

MARITAL DISSOLUTION UNDER HINDU LAW: A OMPREHENSIVE ANALYSIS OF DIVORCE PROCEEDINGS AND LEGAL IMPLICATIONS

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ABSTRACT

In Hinduism, marriage is an obligatory samskara, every Hindu must marry. According to Manu, the relation of husband and wife is of seven births, this sacred tie cannot be broken. Before 1955, there was no existence of divorce but with the advancement in socio-economic conditions, divorce was introduced under Hindu Marriage Act, 1955. This paper analysis the various grounds of divorce under Hindu law wherein either spouse can obtain decree of divorce and the major amendments that takes place under law. It briefly elucidates the grounds that are only at the hand of the wife on which she can seek divorce. It specifies the conditions wherein both the parties can be agreed for mutual divorce. Apart from this, the paper also highlights, the provisions of Irretrievable Breakdown of Marriage are available to both the parties. The paper also discusses when the divorcee can remarry. The utmost objective of the paper to legally analysis the various ways of obtaining a divorce when one spouse cannot live with other spouse and how did Hindus adopt this theory of divorce when it was in their religion?

Keywords: Marriage, Hindu law, Divorce, India

1. INTRODUCTION

India is a country of different religions and so are its customs. Hinduism is one of India's ancient religions, synonymous with dharma i.e., or way of life. According to Ancient Hindu customs, Marriage was purely considered to be a sacrament, an ideal relationship between two souls that continues even in the next birth. The same was reflected in the case of *Koppiseti Subbharao v. state of Andhra Pradesh*⁴⁸³ where it was held that marriage is the union of two souls. Hitherto, marriage is a sanctified alliance

for life. Besides, it is contemplated as one of the sixteen sacraments under Hindu religion.

While on the contrary, under ancient Hindu customs, no such concept of divorce ever existed as people then reckoned marriage as an unbreakable bond. It is when the Modern Hindu Law came into existence when this term was put to use under Hindu traditions. Divorce relates to a method for dissolution of marriage. All mutual rights and obligations of husband and wife ceases and the parties revert back to their unmarried status and are once again free to re - marry.

2. DIVORCE UNDER MODERN HINDU LAW

⁴⁸³ Criminal Appeal No. 867 of 2009 (Arising out of SLP(Crl.) No. 4496 of 2006) AIR 2009, 29 April

The laws have been formulated to be dynamic so much so that they are open for adaptation with the modern ways of the society. Likewise, the Hindu Law has adapted the requirements of the modern Indian society and hence, the concept of divorce is established. The spouses are self-sufficient and independent a lot more than they used to be before. They are prepared to live separately rather instead of staying in an unhappy or displeasing marriage. After eight years of independence, Indian laws has introduced the concept of divorce with its codification under Hindu Laws 1955. It broadly comprises of four Acts governing Hindu laws relating to marriage, adoption, maintenance, guardianship, and succession. One such Act is the Hindu Marriage Act, 1956. Section 13 of the said act deals with provisions relating to divorce owing to which the parties can seek a decree for divorce on the grounds provided under the same section.

The Hindu Marriage Act, 1955, provides numerous theories of divorce *viz.*, fault theory, breakdown theory and divorce by mutual consent. The divorce under Hindu Law based on the fault theory i.e., marriage can be dissolved when either party to the marriage committed a matrimonial offence.

Section 13(1) of the act broadly enshrines nine fault grounds on which either party (husband or wife) could seek for divorce, and two fault grounds in section 13(2) on which wife alone could seek divorce. In 1976, extensively amendments were made in the Hindu Marriage Act making radical changes in the grounds of divorce. Through the Marriage Laws (Amendment) Act, 1976 two additional grounds for divorce were inserted. Besides, keeping the irretrievable breakdown of marriage in mind, the concept of divorce by mutual consent was also introduced in the Hindu Law.

Clause 1 of section 13 provides general grounds for divorce upon which either spouse can seek divorce. These grounds are enumerated as under:

1. Adultery;
2. Cruelty;
3. Desertion;
4. Conversion to another religion;
5. Insanity;
6. Leprosy;
7. Venereal disease;
8. Renunciation; and
9. Presumption of death

2.1. ADULTERY

2.1.1. GENERAL INTRODUCTION

Adultery was never favoured under Hinduism; it has always been beheld as a mortal sin. Hindu Laws and customs have been stringent over adultery for both purposes, religious and social. Today, adultery is recognized as a valid ground of divorce in India under section 13(1)(i) of Hindu Marriage Act, 1955. However, earlier, it was both a penal offence as well as a ground for divorce. Adultery can be defined as the act of a married person or respondent having sexual intercourse with any person other than his or her spouse. After the amendment of 1976, a single act of adultery would be enough for divorce and no need to be proved for continuous course of conduct of adultery for divorce, before 1976, a divorce could be granted only when spouse is 'living in adultery'. Now adultery simpliciter has been made ground of divorce as well as of judicial separation. Adultery is also described as criminal offence under section 497⁴⁸⁴ of IPC but it is separable from adultery as a matrimonial offence in many respects. Under IPC, it is a compoundable offence which means that when both the parties are willing to compromise then the charges can be dropped against each other.

2.1.2. IMPLICATIONS

⁴⁸⁴ Adultery—Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as an abettor.

According to the IPC, only man commits this offence and shall be liable and not the woman. A woman is not liable as an abettor. While in matrimonial offence both and husband and wife have capacity to commit adultery. Adultery can be a ground of divorce but it is no longer criminal offence under IPC. The supreme court has struck down this 158 years old law on adultery in a landmark judgement of *Joseph shine vs Union of India*⁴⁸⁵. It was held by apex court that section 497 of IPC is unconstitutional as it is violative of article 14 and 15 of the Indian Constitution. However, adultery is still a sufficient ground for divorce as well as judicial separation as ruled by the Apex Court.

WIFE CANNOT CLAIM MAINTENANCE IF ALLEGATION OF ADULTERY IS PROVED AGAINST HER: In *Sanjivani Ramchandra Kondalkar vs. Ramchandra Bhimrao Kondalkar and anr*⁴⁸⁶, the Bombay High Court examined that when allegations of adultery are proven against the wife, she is not entitled to maintenance from her husband.

2.1.3. VALID CONSENT AS AN ESSENTIAL INGREDIENT

The married women must be completed or above the age of 16 years while committing adultery, if she has below the age of 16 years her consent would not be considered valid and it amounts to rape.

2.1.4. BURDEN OF PROOF – The burden of proof, in case of adultery always lies on the petitioner, a substantial proof is required to satisfy the court with the contention that adultery has been committed. Though, it is true that it is difficult to get direct evidence of adultery. However, it is not impossible, there are some rare cases where it can be proved by means of circumstantial evidences⁴⁸⁷. The offence of adultery must be proved beyond a reasonable

doubt. As a rule, adultery can be proved by any of the one:

- ✓ Circumstantial Evidence
- ✓ Evidence of non-access and birth of children
- ✓ Contracting of venereal diseases
- ✓ Evidence of visits to houses of ill repute
- ✓ The sexual intercourse was voluntary indulge into by the respondent.
- ✓ The actual penetration need not to be proved, it can be proved prevalence of probabilities.

2.2. CRUELTY

2.2.1 GENERAL INTRODUCTION –

The second ground for divorce under Hindu Marriage Act, 1955 is cruelty. No exhaustive definition of cruelty exists, as the legal concept of cruelty varies from time to time, from society to society and facts or circumstances of the cases. The legal provision of matrimonial cruelty is given under section 13(1) (i-a) of Hindu Marriage Act, 1955. Before the amendment of 1979, cruelty was never considered as a ground of divorce but one of the grounds of Judicial Separation under section 10(1)(b).

On the basis of this section, either the husband or wife can present divorce petition before the court. Cruelty can be any act, here the aggrieved party has to prove that the act was so grave and unbearable, even there is reasonable apprehension in the mind of the aggrieved party that it would be harmful or injurious for the petitioner and it is getting difficult to continue the marriage.

Generally, cruelty refers to violent acts but it is not limited to this only. The word 'cruelty' is a wider term. It can be only understood according to the interpretation made by the judiciary in various cases, even before the concept of cruelty was added in the Act. In the case of *Narayan Ganesh Dastane v. Sucheta Narayan Dastane*⁴⁸⁸, the apex court has opined that

⁴⁸⁵ AIR 2018 SCC Online SC 1676

⁴⁸⁶ AIR 2019

⁴⁸⁷ Swapna Ghose vs Sadananda Ghose, 1979

⁴⁸⁸ AIR (1975) 2 SCC 326

cruelty is an act or a conduct which causes a reasonable apprehension of harm or injury to either spouse while they live with another. To be judged by impact of cruel conduct on petitioner. The supreme court also laid down some points to determine whether a conduct leads to legal cruelty or not, which leads to legal cruelty is as follows:

- 1) Any alleged act which constitutes cruelty should be proven according to the Law of Evidence;
- 2) There should be an apprehension in the petitioner's mind of real harm or injury from the defendant's act or conduct.
- 3) The apprehension should be reasonable having regard to the condition of the parties;
- 4) The petitioner should not have taken advantage of his position.
- 5) The acts of cruelty should not have condoned by the petitioner.

Cruelty occurs in various forms, and is not restricted to a single one therefore, it is difficult to decide what exactly constitutes cruelty. Each case of cruelty is different because cruelty deals with the conduct of human beings which may differ from person to person, their standards of living, thinking, upbringing, society, and other related ailments. In the case of *Ashok vs. Santosh*⁴⁸⁹ the Delhi High Court has stated that Injury to private parts amounts to cruelty. However, In *Shobha Rani vs. Madhukar*⁴⁹⁰, the wife alleged that her in-laws always used to demand for money from her parents and sometimes her husband also used to demand money, The Hon'ble Supreme court considered it to be within the concept of cruelty and said that cruelty can be mental or physical, intentional or unintentional. Pertaining to which demand of dowry was regarded as cruelty. In the instant case, the court noted that denial of sex by one spouse without any sufficient reason amounts to mental cruelty.⁴⁹¹ Likewise, there are other instances which fall under the category of

cruelty viz a viz, Demand of dowry, false allegations of adultery, wife quarrelling with mother-in-law, wilful refusal to have marital intercourse, drunkenness, false criminal charges, refusal to have children, birth of an illegitimate child, peculiar behaviour, termination of pregnancy without husband's consent, aggressive behaviour, etc.

Intension to be cruel is not essential- Mens Rea is the most important element to prove that a crime has been constituted but under Hindu law it is not an important element to constitute cruelty. In the above case, it was held that cruelty can be intentional or unintentional. The absence of guilty mind does not make any difference in the case. *Bhagwat vs. Bhagwat*⁴⁹², In this case, the hon'ble court observed that defence of insanity is not available against cruelty and the conduct of the insane husband amounts to mental cruelty, even in the absence of an intension to be cruel.

Exceptions to cruelty under Hindu law-

Condonation means forgiveness of the matrimonial offence and the restoration of offending spouse to the same position as he or she had before the offence was committed. Section 23(1) of the Hindu Marriage Act, 1955 states that if any party after filing the petition of divorce or judicial separation, does any act which condemns cruelty of other party then this may become sufficient ground for any court to cancel petition of the divorce filed by the petitioner.

Cruelty under Indian Penal Code- cruelty is not only ground for divorce and judicial separation under Hindu Marriage Act, 1955, cruelty is a crime under section 498A of IPC. Cruelty against married woman in India by the husband or his relatives has been mentioned under section 498A. According to the section, if the husband and his relatives, performs an act intentionally upon a woman which amounts to cruelty, shall

⁴⁸⁹ AIR (1983) Del 63

⁴⁹⁰ AIR (1988) 1 SCC 105

⁴⁹¹ Navodit Mishra & Anr vs. Richa Mishra, 2022 (Chh)

⁴⁹² AIR 1976 Bom 80

be liable to be punished with an imprisonment of 3 years which may be extended and shall also be liable to pay a fine under this section.

Misuse of provision of cruelty in the modern era-

The objective of every law to protect or provide safeguard to the victim and also punishing offenders. There is no scale by which it can be decided that cruelty has been constituted or not, consequently, it has been extensively misused. The Delhi court also observed that most of the complaints are filed in the heat of the moment over trifling fights and ego clashes.⁴⁹³

Burden of proof- In case of cruelty, the burden of proof lies upon the respondent, the respondent has to prove that the charge of cruelty is alleged falsely against him or her.

Desertion

Introduction – Desertion is the third ground of divorce given under section 13(1) (ib) of Hindu Marriage Act, 1955. In literal sense, the word 'desert' means 'to give up or leave without any sufficient reason or intention to return'. If one of the spouses voluntarily withdraw from matrimonial life for at least a period of two years, without sufficient reason, is desertion. The Parliament explained desertion: "*The expression 'desertion' means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent of or against the wish of such party, and includes the wilful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly*". There are mainly five essential elements are required to constitute the offence of desertion which are as follows:

- 1) The factum of separation
- 2) The intension to desert (*Animus deserendi*)
- 3) Without any reasonable cause

- 4) Absence of consent of another spouse
- 5) For a continuous period of two years.

When the petition presents before the court on the ground of desertion, the first two elements must be fulfilled, the factum of separation *i.e.*, the deserting spouse have left another spouse with an intension to abandon her or him permanently and it is an intention of deserting party to bring cohabitation permanently to an end. The next two elements are applied to the deserted spouse, the deserted spouse must not have given his or her consent or reasonable cause of desertion to the deserting spouse. It is the duty of petitioner to prove that desertion is against his or her will and there was no sufficient reason of desertion. Most importantly, divorce petition on grounds of desertion can be claimed after a continuous period of two years and it is necessary to show that the same is still continue. If the deserting spouse come back before the expiry of two years and then leaves again, the period of desertion commences from the date in which he left again.

Desertion has been continuous course of conduct, mere temporarily separation of spouses and if there is no intention to cease cohabitation permanently does not amount to desertion. In *Bipin Chandra vs. Prabhawati*⁴⁹⁴ divorce filed under the Bombay Hindu Divorce Act, 1947 where desertion for 4 years was ground of divorce. The honourable supreme court held that even though the wife left her matrimonial house without any reasonable cause but subsequently wife shows an intention to return, desertion comes to an end. She won't be guilty for the offence of desertion and the appeal was dismissed.

Kinds of Desertion- Under the Hindu Marriage Act, Desertion may be of following categories:

- 1) Actual desertion
- 2) Constructive desertion

⁴⁹³ Chandrabhan vs. State, 2008

⁴⁹⁴ AIR 1957 SC 173

Actual Desertion – when the fact of separation and the *animus deserendi* i.e., the intention to bring cohabitation permanently to an end, with the same party, it is known as actual desertion. For instance, where the husband has an intention to bring the cohabitation to an end, abandoned the matrimonial home, he has committed desertion.

Constructive Desertion– when one spouse denies the other spouse to perform marital duties and obligations, it means he or she creates a situation or conducts in such a manner that the other spouse is compelled to leave the matrimonial home, here which party compels to other is known as deserter. In other words, which spouse leaves the matrimonial home after getting compelled by other spouse, will not be guilty for the offence of desertion. Recently, the Kerala High Court gave new dimension to the constructive desertion in landmark judgment of 2021. In *P.C. Kunhinarayanan vs. Vijayakumari*, as per bench, if the wife resisted the husband for cohabitation, it will be constructive desertion. The court allowed an application for dissolution of marriage and took the reference of case of Supreme Court *Savitri Pandey vs. Prem Chand Pandey (2002)* where it was held that desertion might also be constructive. The honourable court has ruled that “when appellant-husband offers to resume the marital relationship, but the respondent resists without any reasonable cause, failing to resume cohabitation, it will amount to constructive desertion”.

Termination of Desertion – Desertion as a ground for divorce is inconsistent from other grounds such as adultery or cruelty, it can be terminated by the act or conduct of deserting spouse. Desertion can be terminated by following ways:

- 1) If the deserting spouse resume cohabitation, with the mutual consent, desertion comes to an end.
- 2) If the marital intercourse takes place between both spouses with mutual consent,

which is very strong proof of cohabitation. Desertion will be terminated.

- 3) If the deserting party expresses his or her intention to return or offer of reconciliation, it would amount to termination of desertion.

Burden of Proof– In case of desertion, the petitioner is bound to prove that there is no reasonable cause of desertion and it was against the wish of the petitioner.

Conversion

Introduction– Religion is the most sensitive aspect of one’s life and the Indian Constitution also laid down the provisions regarding freedom of religion. But if one spouse converts his or her religion it impacts on the matrimonial life of another spouse.

Conversion is a valid ground under Hindu Law, it is a ground for divorce as well as judicial separation, however it is not a ground of divorce under special marriage act which deals with inter-religious marriages. Under clause (ii) of section 13 (1) of Hindu Marriage Act, 1955 it is stated that if the one spouse has ceased to be a Hindu by conversion to another religion, divorce can be obtained on this ground. Under Hindu Law, a person does not cease to be a Hindu until he converts to another religion, mere Hindu on his declaration that he has no faith in Hinduism or he leads unorthodox life so much so as to eat beef and decry all Hindu gods and goddesses⁴⁹⁵, these not only sufficient to cease to be a Hindu, he needs to convert to another religions. Hence, there are two main elements are required for this ground of divorce.

- 1) The Respondent is no longer a Hindu, and
- 2) The respondent has converted to another religion.

The conversion of the respondent does not amount to automatic divorce but the petitioner gets the right to file a petition on the ground of

⁴⁹⁵ Family Law, Dr. Paras Diwan, Page No. 184

conversion. It depends on the petitioner either he or she chooses to continue to live with that spouse or wants divorce.

Judicial Approach- *Sarla Mudgal vs. Union of India*⁴⁹⁶ is a landmark case, in this case, the husband changed his religion from Hindu to Islam to have a 2nd marriage without dissolving his 1st marriage. The court highlighted some points by this landmark judgment:

- 1) A marriage solemnized under the Hindu Marriage Act cannot be dissolved except on the grounds given under section 13 of the same act, until this, second marriage will not be valid.
- 2) The second marriage by conversion would be illegal marriage qua his wife who married under the act and continues to be a Hindu.
- 3) Conversion to Islam by Hindu man and marrying again would not dissolve the previous marriage automatically but it will be a ground for divorce.
- 4) The court observed that the necessity of the Uniform Civil Code as it prevents Indians from adopting the personal laws of one another.

Insanity

Introduction- Insanity means unsoundness of mind, before the amendment of 1976, only divorce can be obtained when either spouse has incurable insanity for three years but in modern codified Hindu Law there is no specified time period as prescribed for insanity.

Section 13(1)(iii) of Hindu Marriage Act, 1955 provides mental illness as a valid ground for seeking divorce. Explanation (a) of the same section defines "mental disorder" which means mental illness, incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and also includes schizophrenia. Further, explanation (b) of the section describes "psychopathic disorder" which includes persistent disorder, disability of

mind, abnormal aggression, and seriously irresponsible conduct⁴⁹⁷.

Schizophrenia is a type of serious mental illness in which the patient behaves in strange manner and unexpected ways such as crying and laughing without reason and at all odd hours, tearing clothes, running out of home.

Medical Examination- In matrimonial case whose divorce is sought on ground of insanity, without medical examination it would be difficult to conclude that whether the allegations made by the petitioner against the other is correct or not. It has been challenged in many cases by arguing it is violative of article 21 of the constitution but court has observed that article 21 is not absolute and a matrimonial court has power to order a person for medical test. However, the court should exercise this power if the petitioner has a strong case against the respondent.

Leprosy

Introduction – Leprosy is an infectious disease mainly caused by the bacteria, which affects the skin and peripheral nerves. Leprosy was a ground of divorce under clause (iv) of section 13 of the HMA, now, it is no longer a ground of divorce. The government of India through the personal laws (Amendment) Act, 2019 omits leprosy as a ground for divorce from various statutes governing marriage in India.

Heretofore, leprosy was incurable and extremely severe, under the clause, petitioner can seek for divorce if the respondent had been suffering from leprosy but at the present time with the advancement of medical science, leprosy is curable.

Venereal Diseases

Introduction- one of the grounds is venereal diseases specified under section 13(1)(v) of the

⁴⁹⁶ AIR 1995 SC 1531

⁴⁹⁷ Bare Act, Hindu Law

act, words are “has been suffering from venereal diseases in a communicable form”. Venereal diseases are sexually transmitted disease such as AIDS, if either spouse suffering from the sexual diseases thus it is a valid ground of divorce under Hindu Law.

The Madras High Court had perceived that any disease which is in a communicable form shall be come under this section. HIV was not existed at the time of the act is enacted nevertheless it falls in the same section and decree of divorce could be passed.⁴⁹⁸

In *Mr. 'X' vs. Hospital 'Z'*⁴⁹⁹ decree of divorce passed in the favour of wife, when husband was found to be HIV positive. The supreme court directed that a person has been suffering from venereal diseases has no right to marry until he recovers.

Renunciation of the world

Introduction- “Renunciation of world” means completely withdraw from the world in order to serve God or achieve spiritual enlightenment. Hindu religion approved four *ashram* or stages of life in which *Sannyasa* is the last stage. Clause (vi) of section 13(1) established that if the respondent has renounced the world, the petitioner can seek divorce. The two requirements must be fulfilled under this clause which are as follows:

- 1) The other spouse must have renounced the world, and
- 2) He must have entered into a holy order.

It is main element to fulfil both the conditions for a valid ground for dissolving a marriage. Unless the respondent does not enter into some religious order, then it would not cover under the clause as the second condition has not been satisfied. Thus, “Renunciation of world” is an only ground under Hindu Law.

Presumption of death

Introduction- Presumption of death is last ground of dissolving a marriage lays down under clause (vii) of section 13(1) of Hindu Marriage Act, 1955. This clause based on section 108 of Evidence Act, where it has been stated a person is presumed to be dead if he has not been heard of as alive for not less than seven years by relatives, friends or other persons who would have normally heard about him if he has been alive.

A marriage may be dissolved on this ground, either spouse has not been heard alive for a period of seven years or more then it would be presumed that he or she has been dead.

Burden or proof- The burden of proving that such a person is not alive lies on the spouse who has been claiming divorce under this clause.

Special grounds of divorce for wife-

Clause (2) of section 13 provides special grounds of divorce where wife alone could seek divorce. At the beginning, only two grounds were existed under the clause but by the marriage laws (amendment), 1976 two more grounds had been inserted. These four grounds are as follows:

1. **Pre-Act polygamous marriages-** Under the clause, if the husband had more than one wife before the commencement of this act i.e., 1955, the wife or wives can present divorce petition if at the time of presenting petition, the other wife is alive. The act aims at enforcing policy of monogamy, such a ground is available when two or more marriages of husband are valid and the other wife should be present at the time of divorce petition.
2. **Rape & Unnatural offences-** unnatural sex, sodomy, oral sex and sex against the order of the nature⁵⁰⁰ by the husband gives the wife a right to claim divorce. Rape and unnatural

⁴⁹⁸ P.Ravikumar vs. Malarvizhi, 2013

⁴⁹⁹ AIR 1995 SC 495

⁵⁰⁰ Sanjeev Gupta vs Ritu Gupta, 2019

offences are criminal offences under IPC. Rape has been defined under section 375 and punishment provided under section 376 of the same, when unnatural offence elucidated under section 377 of the IPC.

3. **Non-resumption of cohabitation after a decree of maintenance-** sub-clause (iii) of clause 2 of section 13 prescribed when a decree for maintenance under section 18 of Hindu Adoption and Maintenance Act or under section 125 of Code of Criminal Procedure has been obtained for awarding maintenance to the wife, and the parties are living separately after the passing of the decree for more than one year then the wife can file a suit for divorce.

4. **Option of puberty-** sub-clause (iv) of section 13(2) lays down, if a wife who has married under age that is if she has not attained the age of fifteen years, under this clause she has option to repudiate her marriage after she attained the age of puberty and it is immaterial whether consummated or not. However, this option is not available for husband thus it was challenged as *ultra virus* of the constitution as it discriminated on ground of gender. The hon'ble court answered, it is not violative of constitution as Article 15(3) allows special provisions for benefit of women.⁵⁰¹

Irretrievable Breakdown of Marriage-

If the marriage has been broken irretrievably, when emotions are dead, willing to separate with each other & totally unhappy couples even the objects of the marriage could not be fulfilled and there is no hope that parties can be reconciled in future, it is irretrievable breakdown of marriage. Section 13(IA) of Hindu Marriage Act, 1955 provides provision where either party to a marriage can present a petition for the dissolution of the marriage on the ground-

1) there has been no resumption of cohabitation as between the husband and the wife for more than one year after the passing of

a decree for judicial separation in a proceeding to which they were parties, or

2) there has been no restitution of conjugal rights as 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.

Alternative relief in divorce proceedings-

Section 13A empowers the court, if any proceeding under this act, on a petition for dissolution of marriage by a decree of divorce, may pass decree for judicial separation instead of a decree of divorce except in so far as the petition is founded on the grounds mentioned under clauses (ii), (iv) and (vii) of section 13(1) of the act.

Divorce by mutual consent-

As per section 13 B of the act, a marriage may be dissolved by mutual consent if both the parties jointly presented a petition for divorce on the following averments:

- 1) That spouses have been living separately for a period not less than one year.
- 2) That spouses have been unable to live together, and
- 3) That spouses have mutually agreed that their marriage should be dissolved.

If the parties are agreed to divorce with mutual consent, all the aforementioned conditions must be satisfied. It is not necessary that spouses are living apart physically, they can be living under same roof but not as husband and wife. After filing of the petition, the parties have to wait for six months though not for more than eighteen months.

In a case, when the spouses have no grounds available prescribed under section 13 of the act and they want to dissolved their marriage then divorce can be obtained by mutual consent.

⁵⁰¹ Roop Narayan Verma Vs Union of India, AIR 2007 Chh. 64 (DB)

One year bar in filing divorce petition-

Section 14 highlights that no petition for divorce would be entertained by the court unless one year has passed since the solemnization of the marriage or a leave to present a petition within that time had been obtained. Before 1976, the waiting period was 2 years which is now one year. Though in the case of exceptional hardship to the petitioner or exceptional depravity on the part of the respondent, the petition may be presented earlier.

Remarriage after divorce-

Section 15 lays down when the decree of divorce to dissolve a marriage has been passed and there is no right of appeal against the decree has left, the time for appealing has expired or when an appeal presented but it has dismissed, either party to the marriage is free to remarry.

Conclusion-

In modern times divorce has become hugely common for everyone whereas it was an unknown concept in the ancient period forasmuch Hindus conceived of their marriage as a sacramental and an eternal union. There were only exceptional cases when marriage was allowed to dissolve. Later, divorce was validated under the matrimonial causes act, 1857 only on the sole ground that is adultery. Afterwards, divorce comes into existence under the Hindu Marriage Act, 1955. At present, there are 9 grounds are available under section 13(1) where either spouse can present divorce petition. Hindu culture tries to accept dynamic change in society. However, every coin has two sides, thus there are some positives and negatives traits of divorce. Due to these nine fault grounds, guilty spouse can take advantage of his or her fault by separating from another spouse and dissolving the marriage. On the other hand, sometimes forced relationships lead to suicide or mental illness, to avoid this result divorce is better option for both. Further, sub-clause (2) of section 13, four grounds are

available for wife where she has alone right to claim divorce, she has no compulsion to bear the rest of her life with him. Afterwards, the concept of irretrievable breakdown of marriage comes into light when a married couple is unloving and unresponsive, they have option to dissolve their marriage through sub-clause (IA) of section 13 of the act. If no any aforementioned ground is available and spouses are distressed or miserable with each other then divorce can be taken by mutual consent under section 13 B and time limit is prescribed under section 14 where no parties to the marriage can file divorce petition before 1 year. In divorce cases, the court has power to grant alternative relief in section 13A. At the end when divorce proceedings have been completed and decree has passed over and above time of appeal has passed away then parties to the marriage are free to marry again.

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