-**

Essential Conditions-

- I) The petitioner should be wife.
- II) There should be a decree of maintenance passed under S. 18 of HAMA, 1956 or u/s 125 of Cr.P.C, 1973.
- III) Non resumption of cohabitation between husband & wife for 1 year or more after passing a maintenance decree under the aforesaid acts

- **4. Repudiation of Marriage-**

- If her marriage was performed before she attained age of 15 years, she can apply for divorce before attaining 18 years of age (whether the marriage was consummated or not). If marriage not consummated she can avail this even after attainment of 18 years of age.
- **Case- Kamlesh v. Chameli Singh**
- Held, if she repudiates her marriage before 18, she is entitled to file for divorce even after 18 yrs of age.

- **5. Divorce by Mutual Consent (Sec. 13-B) –**
- It was inserted through **1976 Amendment.**
- Both the parties are ready to separate from each other.

Procedure-

- Both the parties should make a petition jointly stating that they have been living separately **for a period of 1 year or more & they have not been able to live together & also that they have agreed that the marriage should be dissolved.**

- Section 13-B (I) of the Act lays down that on the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to sub-section (1) given above and not later than eighteen months after the said date.
- if the petition is not withdrawn in the meantime, the Court shall on being satisfied. after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnized and that averments in the petition are true, pass a decree of divorce, declaring the marriage to be dissolved with effect from the date of the decree.

- The underlying idea for divorce by mutual consent may be treated from the principle that if the marriage under most of the matrimonial Acts is a civil contract, contract based on certain conditions with the mutual consent of the parties, then the parties must be given discretion to finish that contract of marriage.
- However, although the basis has been derived from the common principle of a civil contract, yet the marriage contract cannot be equated with contract under the Indian Contract Act.
- Parallel to the provision of Section 28 of the Special Marriage Act, divorce by mutual consent, has been provided under Section 13-B of the Hindu Marriage Act.

Three essentials of divorce by mutual consent.

According to Section 13-B, following are the three essentials-

1. that both the parties have been living separately for a period of one year or more,
2. that both the parties have not been able to live together;
3. that both the parties have mutually agreed that their marriage should be dissolved.

After filing petition the parties may withdraw it. If not withdrawn, the court may **after 6 months & before 18 months** pass a decree for divorce, after hearing the parties.

It is remarkable here that according to Section 23(1)(bb) of the Act, the consent petition of divorce by mutual consent must not be obtained by force, fraud or undue influence. If any of the element mentioned above is found to be present in the agreement the application is liable to be rejected by Court on finding the truth of the case.

The Bombay High Court held that if all the three ingredients of Section 19 proved, divorce under this section cannot be refused.

In Ravishanker v. Smt. Sharda, the M.P. High Court

➤ declared that nothing to indicate that parties seeking divorce by mutual consent are required to prove anything in addition to that laid down in Section 13-B.

➤ The view that a ground which existed earlier, in addition to that contained in Section 13-B, should also be proved, would result in nullifying the very object of providing this new ground of divorce by insertion of Section 13-B.

In Raj Vinod v. Smt. Durga Devi,

➤ where the parties reached to a consensus that they cannot happily live together as husband and wife since their separation was for a substantial period of sixteen years. As a result of the consensus, they decided to present joint divorce petition and the divorce by mutual consent allowed.

in **Ashok Hurra v. Rupa Bipin Zaveri,**

➤ the Supreme Court has held that Sureshta Devi's decision that "consent can be withdrawn at any time before decree is passed" are too wide and requires reconsideration. In this case, the petition for divorce by mutual consent was pending for a considerably long period and the wife had not withdrawn her consent within 18 months from the date of presentation of petition.

➤ Neither divorce decree could be passed nor reconciliation could be brought about between the spouses. Moreover, during the pendency of the divorce proceedings, the husband had contracted another marriage and begot a child.

- Civil and criminal proceedings were also filed by the spouses against each other during pendency of the suit. In view of the above facts, the Supreme Court held.
- Held the cumulative effect of the various aspects' in the case indisputably point out that the marriage is dead, both emotionally and practically... and there is To lapse of years since the filing of the petition; existence of such a state of affairs warrant the exercise of the jurisdiction of this court under Article 142 of Constitution and grant a decree of divorce by mutual consent..... and dissolve marriage between the parties.

➤ It is curious to note that in this landmark decision the Supreme Court has dissolved the marriage under Sec. 13B of Hindu Marriage Act by exercising its power under 142 of the Constitution of India so as to meet the ends of justice. Another significant point has been that considering the blameworthy conduct of the husband, the Apex Court has directed him to pay Rs. ten lakhs as condition precedent for the decree of divorce.

DISTINCTION BETWEEN JUDICIAL SEPARATION & DIVORCE

Judicial Separation

1. Sec. 10 of HMA, 1955

2. Conjugal rights are suspended.

3. It keeps the marriage alive.

4. Parties cannot remarry during this period.

5. Object- To unite the couple.

Divorce

1. Sec. 13 & 13-B of HMA, 1955

2. Marriage is dissolved.

3. It ends marriage.

4. Parties are free to remarry after divorce.

5. Object- To live independently & also to remarry.

Judicial Separation

6. It can subsequently be rescinded by the Court.

7. It becomes a ground for divorce if there is no cohabitation between the parties for a period of 1 year or more after it's passing.

8. It is a less drastic remedy as compared to divorce.

Divorce

6. It can not be subsequently rescinded by the Court.

7. It is not so in case of divorce.

8. It is a more drastic remedy as compared to judicial separation.

Maintenance pendente lite & Expenses Proceedings (Sec. 24)

- It is an **interim maintenance** generally payable from the date of filing of petition till the termination of proceeding. It may be claimed in all the four matrimonial causes u/s 9,10,11 & 13 of the HMA, 1955.
- **Provision for interim maintenance includes-**
 - A) personal maintenance of the claimant, &
 - B) expenses of the proceedings.
- The **needy husband/wife** can apply for it anytime during the pendency of proceedings.

- **Deciding factors –**

A) position & status of the parties

B) reasonable wants of claimant towards food, clothing, shelter, medical attendance & treatment, education & the like

C) income of the claimant

D) income of the opposite party & number of persons depending on him/her.

- **Case-** [Remani Menon v. K.G. Omankuttan, AIR 2004 Guj. 23](#)

Permanent Alimony & Maintenance (S. 25)-

Needy **husband/wife** can apply to the court for permanent alimony & maintenance.

- It includes such **gross/monthly/periodical sum** up to the life of applicant for maintenance & support.

-Deciding factors-

I) Respondent's own income & other property,

II) Applicant's own income & other property,

III) The conduct of the parties &

IV) Other circumstances of the case.

- Even respondent's immovable property may be charged

- The court is empowered to **vary, modify or rescind** such Order, as it deems fit, on account of change in circumstances.

Cancellation of Order –

I) Remarriage

II) Unchastity (wife)

III) Sexual intercourse outside wedlock (husband)

Case- Lalit Mohan v. Tripta Devi, AIR 1990 J&K 7.

Held **S.24 & 25** aims at avoiding starvation of wife or husband with no independent income sufficient for living or meeting litigation expenses & such a relief can be granted to husband as well.

Custody of Children (S.26) & Appeals (S. 28

In any proceedings under this Act, the Court can pass such interim orders & make certain provisions for **custody, maintenance & education of minor children.**

Petitioner has to file an application in this regard before the court.

The **paramount interest & welfare of the children** is considered.

The court **can order the custody of children** to either of parents/third person or an institution. Where parents are separated & one is allowed custody of child then other parent has access to such children. The directions by the court in such cases are to be followed.

- **Case – Padmaja Sharma v. Ratan Lal Sharma, AIR 2000 SC 1398-**
- Held, where the husband & wife both are earning members , the wife is equally obliged to contribute towards the maintenance of her children in proportion to her salary.
- **Appeals (S.28) – Appeals u/s 25 & 26 –**
- **within 90 days from the date of decree or order.**

Court to which Petition shall be presented (S. 19)

S. 19 – Every petition under this Act shall be presented to **District Court** within the local limits of whose ordinary original civil jurisdiction-

I) Marriage was **solemnized**, or

II) **Respondent**, at the time of presenting petition, **resides**, or

III) Parties to marriage **last resided together**, or (where wife is the petitioner, where she is residing on the date of presentation of petition), or

IV) Where petitioner is residing in case of where respondent is residing outside the territories to which **this act extends or has not been heard of as being alive for 7 years or more** by those persons who would naturally have heard of him if he were alive.

S. 21-A-Power to transfer petitions in certain cases-

If two petitions for matrimonial relief by both the parties are presented in the same Court, they should be clubbed together. If the two are in different courts, the last filed petition should be transferred the court in which the earlier petition was already pending.

[Authority – (Court/Government)]

Sec. 21-B – The Trial Court should conclude the trial **within 6 months** of service of notice on the respondent. Similarly the Appellate Court should conclude the hearing the Appeal **within 3 months** of service of notice of appeal on the respondent.

Sec. 22 – Proceedings to be in **camera** & may not be printed or published (except the judgment of H.C./S.C) with the previous permission of the court. Otherwise he shall be punishable with **fine up to 1000/-**.