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DISSOLUTION OF MARRIAGE UNDER HINDU LAW

INTRODUCTION

Hindu marriage has a rich and complex history deeply embedded in the cultural fabric of India. The evolution of Hindu marriage practices is influenced by religious beliefs, societal norms, and legal frameworks. The concept of marriage in Hinduism can be traced back to ancient texts such as the Vedas and Dharmashastra. Rig Veda, one of the oldest Hindu scriptures, mentions hymns related to marriage ceremonies, emphasizing the sacred and spiritual nature of the union.

With the codification of Hindu personal laws in the Hindu Marriage Act of 1955, the legal aspects of Hindu marriage were standardized in independent India. The Act recognizes the sacramental nature of Hindu marriage while providing a legal framework for issues like divorce and restitution of conjugal rights. Hindu marriage remains a sacred and multifaceted institution, uniting individuals and families with rituals that blend cultural, spiritual, and legal dimensions, making it a cornerstone of the Indian societal fabric. Marriage laws in India have evolved significantly. Subsequent amendments and the introduction of laws for other religious communities reflect ongoing efforts to modernize and address societal changes.

THEORIES REGARDING DISSOLUTION OF MARRIAGE

The Hindu Marriage Act, of 1955, recognizes three main theories for dissolving a marriage:

1. Fault Theory (Guilt Theory)

2. Mutual Consent Theory

3. Irretrievable Breakdown of Marriage Theory (Emerging Theory)

1. FAULT THEORY

This theory hinges on the principle that one spouse must be at fault for a matrimonial offence to dissolve the marriage. Grounds for divorce under Fault Theory:

- Adultery
- Cruelty (mental or physical)
- Desertion for two years or more
- Conversion to another religion
- Unsound mind for three years or more
- Venereal disease at the time of marriage
- Renunciation of the world by either spouse

The only criticism of this theory is it only focuses on assigning blame, which can be adversarial and prolong the dissolution process and it is difficult to prove grounds like cruelty or adultery and it may not be relevant in cases where the marriage has irretrievably broken down due to incompatibility or other factors.

2. MUTUAL CONSENT THEORY

This theory allows both spouses to mutually agree to dissolve the marriage, without assigning blame or proving any matrimonial offence. Requirements for Mutual Consent Divorce:

- Living separately for at least one year (three years if married less than three years)
- Both spouses must file a petition jointly
- A court may hold counselling sessions to confirm genuine consent

In the case of *Smt. Sureshta Devi vs Om Prakash*¹, the conditions for divorce by mutual consent were discussed. The parties had to be living separately for a period of at least one year; it does not necessarily mean different houses. They may live in the same house, just not as husband and wife.

¹1992 AIR 1904, 1991 SCR (1) 274.

The advantages of this theory are that it is a faster and less acrimonious process compared to the Fault Theory; it reduces emotional and financial stress for both parties, and it allows for amicable separation and co-parenting if children are involved.

3.IRRETRIEVABLE BREAKDOWN OF MARRIAGE THEORY

This theory is not explicitly mentioned in the Hindu Marriage Act but is gaining traction in Indian courts. It focuses on the breakdown of the marital relationship without attributing fault to either spouse. Factors considered for Irretrievable Breakdown:

- Long separation
- Incompatibility
- Loss of affection
- Domestic violence
- Mental illness
- Financial problems

In the case of *Yousuf Vs Sowrama*¹, the Court observed that parties cannot stay together, and the reason may be of any kind, lack of financial security, for the children's sake etc but one party refuses to file for divorce. After going through the facts, the Court may decide that there is an irretrievable breakdown of marriage and not granting divorce will lead to more problems.

LEGAL FRAMEWORK FOR THE DISSOLUTION OF MARRIAGE

The legal framework for the dissolution of marriage under Hindu law, primarily governed by the Hindu Marriage Act of 1955, encompasses a detailed and comprehensive set of provisions aimed at addressing various aspects of marital dissolution. Here is an elaborate breakdown:

¹ AIR 1971, Kerala, 261.

1. ADULTERY [S.13(1)(i)]

In numerous countries, the notion of adultery might not be deemed a criminal offence. However, according to the Hindu Marriage Act, adultery is recognized as a significant basis for pursuing divorce in cases of matrimonial offences. Adultery, in this context, refers to consensual and voluntary sexual relations between a married individual and another person, regardless of their marital status. This includes instances where a husband engages in such relations with a second wife, even if their marriage falls under the category of bigamy, rendering the individual accountable for adultery. The concept of Adultery was inserted under the Hindu Marriage Act by the Marriage Laws Amendment Act, of 1976.

In the case of *Sachindranath Chatterjee vs Sm. Nilima Chatterjee*², the petitioner and defendant were married. After marriage, the husband leaves his wife in his hometown so she can finish her studies and relocate to another city for work. He came two or three times a month to see her. Later, he discovered that his wife was committing adultery, i.e. having sexual relations with his nephew, watchman, etc. The plaintiff approaches the court to seek divorce on the grounds of adultery, and his petition is allowed, and the marriage is dissolved.

Before the 1976 amendment, establishing grounds for divorce based on adultery required demonstrating that, at the time of the petition, one's spouse was engaged in an adulterous relationship. Post-amendment, a singular act of voluntary sexual intercourse with someone other than the spouse is now a legitimate basis for divorce, as outlined in Section 13(1)(i) of the Act. The responsibility to substantiate allegations of adultery rests with the accuser, and the evidentiary standard is by a preponderance of probabilities rather than proof beyond a reasonable doubt.

² AIR 1970, CAL, 38.

In the case of *Chetan Dass v. Kamla Devi*³, the appellant and respondent were married in Hindu rituals. After marriage, the appellant had an extramarital affair with one of the nurses at the

hospital where he worked, causing his wife to leave him. He filed an appeal, arguing that the respondent's allegations and her act of deserting him without justifiable cause constituted mental torture. The Hon'ble Supreme Court stated that a man cannot profit from his own mistakes. However, the decree for divorce was not given because the wife, or respondent in this case, was willing to continue her marriage and live with him on the condition that he leave the other lady.

It should be mentioned that adultery has been decriminalised by the Hon'ble Supreme Court in the case of *Joseph Shine v. Union of India*.⁵ However, it remains a reason for divorce under the Hindu Marriage Act of 1955, which implies that if a person commits adultery, he or she will not be penalised, but the spouse may seek divorce.

2. CRUELTY [S.13 (1)(i-a)]

Section 13(1)(i-a) of the Hindu Marriage Act provides that cruelty can be a ground for divorce. Cruelty, in this context, refers to any willful conduct that causes mental or physical suffering to the petitioner, making it difficult to continue living together. Cruelty can manifest in various forms, including verbal abuse, harassment, or any act that endangers the mental or physical wellbeing of the spouse seeking divorce.

In the case of *V. Bhagat v. D. Bhagat*⁶, the petitioner was granted a divorce based on cruelty when the Supreme Court ruled in their favour. According to the judgement, the petitioner was a practising advocate, and the respondent's claims of paranoid disorder, insanity, and other things made in her written statement and during the husband's cross-examination would have caused mental cruelty by tarnishing his reputation. Furthermore, the court rejected the respondent's

³ 2001 (4) SCC 250.

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argument that she was still willing to live with the petitioner. This was because it was practically impossible to expect the parties to cohabituate following the barrage of accusations and denials

⁵ AIR 2018 SC 4898.

⁶ 1994 AIR 710.

made in court. The respondent was determined to treat her husband cruelly, as the court even declared that her mere suggestion to torment him further was indicative of this.

In the case of *Raj Talreja vs. Kavita Talreja*⁴⁵, the apex held that from the evidence shown, it is clear that the wife, in this case, made careless, false, and defamatory claims against her husband, his family, and his coworkers, which would undoubtedly have the impact of harming his standing among his peers. If there are legitimate grounds for the complaints, then simply submitting them does not constitute cruelty. Treating the wife's charges as cruelty under the Hindu Marriage Act of 1955 may not be appropriate only because the case is not pursued further if the accused is found not guilty after trial. Nonetheless, there can be no question that the aforementioned behaviour—that is, making false charges against the other spouse—would constitute cruelty if it turns out that the accusations are blatantly untrue. All of the accusations in this case were determined to be untrue and the husband was granted divorce.

In the case of *Rakesh Raman v. Kavita*⁸, the apex court held that as irretrievable breakdown is not a ground for divorce under the Hindu Marriage Act and the law has not been amended to incorporate the provision despite the apex court's suggestions and recommendations of the Law Commission, the Supreme Court has said that such marriages inflict cruelty on both husband wife and can be dissolved under the ground of cruelty if parties are not agreeable to divorce.

3. DESERTION [13(1)(i-b)]

According to the Hindu Marriage Act, 1955, section 13 (1)(i-b), desertion is a reason for divorce. The definition of desert is to give up, stop going somewhere, or remove oneself from something. The court determined that the term "desertion" refers to abandonment and indicates a

⁴ AIR 2017 SC 2138.

⁵ SCC OnLine SC 497.

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withdrawal from an existing cohabitation.⁶The expression "desertion" means the desertion of the petitioner by the other party to the marriage without reasonable cause, without the consent of such party, or against their will. It also includes the other party's willful neglect of the

petitioner," according to the Explanation to Section 13(1). When one spouse leaves the other in a manner which is not justifiable, the deserted spouse has a remedy by way of matrimonial relief.

By the amendment of 1976, desertion has been for the first time included as a ground for divorce under Section 13 (1)(i-b) of the Hindu Marriage Act. Before 1976, desertion was a ground for judicial separation but now it is also a ground for divorce. The main essential ingredients of this offence in order that it may furnish a ground for relief are:

1. Physical separation
2. Animus deserendi or the intention to bring cohabitation permanently to an end.
3. Both these essential ingredients should continue during the entire statutory period.

The section provides that the party needs to have deserted the petitioner for a continuous, that is to say, uninterrupted period of not less than 2 years immediately after which the petition is presented. It can thus be inferred that the clause provides for 2 basic necessities to be fulfilled in order to make desertion a ground for divorce; firstly that such desertion or separation must be for a continuous period of a minimum 2 years; and secondly, such a period of 2 years should be in immediate continuity with time of presentation of such petition. To make it more clear there should not be a gap between the period of 2 years and the presentation of the petition.

In the case of *Savitri Pandey v. Prem Chandra*⁷, it was held that when a spouse intends to permanently desert their partner without their agreement or a good reason, it is considered desertion for the purposes of filing for divorce under the Act. Put otherwise, it represents a complete rejection of marital duty. Desertion is the act of removing oneself from a situation rather

⁶ *Kako v Ajit Singh*, AIR 1960 Punj 328.

⁷ (2002) 2 SCC 73.

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than from a location. Desertion is a continual cause of the behaviour that must be assessed in light of the particular facts and circumstances of each case; it is not a single act that suffices on its own.

4. CONVERSION [13(1)(ii)]

Conversion serves as a basis for divorce according to the Hindu Marriage Act of 1955. Section 13(1)(ii) of the Act stipulates that a marriage, whether conducted before or after the Act's commencement, can be dissolved by a decree of divorce upon a petition from either spouse, citing the other party's conversion to another religion as grounds for dissolution.

In the landmark judgement of *Lily Thomas v. UOI*⁸, the apex court held that if a man contracts a second marriage without obtaining a divorce from his still-living first wife, the marriage is deemed void. Additionally, the court ruled that if a man converts to Islam and subsequently enters into a second marriage in accordance with Islamic practices, that marriage is also considered void. The dissolution of the first marriage in accordance with the Hindu Marriage Act is a prerequisite for the validity of the second marriage. Failure to comply may render the man liable under Sections 494 and 495 of the Indian Penal Code for the crime of bigamy.

It was further emphasised that the freedoms protected by Article 25 of the Indian Constitution should not encroach upon the equivalent freedoms of others. The constitutional structure guarantees that every person possesses a fundamental right to exercise their religious beliefs and articulate their opinions in a manner that does not violate the religious rights and personal freedoms of others.

In the *Prakash v. Parmeshwari*⁹ case, the Supreme Court affirmed that conversion to another religion constitutes a valid ground for divorce under the Hindu Marriage Act of 1955. Conversely, in the *Ramesh Chander v. Savitri*¹⁰ case, the Supreme Court clarified that the mere act of

⁸ 2000(2)ALD(CRI)686.

⁹ (2010) 12 SCC 469.

¹⁰ (2005) 1 SCC 518.

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conversion does not automatically dissolve the marriage. It serves as a basis for divorce, necessitating the petitioner to demonstrate that the conversion inflicted mental cruelty.

It is crucial to emphasise that the petitioner must substantiate the act of conversion, and the court must be convinced that the other party has genuinely adopted another religion. If the presented evidence is insufficient, the court reserves the right to dismiss the petition.

5. UNSOUNDNESS OF MIND [S.13(1)(iii)]

Section 13(1)(iii) of the Hindu Marriage Act permits divorce when one spouse 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."

In the case of *Sharda v. Dharmpal*¹¹, the Supreme Court underscored the significance of medical examination in granting a divorce decree under Section 13(1)(iii) of the Hindu Marriage Act. It highlighted that for a divorce on the grounds of incurable unsoundness of mind, the mental disorder must be of a nature that makes it unreasonable for the other spouse to live together. While acknowledging the absence of provisions compelling medical examination in matrimonial proceedings, the court cited precedents, including *Goutam Kundu vs. State of West Bengal*¹² and *B.R.B. vs. B.*¹³, supporting the court's authority to order medical tests in the interest of justice. The court invoked Section 151 of the CPC, affirming its inherent power to ensure justice and ruled that a matrimonial court could indeed direct a party to undergo medical examination.

In the case of *Ram Narayan v. Rameshwari*¹⁷, the Supreme Court ruled that when dealing with a case involving schizophrenia, the petitioner must not only prove the existence of the mentioned

¹¹ AIR 2003 SC 3450, (2003) 4 SCC 493.

¹² (1993) 3 SCC 418.

¹³ (1968) 2 All. E.R. 1023.

¹⁴ AIR 2260 1988 SCR Supl.

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mental disorder but also establish that, considering the condition, it would be unreasonable to expect the petitioner to live with the respondent.

In the case of *Smt. Alka Sharma v. Abhinesh Chandra Sharma*¹⁵, it was observed that the wife exhibited extreme frigidity and fearfulness on the first night of marriage, rendering her incapable of engaging in a sexual act. Additionally, she demonstrated an inability to handle household appliances and failed to follow basic hygiene practices. The court concluded that she suffered from schizophrenia, leading to the husband being granted the annulment of the marriage.

In the case of *Vinita Saxena vs Pankaj Pandit*¹⁶, the petitioner sought a divorce on the basis of the respondent's Paranoid Schizophrenia, a mental disorder discovered after their marriage. The court, in this instance, approved the divorce, citing the husband's mental instability as the grounds for dissolution.

6. LEPROSY [S.13(1)(iv)]

Leprosy used to be one of the reasons for divorce, but it is now excluded. In its report, the Law Commission suggested eliminating any provisions that discriminated against individuals stricken by leprosy. India has also ratified a UN Resolution that demands that prejudice against those who have leprosy be eradicated. The Parliament enacted a Personal Law (Amendment) Act, of 2019 that has eliminated leprosy as a reason for divorce under five personal laws, including the Hindu Marriage Act.

7. VENEREAL DISEASE [S.13(1)(v)]

According to Section 13(1)(v) of the legislation, a spouse may file for divorce if "the other party has been suffering from a communicable form of venereal disease, or has been suffering from a virulent and incurable form of leprosy." Either spouse, that is, the infected or uninfected spouse, may be granted a divorce on the basis of venereal disease. This clause is justified by the idea that

¹⁵ AIR 1991 MP 205, I (1992) DMC 96, 1991 (0) MPLJ 625.

¹⁶ (2006) 3 SCC 778.

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an individual shouldn't have to live with a spouse who suffers from a communicable and incurable illness.

One of the valid reasons for divorce in India under Hindu personal laws is the presence of a sexually transmitted disease (STD), also known as a venereal disease. If either spouse is afflicted

with a communicable form of venereal disease, it constitutes sufficient grounds for the other spouse to seek and be granted a divorce. It is essential that the disease is explicitly communicable for this provision to apply. It is said that the spouse cannot use this defence in a divorce application if the illness is treatable with appropriate treatment. Thus, not all diseases pose a threat to life, and some types of diseases can be cured.

In the case of *Mr. X v. Hospital Z*¹⁷, the Supreme Court determined that either the husband or the wife has the right to seek a divorce based on venereal illness. The court also stated that an individual who has endured such an ailment cannot be asserted to possess the right to marry, even before entering into marriage, unless they are cured of the condition.

The Madras High Court, in the 2013 case of *P. Ravikumar vs Malarvizhi @ S. Kokila*, determined that any sexually transmitted infection resulting from sexual intercourse falls under the definition of a venereal disease according to Section 13(v) of the Hindu Marriage Act, 1955. While HIV, being a sexually transmitted illness, was not specifically mentioned in the Act due to it not being identified in 1955, any disease that is venereal and communicable qualifies under the provisions of Section 13(v). Therefore, it is asserted that a petition can be filed based on the ground of a communicable venereal disease, and the absence of a specific mention of HIV does not preclude the granting of a divorce.

8. RENUNCIATION [S.13(1)(vi)]

Under Section 13(1)(vi) of the Hindu Marriage Act, 1955, renunciation of the world or entering a religious order is recognized as a ground for divorce. This provision allows either spouse, whether husband or wife, to seek divorce if the other spouse renounces the world and chooses a path of religious asceticism or monkhood.

¹⁷ (2003) 1 SCC 500.

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The legal interpretation of this provision emphasises that renunciation should be voluntary and accompanied by a genuine desire to lead a life of religious celibacy and spiritual pursuits. If one spouse renounces worldly life and enters a religious order, making it practically impossible to fulfill marital obligations, the other spouse has the right to seek a divorce.

However, it is important to note that the renunciation must be genuine and not a mere pretence to escape the marital responsibilities. Courts may consider factors such as the sincerity of the renunciation, the permanency of the decision, and whether the renouncing spouse can still fulfil their marital duties despite the religious commitment.

While this ground is one of the grounds for divorce under the Hindu Marriage Act, it is not commonly invoked. The court, in such cases, aims to balance the right of an individual to follow a religious path with the right of the other spouse to seek relief from the marital relationship that has been fundamentally altered due to the renunciation.

9. PRESUMPTION OF DEATH [S.13(1)(vii)]

Under Section 13(1)(vii) of the Hindu Marriage Act, 1955, the presumption of death is recognized as a ground for divorce. This provision allows a spouse to seek a divorce if the other spouse has been absent and unheard of for a continuous period of seven years or more, and the petitioner believes that the absent spouse is likely to be dead. The key elements of this provision include:

1. **Continuous Absence:** The absent spouse must have been continuously absent for a minimum period of seven years. It is essential that there is no information about the whereabouts or wellbeing of the missing spouse during this period.
2. **Unheard of:** The petitioner must not have heard anything about the missing spouse during the seven-year period. Lack of communication or any information about the missing spouse's existence is crucial for the presumption of death.
3. **Belief in Death:** The petitioner should genuinely believe that the absent spouse is likely to be dead. This belief should be reasonable, given the circumstances of the continuous absence and lack of communication.

It is important to note that the presumption of death is not automatic after seven years. The court will consider the specific facts and circumstances of each case to determine if the conditions for the presumption of death are met. Additionally, if the missing spouse returns during the divorce proceedings and can provide a reasonable explanation for the absence, the court may reevaluate the case.

This provision is designed to address situations where a spouse goes missing, and the other spouse, after a reasonable period, wishes to move on with their life through divorce due to the uncertainty surrounding the absent spouse's status.

To give a fuller understanding of the subject in question, a crucial distinction between the presumptions of Death and Desertion [Section 13(1)(i-b)] as grounds for getting a divorce must be made. A spouse has committed the marital offence of desertion if they intentionally leave their other spouse behind, pressure them to leave the marital residence, or disregard them without providing a legally acceptable explanation. The desire to stop living with the other spouse is a necessary component of desertion. In Indian law, a spouse's disappearance and silence cannot be deemed a fault because there is no specific intention communicated, and prolonged absences can increase the likelihood of death.

In the case of *Nirmoo v. Nikkaram*¹⁸, it was established that if an individual assumes their spouse's death and remarries without obtaining a divorce decree, the legitimacy of the subsequent marriage can be contested by the returning spouse. This legal principle takes precedence over any customary practices specifying a period shorter than seven years for presuming a spouse's death, as exemplified in the case of *Parkash Chander v. Parmeshwari*¹⁹. In the latter case, where the Karewa marriage customs suggested remarriage after the husband's absence of 2/3 years, the court ruled that the presumption of death cannot be made unless brought before the appropriate court. Additionally, the seven-year duration specified in Section 108 of the Indian Evidence Act cannot be reduced to only 2-3 years.

¹⁸ AIR 1968 Del 260.

¹⁹ AIR 1987 P&H 37.

It outlines the grounds on which either party to a marriage, whether the marriage was solemnized before or after the commencement of the Act, may present a petition for the dissolution of the marriage by a decree of divorce. The grounds specified are as follows:

No Resumption of Cohabitation: If 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, it constitutes a valid ground for seeking a divorce.

No Restitution of Conjugal Rights: If there has been no restitution of conjugal rights between the parties to the marriage for a period of one year or more after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties, it also serves as a valid ground for seeking divorce.

In essence, if a decree of judicial separation or a decree for restitution of conjugal rights has been passed, and the specified period of one year or more has elapsed without the parties resuming cohabitation or restoring conjugal rights, either party can file for divorce. These provisions aim to address situations where attempts at reconciliation or legal interventions have failed to revive the marital relationship.

In the case of *Dharmendra Kumar vs Usha Kumar*²³, the apex court held that no assertion has been made in the current case to suggest that the respondent was attempting to benefit from her own wrongdoing. Section 13(1A)(ii) of the Hindu Marriage Act 1955 grants either party in a marriage the right to file a petition seeking the dissolution of the marriage through a divorce decree. This is based on the ground that there has been a lack of restitution of conjugal rights between the parties for the specified period after the issuance of the decree for restitution of conjugal rights, as outlined in the provision. The inclusion of Sub-section (1A) in Section 13 was introduced by Section 2 of the Hindu Marriage (Amendment) Act 1964. Before the 1964 amendment, Section 13 only allowed the spouse who had obtained the decree for restitution of conjugal rights to seek relief through divorce, denying this right to the party against whom the decree was issued. It is only fair and reasonable that the relief available to the spouse in favor of whom a decree for restitution of

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conjugal rights has been granted should also be extended to the one who does not insist on compliance with the decree issued in their favour.

SPECIAL GROUNDS FOR WOMEN [S.13(2)]

²³ 1977 AIR 2218, 1978 SCR (1) 315.

This section outlines the circumstances under which a wife may file a petition for the dissolution of her marriage through a decree of divorce under the Hindu Marriage Act. These grounds are as follows:

1.Bigamy or Polygamy: If the husband has married again before the commencement of the Act, or if any other wife of the husband, married before such commencement, is still alive at the time of the presentation of the petition, the wife can seek divorce. However, it's crucial that the other wife is alive at the time of filing the petition.

2.Criminal Offenses by Husband: If the husband has been guilty of rape, sodomy, or bestiality since the solemnization of the marriage, the wife can seek divorce on these grounds.

3.Maintenance Decree or Order: If, in a suit under section 18 of the Hindu Adoptions and Maintenance 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 has been passed against the husband awarding maintenance to the wife, and since the passing of such decree or order, cohabitation between the parties has not resumed for one year or more, the wife can seek divorce.

4.Child Marriage and Repudiation: If the marriage (whether consummated or not) was solemnized before the wife attained the age of fifteen years, and she has repudiated the marriage after attaining that age but before attaining the age of eighteen years, the wife can seek divorce.

The explanation clarifies that these grounds apply irrespective of whether the marriage was solemnised before or after the commencement of the Marriage Laws (Amendment) Act, 1976.

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In the case of *Lily Thomas v. Union of India*²⁰, the central issue revolved around the husband's alleged conversion to another religion and subsequent marriage to another woman of that religion, all while his first marriage was still valid. The wife filed a complaint against her husband, asserting that he had not legally terminated their existing marriage before entering into the second one.

The Supreme Court, in its judgement, held that despite the husband's conversion to another religion, he had not obtained a legal divorce from his first wife. Consequently, the court concluded that he could be held liable for the offence of bigamy. In Indian law, bigamy is a criminal offence where an individual, while still married, goes through another marriage ceremony. The Supreme Court further ruled that the second marriage, being in violation of the legal provisions, would be considered void.

Moreover, the court made a noteworthy observation emphasising that religion should not be treated as a commodity to be exploited for personal gains or benefits. This underscores the court's commitment to ensuring that religious conversions and practices are conducted with sincerity and authenticity, rather than as a means to evade legal responsibilities or engage in actions contrary to the established legal framework. The judgement serves to uphold the sanctity of marriage and prevent the misuse of religious conversions for fraudulent purposes.

ALTERNATE RELIEF IN DIVORCE PROCEEDINGS

The provision is related to the concept of "alternate relief" in divorce proceedings under the Hindu Marriage Act. Section 13 of the Act deals with the grounds on which a decree of divorce can be sought. However, in certain situations, the court has the discretion to provide an alternative remedy known as a "decree for judicial separation.

The section says that "in any proceeding under this Act, on a petition for the dissolution of marriage by a decree of divorce, except insofar 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."

²⁰ 2000(2)ALD(CRI)686.

This means that during divorce proceedings, if the grounds for divorce are not based on specific reasons mentioned in clauses (ii), (vi), and (vii) of Section 13(1), the court has the authority to, at its discretion, grant a decree for judicial separation instead of a decree of divorce. The grounds mentioned in those clauses could be related to issues such as cruelty, adultery, or desertion.

Judicial separation is a legal status that allows a married couple to live separately without formally terminating the marriage. It doesn't dissolve the marriage but provides a legal recognition of the spouses living apart. This option may be considered by the court when it deems it just or appropriate based on the circumstances of the case, providing an alternative relief to divorce in certain situations.

DIVORCE BY MUTUAL CONSENT [S.13B]

Section 13B of the Hindu Marriage Act provides for divorce by mutual consent. Explanations of the key provisions are as under:

- 1. Filing a Petition:** Both parties to a marriage, whether the marriage was solemnised before or after the commencement of the Marriage Laws (Amendment) Act, 1976, can jointly present a petition for the dissolution of their marriage by a decree of divorce. The grounds for seeking divorce are that they have been living separately for a period of one year or more, have not been able to live together, and have mutually agreed that the marriage should be dissolved.
- 2. Timeframe for Motion:** After the presentation of the mutual consent petition, both parties can make a joint motion for the divorce not earlier than six months after the date of presenting the petition and not later than eighteen months after that date. If the petition is not withdrawn during this timeframe, the court proceeds with the divorce proceedings.
- 3. Court's Inquiry:** The court, upon receiving the motion, is required to conduct an inquiry. It should satisfy itself, after hearing the parties and making any necessary inquiries, that the marriage was solemnised, and the averments in the petition are true.
- 4. Decree of Divorce:** If the court is satisfied with the validity of the marriage and the truth of the statements in the petition, it passes a decree of divorce. This decree declares the marriage to be dissolved, and the divorce is effective from the date of the decree.

In conclusion, Section 13B allows couples to seek divorce by mutual consent under specific conditions. The parties must have lived separately for at least one year, be unable to live together, and mutually agree to dissolve the marriage. The court, following a mandatory waiting period, verifies the facts and, if satisfied, grants a decree of divorce. This provision aims to provide a relatively expedited and amicable process for couples who mutually agree to end their marriage.

Justice Indira Banerjee, in the case of *Amit Kumar v. Suman Beniwal*²⁵, emphasised that Section 13B of the Hindu Marriage Act, 1955, introduced in 1976, aims to streamline divorce by mutual consent. It addresses collusive divorces, preventing unnecessary procedural delays. The provision incorporates a six-month cooling-off period to allow reconsideration, and if both parties persist, the court issues a divorce decree, promoting amicable separation while curbing adversarial litigation.

In the case of *Shilpa Shailesh vs Varun Sreenivasan*²⁶, a five-judge constitution bench ruled on May 1 that granting divorce based on the irretrievable breakdown of marriage is not a matter of right but a discretionary power. Section 13B of the Hindu Marriage Act, 1955, outlines the divorce procedure through mutual consent. It mandates a 6-18 month cooling-off period after filing a joint application. However, the Supreme Court, relying on Article 142, ruled that it isn't bound by these timeframes. The court can expedite the process, even during Family Court proceedings, and grant divorce based on 'irretrievable breakdown,' even if one party opposes, in the interest of justice.

NO PETITION FOR DIVORCE TO BE PRESENTED WITHIN ONE YEAR OF MARRIAGE [S.14]

Section 14 of the Hindu Marriage Act, 1955, stipulates that no court can entertain a divorce petition within one year of marriage, unless one year has elapsed from the date of marriage. However, the court, under certain circumstances like exceptional hardship or depravity, may allow the petition before one year with proper application. If the petitioner misrepresents the case, the court may conditionally decree or dismiss the petition. The court, in considering such applications, must factor in the interests of any children and the likelihood of reconciliation within the specified oneyear period.

In the case of *Rishu Aggarwal v. Mohit Goyal*²⁷, the Delhi High Court clarified that mere incompatibilities or irreconcilable differences arising from temporal or behavioural issues do not

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justify claims of extreme depravity in a marriage. The court emphasized that the denial of sexual relations, while constituting hardship, doesn't meet the criteria of 'extreme hardship' under Section

²⁵2021 SCC OnLine SC 1270.

²⁶ Transfer Petition (Civil) No. 1118 of 2014.

²⁷ 2022 SCC OnLine Del 1089.

14(1). The court maintained that refusing cohabitation due to behavioural differences isn't considered 'exceptional hardship' or 'extraordinary depravity,' and thus, the one-year waiting period cannot be waived as a rule. The decision upheld the Family Court's ruling, preserving the parties' rights to seek divorce after the mandatory waiting period.

CONCLUSION

In conclusion, the dissolution of marriage under Hindu law is a process guided by legal provisions aimed at ensuring fairness and protection of the interests of the parties involved. The Hindu Marriage Act, 1955, provides for various grounds for divorce, including mutual consent, cruelty, desertion, adultery, and more. Section 13B specifically outlines the procedure for divorce by mutual consent, introducing a mandatory cooling-off period to promote thoughtful decisionmaking.

The judiciary plays a crucial role in adjudicating divorce cases, ensuring that the legal requirements are met and considering factors such as the welfare of children and the possibility of reconciliation. Recent judicial observations, as exemplified by cases like *Amit Kumar v. Suman Beniwal*²⁸ and others, highlight the courts' commitment to balance the principles of justice and the preservation of the institution of marriage.

The one-year waiting period, as stipulated in Section 14 of the Hindu Marriage Act, adds a layer of caution to divorce proceedings, emphasising the gravity of the decision and encouraging parties to reconsider their choices. Courts, however, have the discretion to consider exceptions to this rule based on circumstances like exceptional hardship or extraordinary depravity, as clarified by the Delhi High Court in certain cases.

In essence, the dissolution of marriage under Hindu law reflects a careful legal framework that seeks to balance the individual's right to seek separation with the preservation of the sanctity of marriage. The evolving judicial interpretations contribute to the refinement of these legal

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principles, ensuring that divorces are granted judiciously and with due consideration to the complexities of each case. As the legal landscape continues to adapt, the emphasis remains on

²⁸ 2021 SCC OnLine SC 1270.

achieving a fair and just resolution while upholding the underlying values associated with the institution of marriage in Hindu law.

BIBLIOGRAPHY

- https://www.indiacode.nic.in/showdata?actid=AC_CEN_3_20_00004_195525_1517807318992&orderno=17 ● https://blog.ipleaders.in/analysis-of-section-13-of-hindu-marriage-act1955/#Venereal_disease
- https://blog.ipleaders.in/grounds-divorce-the-hindu-marriageact/#Unsoundness_of_mind
- <https://mutualdivorcelawyer.co.in/section-14-of-hindu-marriage-act/>
- <https://www.sconline.com/blog/post/2022/04/19/whether-denial-of-sex-can-qualifyas-exceptional-depravity-hindu-marriage-act-divorce-mutual-consent-temperamentalissue-delhi-high-court/>
- <https://www.livelaw.in/top-stories/supreme-court-waiting-period-mutual-consentdivorce-s13b2-of-hindu-marriage-act-waived-article-142-227642#:~:text=In%202017%2C%20a%20two%2Djudge,Family%20Court%20in%20exceptional%20circumstances.>
- <https://dnluslj.in/redefining-divorce-dynamics-and-decoding-judicial-boundariesunravelling-the-impact-of-shilpa-sailesh-v-varun-sreenivasan/>

