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# Divorce under Hindu Law: An Analysis

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## ABSTRACT

*The term "Divorce" was unknown to the traditional Hindu system. Traditionally, in Hindu communities, marriage was viewed as a sacrament and unbreakable, reflecting beliefs about the sanctity of marital vows and their connection to spiritual, moral and societal order. The role of women in family was very much restricted towards rearing of children and taking care of the home. The status of women has always been secondary to that of men and in patriarchal societies. Also, the social, economic, educational, marital, cultural and religious status of women in our society was inferior to that of men. Even today, in the 21st century, Indian patriarchal society, women do not have the same status as men. Considering the social relations between men and women at different levels of social life, it could be seen that women do not get equal status with men in all aspects of social life like family, religion, caste and culture. This inequality has resulted in enormous growth of violence against women that led to the need for regulating the personal matters of various religious groups. Accordingly, the Hindu Marriage Act came into effect on 18th May 1955, for protecting of rights and interests of the persons belonging to Hindu community with specific reference to marriage, matrimonial reliefs, maintenance, custody of children etc., The act has provided with various grounds for divorce under Section 13. This article is throwing light on the grounds for divorce provided under Section 13 of the Hindu Marriage Act with some important case laws.*

**Keywords:** Divorce, Grounds, Hindu Law, Section 13.

## I. INTRODUCTION

Divorce is the golden key to the cage of marriage. The term 'divorce' comes from the Latin word *divortium* which means to turn aside; to separate. It is the legal cessation of a matrimonial bond. Divorce means putting an end to the marriage by dissolution of marital relations. The parties can no longer be husband and wife. Almost all the personal laws of various religious groups have provided with various matrimonial reliefs either in the nature of temporary or permanent. The temporary reliefs are restitution of conjugal rights and judicial separation and the permanent relief is divorce. For obtaining this permanent relief various grounds are provided by the respective personal laws of Hindus, Muslims and Christians.

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## **II. GROUNDS FOR DIVORCE UNDER THE HINDU MARRIAGE ACT, 1955**

The Hindu Marriage Act, 1955 has provided various for obtaining the decree of divorce. The grounds on which the divorce is taken in accordance with Sec 13 of the Hindu Marriage Act, 1955 is as follows:

Sec 13. Divorce: (1) Any marriage solemnized whether before or after the commencement of this Act, may on a petition presented by either the husband or the wife, be dissolved by a degree of divorce on the ground that the other party-

- i. has, after the solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse; or
- (ia) has, after the solemnization of the marriage, treated the petitioner with cruelty; or
- (ib) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition.
- ii. has ceased to be a Hindu by conversion to another religion; or
- iii. has been incurably of 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; or
- iv. Omitted<sup>2</sup>.
- v. has been suffering from venereal disease in a communicable form; or
- vi. has renounced the world by entering any religious order; or
- vii. 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.

Section 13(1A) Either party to a marriage whether solemnized before or after the commencement of this Act, may also present a petition for the dissolution of the marriage by a decree of divorce on the ground-

- i. that there has been no resumption of cohabitation as between the parties to the marriage for a period of one year or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties.
- ii. that there has been no restitution of conjugal rights as between the parties to the marriage for a period of one year or upwards after the passing of the decree for restitution of

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<sup>2</sup> Omitted by the Personal Laws (Amendment) Act, 2019.

conjugal rights in a proceeding to which they were parties.

Section 13 (2): A wife may also present a petition for the dissolution of her marriage by a decree of divorce on the ground,-

- i. 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.

Provided that in either case the other wife is alive at the time of the presentation of the petition, or

- ii. that the husband has, since the solemnization of the marriage, been guilty of rape, sodomy or bestiality; or
- iii. that in a suit under section 18 of the Hindu Marriage Act, 1956, or in a proceeding under section 125 of the Code of Criminal Procedure, 1973 or under the corresponding section 488 of the Code of Criminal Procedure, 1898, a decree or order, as the case may be, has been passed against the husband awarding maintenance to the wife notwithstanding that she was living apart and that since the passing of such decree or order, cohabitation between the parties has not been resumed for one year or upwards;
- iv. that her marriage (whether consummated or not) was solemnized before she attained the age of fifteen years and she has repudiated after attaining that age but before the age of eighteen years.

Section 13A: Alternate relief in divorce proceedings:

In any proceeding 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 (ii), (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 for judicial separation.

Section 13B: Divorce by mutual consent:

Subject to the provisions of this Act, a petition for dissolution of marriage by a decree of divorce may be presented to the district court by both the parties together, whether such marriage was solemnized before or after the commencement of the Marriage Laws (Amendment) Act, 1976, on the ground that they have been living separately for a period of one year or more, and that they have not been able to live together and that they have mutually agreed that the marriage

should be dissolved.

On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in sub-section (1) 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 enquiry as it thinks fit, that a marriage has been solemnized and that the 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. It is significant to note that after the Act came into force, a marriage can be dissolved only under the provisions of this Act or exceptionally, under custom permitting divorce. No marriage can be dissolved by "an arrangement to live separately". It may be pointed out further that there can be no divorce for consideration even if the parties agree to it. Thus where there were no grounds for divorce under sec 13 nor there a petition for divorce by mutual consent under section 13-B, the Orissa High Court order dissolving a marriage on the husband paying Rs. 10 lakhs to the wife and the wife consenting to it, was set aside in appeal by the Supreme Court in a case *Sanjeeta Das v. Tapan Kumar Mohanty*, (2010) II DMC 568 SC. The court observed:

"No court can assume jurisdiction to dissolve a Hindu marriage simply on the basis of the consent of the parties de hors the grounds enumerated under sec 13 of the Act, unless of course the consenting parties proceed under sec 13-B of the Act".

Dissolution of marriage through panchayat as per custom prevailing in that area and in that community cannot be a ground for granting a divorce decree under sec 13 of the Act.

The Madras High Court had ruled in *Subbarama Reddiar vs Saraswathi Ammal (1996)*, that a single act of adultery is sufficient grounds for divorce or judicial separation. The unwritten taboos and laws of social decency in this nation, particularly in village regions, must necessarily be taken into account. Unless an excuse is given that is consistent with an innocent interpretation, the only conclusion that the court of law can draw from the fact that an unknown person was found alone with a young woman past midnight in her apartment, in an actual physical juxtaposition, is that the two have committed an act of adultery together.

#### **(A) Adultery as a Ground for Divorce:**

The Madras High Court had ruled in *Subbarama Reddiar v Saraswathi Ammal*<sup>3</sup>, that even a single act of adultery is sufficient ground for divorce or judicial separation. But before the Marriage Laws (Amendment) Act, 1976, living in adultery was a ground for divorce.

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<sup>3</sup> AIR 1967 MADRAS 85.

In *Joseph Shine vs Union of India (2018)*<sup>4</sup>, the Supreme Court declared that adultery is not a crime and repealed Section 497 of the Indian Penal Code, 1860. It has been noticed that two people may separate if one of them cheats, but attaching crime to infidelity is taking things too far. Also, under the provision punishing adultery, the woman was considered to be the property of the husband as it was the husband who was given the right to prosecute the other man and not the wife. Further, the wife was not even considered as an abettor to the crime. Therefore, it was clear that the provision only sought to protect the proprietary rights of the husband over his wife. Adultery is a private problem, and how a couple handles it is a matter of extreme privacy. This lack of moral commitment in marriage, which damages the relationship, has been left to the couple's discretion. They have the option to proceed with the divorce if they so want.

### **(B) Cruelty as a ground for divorce under the Hindu Marriage Act, 1955:**

The Hindu Marriage Act, 1955 provides cruelty as a common ground for both the husband and wife to apply for a decree of divorce. Cruelty is broadly defined as any conduct that would cause reasonable apprehension in the mind of the petitioner that it is harmful or injurious to live with the respondent. It can be physical or mental, intentional or unintentional, and is a subjective concept that varies in each case depending on the facts and circumstances.

Physical cruelty refers to any act or conduct that causes bodily harm or poses a threat to the life, limb, or health of one spouse by the other spouse. It includes physical violence, assault, or any other form of harmful behaviour that endangers the physical well-being of the victim. In cases of physical cruelty, a spouse can file for divorce or seek legal protection. Mental cruelty refers to the infliction of emotional or psychological distress on one spouse by the other spouse. It includes behaviour or conduct that is of such a nature that it makes it impossible for the victim spouse to live with the other spouse. Mental cruelty can take various forms, such as constant humiliation, verbal abuse, harassment, neglect, threats, or persistent indifference towards the well-being of the other spouse. The concept of mental cruelty is subjective and depends on the facts and circumstances of each case. There is no exhaustive list of acts or behaviours that constitute mental cruelty, as it can vary based on individual experiences and cultural contexts.

### **(C) Some important cases relating to Cruelty as a ground for divorce:**

The Hon'ble Supreme Court in various cases held that, cruelty can be physical as well as mental. If it is physical, it is a question of fact and degree. If it is mental, the enquiry must begin as to the nature of the cruel treatment and then as to the impact of such treatment on the mind of the spouse. Whether caused reasonable apprehension that it would be harmful or injurious to live

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<sup>4</sup> AIR 2018 SC 4898.

with the other, ultimately, is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse<sup>5</sup>.

In *Dastane v. Dastane*<sup>6</sup>, the Hon'ble Supreme Court held that, the foundation of a sound marriage is tolerance, adjustment and respecting one another. Tolerance to each other's fault to a certain bearable extent has to be inherent in every marriage. Petty quibbles, trifling differences should not be exaggerated and magnified to destroy what is said to have been made in heaven. All quarrels must be weighed from that point of view in determining what constitutes cruelty in each particular case and as noted above, always keeping in view the physical and mental conditions of the parties, their character and social status. A too technical and hyper-sensitive approach would be counter-productive to the institution of marriage. The Courts do not have to deal with ideal husbands and ideal wives. It has to deal with particular man and woman before it. The ideal couple or a mere ideal one will probably have no occasion to go to Matrimonial Court.

In *Shobha Rani vs Madhukar Reddi*<sup>7</sup>, the Hon'ble Supreme Court held that the test for cruelty is whether the conduct of the respondent is of such a nature that the petitioner cannot reasonably be expected to live with the respondent. It is to be noted that the concept of cruelty is ever-changing and cannot be defined with precision.

In *Naveen Kohli vs Neelu Kohli*<sup>8</sup>, the Hon'ble Supreme Court held that false allegations of adultery, mental illness, and impotence can amount to mental cruelty. It also noted that in cases of mental cruelty, it's not necessary to prove physical injury or danger to life.

In *K. Srinivas Rao vs. D. A. Deepa*<sup>9</sup>, the Hon'ble Supreme Court held that the petitioner must show a consistent pattern of behaviour by the respondent to prove cruelty. It noted that occasional outbursts of anger or quarrels do not necessarily amount to cruelty.

*Rani Narasimha Sastry vs Rani Suneela Rani*<sup>10</sup>, merely because the respondent has sought for maintenance or has filed a complaint against the petitioner for the offence punishable under Section 498-A of IPC, they cannot be said to be valid grounds for holding that such a recourse adopted by the respondent amounts to cruelty. It is true that it is open for anyone to file complaint or lodge prosecution for redressal for his or her grievances and lodge a first information report for an offence also and mere lodging of complaint or FIR cannot ipso facto

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<sup>5</sup> *Samar Ghosh vs. Jaya Ghosh* (2007) 4 SCC 511.

<sup>6</sup> AIR 1975 SC 1534.

<sup>7</sup> (1988) 1 SCC 105.

<sup>8</sup> AIR (2006) SCC 1675.

<sup>9</sup> (2013) 5 SCC 226.

<sup>10</sup> (2020) 18 SCC 247.

be treated as cruelty. But when a person undergoes a trial in which he is acquitted of the allegation of offence under Section 498-A of IPC, levelled by the wife against the husband, it cannot be accepted that no cruelty has meted on the husband.

In *Jayachandra v. Aneel Kaur*<sup>11</sup>, it was observed by the Supreme Court that must be of the type as to satisfy the conscience of the Court that the relationship between the parties had deteriorated to such an extent due to the conduct of the other spouse that it would be impossible for them to live together without mental agony, torture or distress, to entitle the complaining spouse to secure divorce. Physical violence is not absolutely essential to constitute cruelty and a consistent course of conduct inflicting immeasurable mental agony and torture may well constitute cruelty within the meaning of Section 10 of the Act. Mental cruelty may consist of verbal abuses and insults by using filthy and abusive language leading to constant disturbance of mental peace of the other party.

In *Dastane v. Dastane*<sup>12</sup>, the Hon'ble Supreme Court held that, the foundation of a sound marriage is tolerance, adjustment and respecting one another. Tolerance to each other's fault to a certain bearable extent has to be inherent in every marriage. Petty quibbles, trifling differences should not be exaggerated and magnified to destroy what is said to have been made in heaven. All quarrels must be weighed from that point of view in determining what constitutes cruelty in each particular case and as noted above, always keeping in view the physical and mental conditions of the parties, their character and social status. A too technical and hyper-sensitive approach would be counter-productive to the institution of marriage. The Courts do not have to deal with ideal husbands and ideal wives. It has to deal with particular man and woman before it. The ideal couple or a mere ideal one will probably have no occasion to go to Matrimonial Court.

In the case of *Joydeep Majumdar vs. Bharti Jaiswal Majumdar (2021)*<sup>13</sup>, the Apex Court observed that for dissolution of marriage at the instance of the party who alleged mental cruelty, the impact of such mental cruelty must be that it is not possible to continue the marital relationship. The wrong party cannot be expected to condone such conduct and continue to live with his or her spouse. The degree of tolerance required in every case would be different, depending from couple to couple with reference to their background, level of education, and the status of parties.

The Telangana High Court in the case of *D. Narsimha vs. D Anita Vaishnavi (2024)*, held that

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<sup>11</sup> 2005 SCC 22.

<sup>12</sup> AIR 1975 SC 1534.

<sup>13</sup> AIR 2021 SC 1165.



the act of a spouse to damage the reputation, social, standing, or work prospects of another would be considered cruelty, Further depriving the spouse of being on social media websites like Facebook and Instagram may also amount to cruelty.

The concept of cruelty is ever-changing and varies from case to case. The Hon'ble Supreme Court has laid down guidelines that the petitioner must show a consistent pattern of behaviour by the respondent to prove cruelty. False allegations, denial of sex, unjustified refusal to have children, and excessive demands for dowry are some of the factors the court has taken into consideration while deciding cases of divorce on the ground of cruelty under the Hindu Marriage Act.

**(D) Desertion as a ground for divorce:**

Desertion is a ground for divorce under section 13 (1) (i-b) of Hindu Marriage Act, 1955. The word desert means to abandon, cease to frequent, withdraw one's held or attendance. The court held that desertion means abandonment and implies an action of withdrawal from a cohabitation that exists. According to Section 13 (1) (i-b), 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 wilful neglect of the petitioner by the other party to the marriage. When one spouse leaves the other in a manner which is not justifiable, the deserted spouse has a remedy through court of law by way of matrimonial reliefs. However, It is not defined in the Act purposely because this can be decided by the court by case by case based upon the facts and circumstances of each case. It is a variable concept in a progressive society and its meaning changes with time. It is a dynamic concept. Desertion refers to total abandonment of matrimonial obligations.

In *Bipin Chander Jaisinghbhai Shah v. Prabhawati*<sup>14</sup>, it was held that if a spouse abandons the other in a state of temporary passion, for example, anger or disgust without intending permanently to cease cohabitation, it will not amount to desertion. The following ingredients must be fulfilled for desertion:

- i The factum of separation i.e., living apart and away from the deserted spouse.
- ii Animus deserendi i.e., an intention to bring cohabitation to an end permanently
- iii Desertion should have been without any reasonable cause.
- iv It should have been without the consent of the petitioner and
- v It should have been for a continuous period of two years, immediately preceding the

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<sup>14</sup> AIR 1957 SC 176; *Lachman Utamchand Kiriplani v. Meena*, AIR 1964 SC 40.

presentation of the petition in the court. The period of two years must be a continuous period and it must run up to the date of the filing of the petition in the court. Desertion is completed, when the factum of separation and animus deserendi co-exist.

In *Durga Prasanna Tripathy v. Arundhati Tripathy*<sup>15</sup>, the petition for divorce filed by the husband on the ground that his wife deserted him after 7 months of marriage. Parties were living separately for about 14 years. Attempts were made by the husband and his relatives in getting back wife to matrimonial home with no success. Records showed that the parties disliked each other. There were no chances of reconciliation and then court granted divorce on the ground of desertion.

In another case, the parties to the marriage were living separately for last more than a decade. Attempts were made for reconciliation between them, but such attempts were of no effect. There was no chance of both living together to continue their marital life. In order to do justice between the parties the Supreme Court dissolve their marriage under Article 142 read with section 13 (1)(ib) of the Hindu Marriage Act<sup>16</sup>. Where a husband serving in the army goes to his house in dehradun during vacation but the wife does not allow him to enter house and misbehaves with him. It was held that the husband was entitled to a divorce decree on the ground of wife's desertion<sup>17</sup>.

Sections 14 of the Hindu Marriage Act states that, no petition for divorce can be presented within one year of marriage, except in exceptional cases. The court can allow a petition before one year if the case is one of exceptional hardship to the petitioner and the respondent is exceptionally deprived. Further, in disposing of any application under this section for leave to present a petition for divorce before the expiration of one year from the date of the marriage, the court shall have regard to the interests of any children of the marriage and to the question whether there is a reasonable probability of a reconciliation between the parties before the expiration of the said one year.

When the divorced persons may marry again is explained under Section 15 of the Hindu Marriage Act, 1955. When a marriage has been dissolved by a decree of divorce and either there is no right of appeal against the decree or, if there is such a right of appeal, the time for appealing has expired without an appeal having been presented, or an appeal has been presented but has been dismissed, it shall be lawful for either party to the marriage to marry again.

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<sup>15</sup> AIR 2005 SC 3297.

<sup>16</sup> *Manju Kumari Singh v. Avinash Kumar Singh*, AIR 2018 SC 3629.

<sup>17</sup> *Pramod Bijalwan v. satendra Dutt*, AIR 2008 NOC 508.

### **III. CONCLUSION**

Marriage is considered as a sacrament in Hindu culture. It is creating a religious and legal bond between the husband and wife. The marriage tie vested with them, the responsibility of creating a family of their own. Based on the patriarchal system which was prevailing in the Mithakshara School of Hindu Law, the social roles of husband and wife were derived. Men were played vital role in the family whereas women were not be treated equally. Before the Hindu Marriage Act of 1955, there was no allowance for divorce, as it was deemed too extreme for Indian society of that era. Women were the unseen sufferers under this stringent system. The notion of divorce was not acknowledged, and it was expected that a woman would adapt, accept and compromise with all familial relations. However, with the introduction of the Hindu Marriage Act in 1955, the concept of divorce and corresponding provisions began to evolve to meet the needs of an ever-changing society.

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