

HINDU LAW: LAW OF DIVORCE IN INDIA

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INTRODUCTION

Divorce signifies the termination of marriage through a competent court. This paper provides an overview of the concept of divorce. As we all know, in ancient India, this concept did not exist. They thought marriage was a holy concept. According to Manu, a married couple cannot be separated from one another; their matrimonial bond cannot be broken. Later, the concept of divorce came into existence.

The marriage would end if it were dissolved by mutual consent, and it had to be an illegitimate marriage, according to Kautilya's Arthshastra. On the other hand, Manu opposes the concept of divorce and sees the death of one of the spouses as the only means of ending the marriage. The Hindu Marriage Act of 1955 established a provision on the meaning of marriage. The act establishes divorce as a legal alternative.

DEFINITION AND MEANING OF DIVORCE

According to the dictionary, divorce means the "legal end of a marriage." However, the law defines divorce or dissolution of marriage as the "legal termination of the marital relationship." Patricia Diedrick describes divorce "as a highly turbulent life event creating consequences that range from destruction to relief."

THEORETICAL APPROACHES TO DIVORCE

Fault theory, Mutual Consent Theory and the Irreversible Dissolution of Marriage Theory are the three main theories of divorce.

FAULT THEORY

The offence or guilt theory is also known as the fault theory. According to this principle, a marriage can only be ended if both parties have committed a matrimonial offence such as adultery, cruelty, or other similar offences. However, it is necessary to have both, i.e. a guilty and an innocent party, since only an honest party can seek divorce relief. There is no recourse if one of the parties is at fault.

MUTUAL CONSENT THEORY

According to Kautilya's Arthashastra, a marriage can be ended by mutual consent in the case of an unauthorised marriage. Section 13B of the Hindu Marriage Act, 1955 now provides for consensual divorce.¹ They want to get rid of each other peacefully forever, according to this theory. It defines a time limit for the disputing party to reconsider and withdraw their consent by consultation.

In *Smt. Jayashree Ramesh Londhe v. Ramesh Bhikaji Londhe* case², the court held that either party could revoke the petition after analysing the matter about divorce through mutual consent and thus, a party can withdraw prior consent that was not obtained by fraud, undue influence, or coercion.

IRREVERSIBLE DISSOLUTION OF MARRIAGE THEORY

According to this theory, marriage breakdown is characterised as "a collapse in marital relationships or in such unfavourable circumstances for this kind of relationship that there is no

¹ Hindu Marriage Act, 1955, s. 13B.

² *Smt. Jayashree Ramesh Londhe v. Ramesh Bhikaji Londhe*, AIR 1984 Bom 302.

fair chance for the spouses to be together as husband and wife again.” These marriages must be resolved with the utmost fairness and the least amount of bitterness, misery and humiliation. Therefore, divorce is neither a preference nor an appearance, and it is permissible only for grave causes.

In the case of **K. Srinivas Rao v. D.A. Deepa**³, the court held that the irreversible breakdown of a marriage is not a basis of divorce beneath the Hindu Marriage Act, 1955. However, in cases where a marriage is dissolved due to animosity induced through the acts of either the husband or the wife, or both, the courts have often dealt with the irreversible breakdown of marriage as a difficult alternative situation, among other things inflicting marital separation. If the parties cannot do so, a marriage that has disintegrated for all intents and purposes cannot be reinstituted through a court order.

CHANGES BROUGHT BY THE HINDU MARRIAGE ACT OF 1955

There are various changes made under The Hindu Marriage Act, 1955 some of them are as follows:

- This newly codified law brought Radical and significant modifications to Old Hindu Law.
- The marriage circumstances are clarified; it initiated the concept of monogamy and made bigamy punishable below IPC, 1860.⁴
- All restrictions are removed, and people can marry inter-caste and inter-religion.
- The marriage can only be solemnised as per section 7 of the act.
- The provision relating to judicial separation and divorce, and annulment has been elaborated in detail by the Act.

³ K. Srinivas Rao v. D.A. Deepa, (2013) 5 SCC 226.

⁴ Indian Penal Code, 1860, s. 494.

- Restitution of conjugal rights and the concept of remarrying after a valid divorce have been provided under this Act.

THE GROUNDS FOR DIVORCE ARE MENTIONED BELOW IN THE HINDU MARRIAGE ACT OF 1955

In the current Hindu Law, these 3 theories of divorce are identified, and a person can be separated on the grounds of any one of them.⁵ The Act of 1955 initially depends on these theories mentioned above and cherished 9 fault grounds beneath section 13(1), where both the parties could claim divorce. While under section 13(2), two fault grounds are also mentioned where the spouse could solely get the divorce. However, through a modification in 1964, a definite proviso of section 13(1) was revised in the frame of section 13(1A). Hence, conceding two grounds of the failure of the matrimonial relation. However, two extra fault grounds of divorce are embedded in the 1976 amendment Act for spouse and a new section 13B for divorce through common consent.

Section 13 of the Hindu Marriage Act, 1955 provides for the grounds on which divorce can be sought. Thus, a decree/order of divorce can be obtained on the following grounds:

ADULTERY

It is mentioned beneath section 13(1)(i). Earlier, adultery was recognised as a criminal offence in India, but it has been decriminalised in a recent Supreme Court judgment. Adultery refers to voluntary sexual intercourse between people who are married to anyone else of the opposite sex. Through the “Marriage Law Amendment Act” of 1976, the “Hindu Marriage Act” stipulated the method of adultery. Intermarriage continues to be used as the basis for seeking a divorce from a spouse who has committed adultery.

According to the Hindu Marriage Act of 1955, the basic elements of adultery are as follows:

- If she has sexual intercourse with a married or unmarried person of the contrary sex.
- The Intercourse must be intentional and consenting.

⁵ <https://www.lawctopus.com/academike/divorce-under-hindu-law/> access on April, 3, 2021, 10:04 am.

- Marriage was prevalent at the time of law.
- There must be concrete environmental evidence to prove the burden of the other party.

In the case of **Swapna Ghose v. Sadanand Ghose**⁶, the spouse discovered that her husband was lying on the same bed with another woman at night. Other evidence from the neighbours also showed that he made a mistake. Thus, the wife gets a divorce.

Therefore, the truth of the circumstances is that direct evidence of adultery is scarce. Only two things can prove it;

- Circumstantial evidence
- Infection with venereal disease

CRUELTY

It is mentioned beneath section 13(1)(i-a) of the Hindu Marriage Act of 1955. Cruelty is a term that evolves over time. It includes both mental and physical cruelty. It is described as behaviour by one spouse towards the other that causes rational apprehension in the latter's mind that it is not safe to continue the matrimonial relationship with the other. Mental cruelty is more challenging to prove than physical cruelty.

In **Pravin Mehta v. Indrajeet Mehta** case⁷, the court regarded mental abuse as a “mental state.”

The examples which amount to cruelty are as following:

- Wrong and incorrect accusations of adultery or unchastity
- dowry compulsion
- Intercourse between a married couple and their child is denied
- The birth of a child
- Impotence

⁶ Swapna Ghose v. Sadanand Ghose, AIR 1979 Cal 1.

⁷ Pravin Mehta v. Indrajeet Mehta, AIR 2002 SC 2528.

- Intoxication
- Threat of Suicide
- Wife's writing incorrect and wrong accusation against the husband's employer
- Mood mismatch
- Irreversible marriage failure

The examples which do not amount to cruelty are as follows:

- The normal wear and tear of married life
- Preventing the wife from resigning from her job
- Desertion per se
- Tantrum without malice

DESERTION

It is mentioned under section 13(1)(i-b). Desertion means the abandonment through one person to all the responsibilities of marriage. In other words, we can say that the permanent rejection of one spouse through the other spouse without any appropriate justification and besides his consent.

The following 5 conditions must be present to constitute desertion:

- Fact of separation
- Animus deserendi (Desert Intent)
- Abandonment without any excuse or justification
- Abandonment without the permission of another
- The Statutory two-year must have expired before a petition was filed.

The Supreme Court held in **Bipin Chander Jaisinghbhai Shah v. Prabhavati** case⁸ that, if the defendant exits the matrimonial house to flee, he will not be held liable for abandonment if he expresses a desire to return and is prevented from doing so through the plaintiff.

⁸ Bipin Chander Jaisinghbhai Shah v. Prabhavati, AIR 1957 SC 176.

CONVERSION

It is mentioned under section 13(1)(ii). It states that if a spouse ceases to be a Hindu after converting to another religion such as Christianity, Islam, or another, a divorce may be issued.

In *Suresh Babu v. Leela* case⁹, the husband marries some other woman by converting himself into a Muslim. Due to this, the spouse Leela filed a lawsuit and claimed divorce in addition to consent and cruelty.

INSANITY

It is mentioned under section 13(1)(iii). Insanity comes into a picture when an individual is of unsound mind or being insane. There are two requirements of insanity that need to be followed as a ground of divorce. For example: If the spouse is not in a condition to perform the ordinary responsibilities that he or she is required to discharge due to some mental disorder, then, in that case, divorce can be sought, provided that the stated unsoundness of mind should of a period not less than 3 years.

- The accused was chronic without a sound mind.
- The defendant was constantly or intermittently afflicted with this sort of mental disorder, to the point that the appellant could not presume to coexist equally with him.

LEPROSY

It is mentioned beneath section 13(1)(iv). Leprosy is an infectious disease that affects the skin, mucous membranes, nervous system, and other organs. It can be passed on from one person to the next. Thus, due to its contagious nature, it has been kept as a ground for divorce. This clause has been excluded by Personal Laws (Amendment) Laws, 2019.

⁹ Suresh Babu v. Leela, AIR 2006 (3) KLT 891.

In the case of **Swarajya Lakshmi v. G.G. Padma Rao**¹⁰, the husband filed a lawsuit against his wife, demanding divorce due to leprosy that expert reports cannot cure. Therefore, he successfully obtained the divorce based on primary reasons.

VENEREAL DISEASE

It is mentioned beneath section 13(1)(v). In this case, if the disease is contagious, it can be regarded as the cause of divorce under the Hindu Marriage Act of 1955. For example, Q and R got married on September 9, 2011. Later, Q sustained due to an incurable venereal disease. So, if R lives with Q, she may also be contaminated by this disease. Here, R can go to court to terminate the marriage.

RENUNCIATION (TO GIVE UP)

It is mentioned beneath section 13(1)(vi). Renunciation signifies that when one spouse chooses to give up the world and wants to dedicate her life to God, the other spouse can go to court to seek divorce. Under this, people who abandon the world are regarded as civil deaths. This is a traditional Hindu custom and is considered a legitimate reason for divorce. For example, Q and R got married and lived happily. One day Q determines to give up the world. Here, R has the right to go to court and obtain relief from the divorce.

PRESUMPTION OF DEATH

It is mentioned below in section 13(1)(vii). Under this concept, if a person has not been resurrected for 7 years, it is assumed that he/she is dead. Therefore, this is considered a legitimate reason for divorce, and the burden of proof is borne by the person who filed the divorce. For example: if person Q has been missing for 7 years and his wife R has not heard any information about his life or death, R can go to court to apply for a divorce.

Other than the reasons mentioned above, some additional reasons are brought to the list below section 13(1A) of the Act, through which a divorce can be requested based on the absence of cohabitation for at least one year after the issuance of the order for judicial separation and non-

¹⁰ Swarajya Lakshmi v. G.G. Padma Rao, AIR 1974 SCR (2) 97.

restitution of conjugal rights of the husband and wife, not less than one year after the issuance of the order to restore the marital rights in a lawsuit.

SPECIFIC GROUNDS OF DIVORCE FOR WIVES UNDER THE HINDU MARRIAGE ACT OF 1955

Apart from the reasons mentioned above, according to section 13(2) of the Hindu Marriage Act of 1955, the wife obtained four other grounds for divorce. These reasons are as follows:

POLYGAMY BEFORE MARRIAGE

As per section 11 of the Act mentioned above, this provision states that if the husband has one or more spouses who stay after the commencement of the Hindu Marriage Act of 1955, the spouse can plead for divorce.

In *Venkatame v. Patil* case,¹¹ a man had two wives, one of whom filed for divorce, and he divorced the other while the petition was pending. He then said that the petition should be dismissed because he was left with only one wife. The court dismissed the appeal.

RAPE, SODOMY, OR CRUELTY

This provision specifies that if the husband has been prosecuted or held liable for unnatural crimes such as sodomy or bestiality, or any crime involving moral integrity such as rape, corruption, or other similar offences, the wife is entitled to a divorce. As a result, the wife will file a divorce petition below section 13(2)(ii) of the Hindu Marriage Act, 1955.

THE NON-RESUMPTION OF COHABITATION AFTER A DECREE OR ORDER OF MAINTENANCE

¹¹ *Venkatame v. Patil*, AIR 1963 Mys 118.

As per section 13 (2)(iii) of the Act, a spouse can obtain a decree of divorce if the case falls beneath section 18 of the Hindu Adoption and Maintenance Act of 1976 or a provision below section 125 of the Code of Criminal Procedure (CrPC), 1973.

REPUDIATION OR REJECTION OF MARRIAGE

According to section 13(2)(iv) mentioned in the Act, it provides the spouse with a reason for divorce if her marriage is formalised (whether conceived or not) before she reaches the age of 15 and gives up the marriage after she reaches that age but before she meets the age of 18.

CONCLUSION

In my opinion, Hindus observe a marriage to be a sacred bond. There was no provision for divorce before the Hindu Marriage Act, 1955. The concept of obtaining a divorce was too severe for Indian society then. However, the time has changed, and the law provides a way to get out of an unpleasant marriage by getting a divorce in a court of law. The real benefactors of such a provision are females who no longer have to silently undergo the harassment or injustice triggered to them through their husbands. However, it is feared that the way the judiciary is dealing with the issue of irretrievable marriage breakdown will put the marriage system on hold altogether. Every theory has its positive and negative attributes. Hence, our country's lawmakers must address the issue with caution and concern for its long-term consequences.