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## MATRIMONIAL RELIEFS UNDER HINDU MARRIAGE ACT, 1955

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### INTRODUCTION

The most significant institution in human society is marriage. It is a common occurrence. The foundation of human civilization has come into the picture because of marriage. New social ties and reciprocal rights between spouses are created through marriage. When children are born, their rights and position are established. Marriage is considered a sacred institution in Indian society. It is the very foundation of a stable family and civilized society. It gives status and security to the parties and their offspring.

When two individuals are married to each other, they bring in different thoughts, opinions, different interests, and goals into their relationship. These interests, goals, and opinions will not be stable throughout their married life. At some point in time, the interests, thoughts, opinions, and goals of these two individuals do not match and they may become repulsive. All these small conflicts will grow to an extent where it may lead to disagreements among themselves which may finally lead to matrimonial disputes. The attitude of these two individuals towards each other, the disagreements among themselves may further lead to differences among each other and may also create hindrances in solving their disputes. These disputes not only occur because of the differences in their thoughts, opinions, and interests but it is a series of circumstances that will create high damage to their relationship.

### Hindu Marriage Act, 1955

In 1955, the laws governing Hindu marriage were formalised and put into effect. The laws governing Hindu marriage, restitution of conjugal rights, judicial separation, divorce, annulment of marriage, maintenance, and guardianship are included in the Hindu Marriage Act, 1955 which was passed by the legislature. Sections 5 and 7 of the Hindu Marriage Act of 1955 address the requirements for a legally binding union among Hindus. The present article gives an overview of the Hindu Marriage Act, 1955, alongside explaining current developments in the same.

The Hindu marriage act was enforced by parliament in 1955 to amend and to codify marriage laws between Hindus and also for regulating the institution of marriage including validity and invalidity of marriage, other aspects

of personal life among Hinduism is also regulated the applicability of such in wider Indian society. India is a cosmopolitan country. It allows each citizen to be governed under personal law according to their religious views.

Thus, the Hindu marriage is not a contract and neither is it a sacrament. Marriage does not rest within the criteria of a contract but rather that of a covenant. It is not exclusive to a man and a woman because society is bigoted or hateful; the truth is that only a man in his distinctiveness and a woman in her distinctiveness can form a complete union.

### Structure of Hindu Marriage Act, 1955

The Hindu Marriage Act is an Act of the Indian Parliament that was approved on May 18, 1955. The Hindu Succession Act, 1956, the Hindu Minority and Guardianship Act, 1956, and the Hindu Adoptions and Maintenance Act, 1956

were all enacted at this time as part of the Hindu Code Bills. The Hindu Marriage Act, 1955 was passed to protect the legal rights of Hindu brides and grooms who are joined by the holy bond of marriage. The type of ceremony that must take place has not been specified by law because there are numerous methods by which a man and woman can be wed in accordance with Hindu tradition.

The Act of 1955 is spread across six Chapters, consisting of 29 Sections in total. The layout of the same has been provided hereunder:

Chapter I: Preliminary

Chapter II: Hindu Marriages

Chapter III: Restitution of conjugal rights and judicial separation

Chapter IV: Nullity of marriage and divorce

Chapter V: Jurisdiction and procedure

Chapter VI: Savings and repeals

### **Purpose of the Hindu Marriage Act, 1955**

The Act's principal goal was to update and codify the law governing marriage between Hindus. It contained divorce and separation, both of which are already covered by Sastrik Law (old Hindu Law), in addition to modifying and codifying Sastrik Law. The law became uniform for all Hindu groups as a result of this enactment. In India, certain different religions have their own civil rules that regulate their followers separately.

### **Essentials of a Valid Marriage**

1. Both the parties to the marriage should be Hindu - Section 5 of the Hindu Marriage Act of 1955 specifies the prerequisites for a lawful Hindu marriage, which provides that both parties must be Hindus. If one of the parties to the marriage is a Christian or a Muslim, the marriage will not be considered a genuine Hindu marriage under the Hindu Marriage Act of 1955. Therefore, under the Act of 1955, a lawful marriage cannot be solemnised if both

parties are not Hindus. In *Yamunabai Anant Rao Adhav v. Anant Rao Shivaram Adhav* (1988), it was made clear that Section 5 of the Act only permits marriages to be performed between two Hindus.

2. The parties to the marriage should not suffer from unsoundness of mind, mental disorder, or insanity - In a Hindu marriage, a person must be able to give legally binding consent, according to Section 5(ii)(a) of the Act of 1995. The other party has the option to declare the marriage null and void if neither of the parties is competent to offer legally binding consent to the union due to mental incapacity.

According to Section 5(ii)(b) of the Act, a marriage may be dissolved at the discretion of the other party if one of the parties, even though they are capable of giving legal consent, has been experiencing a mental condition that renders them unfit for marriage and for having children.

It is also to be noted that, according to Section 5(ii)(c) of the Act, if one partner has experienced repeated episodes of insanity, the other party may choose to have the marriage annulled. The Marriage Laws (Amendment) Act, 1999 altered this clause of the Hindu Marriage Act of 1955, and the phrase "epilepsy" has been removed. Because of this, in modern times, if a party to a marriage experiences frequent seizures, the marriage is still legal and the party cannot choose to annul it.

3. The marriage should be monogamous - Section 5(i) of the Hindu Marriage Act, 1955 specifies that neither party had a spouse who was still alive at the time of the marriage. The marriage is deemed null and void if any of the parties had a spouse who was still alive at the time of the union. A bigamous marriage is therefore invalid. A second marriage can

be legally consummated after the first one has been ended by death or divorce.

Any marriage between two Hindus that is solemnised before the commencement of legislation is void if either party was married or already had a spouse at the time of the marriage, according to Section 17 of the Act, which deals with the penalties for bigamy. Also, if a person solemnised a second marriage while the original marriage is still in effect, they may be prosecuted and punished in accordance with the requirements of Sections 494 and 495 of the Indian Penal Code, 1860.

4. The parties to the marriage have attained the majority – The bride must be at least 18 years old and the husband must be at least 21 years old at the time of the marriage, per Section 5(iii) of the Act. Any marriage that is performed in contravention of these standards shall neither be null nor voidable. Additionally, anyone who solemnised such a marriage could be prosecuted under Section 18 of this Act with a harsh sentence of up to two years in jail, a fine of up to one lakh rupees, or both.

A marriage solemnised in contravention of the age requirements under Section 5(iii) was found to be neither void nor voidable in the case of *P. Venkataramana v. State* (1977). However, Section 18 of the Hindu Marriage Act of 1955 makes violating the terms illegal.

5. The parties to the marriage should not be related as Sapindas – A marriage between two people who are associated as Sapindas is void, according to Section 5(v) of the 1955 Act, if it is solemnised. To put it another way, the husband and wife shouldn't share the same ancestry. According to Section 3 (f) of the Hindu Marriage Act of 1955, a Sapinda relationship is one in which a person extends as far as the third generation

(inclusive) in the line of descent through the mother and the fifth generation (inclusive) in the line of descent through the father, the line in each case being traced upward from the individual in question, who is to be counted as the first generation.

Even though the marriage between the Sapindas is null, it may still be lawful if there is a valid custom or usage that governs each of them and allows for such a union. By virtue of Section 18 of the Act, a marriage solemnised between two parties related to Sapindas is void and the parties are subject to punishment, which may include both simple imprisonment for a month and a fine of Rs. 1,000.

6. The parties should not come under the degree of prohibited relationships – The parties should not be considered to be in a banned relationship under Section 5(iv) of the Act unless their respective cultures' traditions allow for marriage between them. According to Section 3(g) of the Act of 1955, two people are considered to be in a banned relationship if they are:

- If one is the other's lineal ascendant or
- If one was married to or had a descendant from the other's lineal ascendant;
- If one was the spouse of the other's brother, father, mother, grandpa, grandmother, or any other relative; or
- If one of the two is a brother or sister, an uncle or niece, an aunt or nephew, a child of a brother or sister, or the children of two brothers or sisters.

A marriage between two people is void if it falls within the parameters of a banned relationship. However, marriage is legitimate if it is governed by a valid custom or usage that applies to both

parties. It is crucial that the usage or custom being practised be certain, reasonable, and not in conflict with public policy. Various traditions that validate marriage in the context of banned partnerships can be found all over India. For instance, it's usual practice in Kerala to marry off siblings' offspring.

In the case of *Balu Swami Reddiar v. Balakrishna* (1956), the court determined that it was improper and against public policy, for one to marry his daughter's daughter in accordance with a Reddiar custom that was well-known among them in the state of Madras. A marriage solemnised between two persons that fall under the definition of a forbidden relationship is void pursuant to Section 18 of the Act, and the parties are subject to a fine of INR 1,000 or one month's simple imprisonment, or both, depending on the severity of the offence.

7. The marriage should be solemnised in accordance with the customary rites and ceremonies - According to Section 7 of the Act, a Hindu marriage is lawful under the 1955 Act if it is performed in conformity with the traditional rites and ceremonies of either party. If such rituals and ceremonies involve the saptapadi and binding, when the seventh step is taken, the marriage is considered to be complete.

In the case of *Bibba v. Ramkall* (1982), the court determined that performing certain ceremonies merely with the goal of considering the couples married does not constitute performing the legal rituals. Depending on each person's customs, the ceremonies may differ. For instance, a significant customary rite used by the Nair caste in Kerala is the presentation of a piece of cloth by the bridegroom to the bride (pudava kodukal).

### **Registration of marriages under the Hindu Marriage Act, 1955**

According to Section 8 of the Hindu Marriage Act of 1955, a marriage is instantly recorded by the Registrar of Marriage on the same working day. All documents are verified on the application date, and the marriage is then registered by the registrar of marriage appointed by the Government of India on the following working day, and a marriage certificate is provided.

According to Section 8 of the Act, state governments may establish regulations for the registration of Hindu marriages, allowing the parties to any such marriage to have details about their marriages entered in the Hindu Marriage Register in the manner and under the conditions that may be prescribed. This registration is being done to make it easier to prove Hindu marriages. The state legislature may be presented with any rules created under this provision. The Hindu Marriage Register shall be accepted as proof of the statements made therein and should be available for inspection at all appropriate times.

### **Matrimonial Reliefs under HMA, 1955**

The very purpose of marriage is to unite legally. It lays down that the legally wedded couple must live together throughout the life sharing pleasures and pains. However, in some cases, matrimonial disputes take place due to misunderstanding or indifferent attitudes between the husband and the wife. In such cases, to provide relief to the aggrieved spouse, certain matrimonial remedies are incorporated in the Hindu Marriage Act, 1955. Those matrimonial remedies are:

1. Restitution of Conjugal Rights. (Section 9)
2. Judicial Separation (Section 10)
3. Void Marriages (Section 11) & Voidable Marriages (Section 12)
4. Divorce (Section 13)

### **Restitution of Conjugal Rights**

When either of the spouses withdraws from their wedding without a reasonable excuse, then section 9 of the Hindu Marriage Act says that the other spouse or the aggrieved party can apply for the restitution of conjugal rights. According to section 9, the court may not compel the other spouse to be in a marital relationship with the other spouse but it can ask for a justifiable reason as well as a remedy for the other spouse.

The following three essentials have to be proved:-

1. The withdrawal by the respondent from the society of the petitioner (aggrieved party).
2. The withdrawal is without any reasonable or lawful ground.
3. The court must get satisfied with the truth of the statement made in the petition.
  - This remedy has been statutorily provided under all personal laws:-
    - i. [Section 9 of the Hindu Marriage Act](#).
    - ii. Section 32-33 of Divorce Act.
    - iii. Section 36 of the Parsi Marriage And Divorce Act.
    - iv. Section 22 of the Special Marriage Act.

The capacity to request maintenance under Section 25 of the Hindu Marriage Act, 1955 is one of the significant consequences offered to an aggrieved party under Section 9 of the Hindu Marriage Act, 1955.

The significance of conjugal rights in a marriage is recognised by numerous provisions of Indian personal law. In the strictest sense, marriage rights refer to the freedom to cohabit and have a sexual relationship with one's spouse. The wife and husband must respect each other's rights and live together, which is one of marriage's most basic obligations. "Restitution of Conjugal Rights" is a legal clause that enables the offended party to restore cohabitation with a spouse who withdrew without cause. It's frequently thought of as a strategy to keep a marriage intact. Marriage imposes various marital obligations and grants each spouse

legal rights under all matrimonial laws. The Act's contested clause has a lengthy history due to its constitutional legitimacy.

The Supreme Court validated the constitutionality of Section 9 of the HMA in [Saroj Rani v. Sudarshan Kumar Chadha, 1984](#). The Court held that the respondent shall follow the matrimonial obligations and cohabit with the petitioner. The Court also stated that if in case the respondent fails or wilfully fails to comply with the decree within one year then the petitioner has the right to file a case for divorce under [Section 13 of the HMA](#).

The Supreme Court in [Seema v. Rakesh Kumar, 2000](#) held that the petitioner is entitled to receive maintenance from her husband if she is not able to live a decent life on her own even if they are living together.

In a case of [Jagdish Lal v. Smt. Shyama Madan and Ors, 1966](#) the case for restitution of conjugal rights was filed by the husband. The wife, in this case, proved that her husband was impotent. The Court held it as a ground for rejection of the petition and therefore rejected the suit.

In [Harvinder Kaur v. Harvinder Singh, 1984](#) the Court held that the decree of restitution of conjugal rights acts as an inducement for the couples to live together. The Court further held that it does not create any force on either of the spouses to come into a physical relationship.

Although it was designed to safeguard the interests of those involved in a marriage bond, this clause has faced challenges and criticism for a number of reasons. The provision's constitutionality was contested in the *T. Sareetha v. T. Venkatasubbaiah* (1983) case before the Andhra Pradesh High Court. According to the plaintiff in this lawsuit, Section 9 of the Hindu Marriage Act breaches fundamental rights protected by [Articles 14](#) and [21](#) of the Constitution. The Court felt that this clause was particularly unfriendly and barbaric toward women. Her right to her own body is violated as a result of this forced cohabitation, and she loses her free choice

regarding her sexual autonomy. As a result, a decree of restitution of conjugal rights will offend her right to privacy protected by Article 21. Since sexual cohabitation is a private decision between a husband and wife, the above mentioned provision was initially ruled illegal by the Court in 1983. Accordingly, the state should not intervene in such private decisions.

The Delhi High Court, however, held a different viewpoint. The Court noted that there are various misunderstandings about Section 9 that have sparked discussions about its constitutionality and given rise to such discussions. Marriage is a religious ceremony, according to the Court, and efforts have been taken by the law to maintain its sanctity. Therefore, the restitution of the conjugal rights clause was implemented to prevent either the husband or the wife from ending their cohabitation without a good reason. The true purpose of the regulation, which is to uphold the marriage tie between two people, must therefore be taken into account when determining whether it is constitutional. As a result, the Court determined that Section 9 does not contravene Articles 14 and 21 because it was included as a new justification for filing for divorce.

The Supreme Court's ruling in the case of *Saroj Rani v. Sudarshan Kumar Chadha* in 1984 put an end to all disputes. The Delhi High Court's judgment was accepted in this instance, and the Andhra Pradesh High Court's decision was overturned. According to the Court, the relevant clause "serves a societal purpose as an assistance to the avoidance of marriage breakdown" and functions as a remedy. Although this remedy may be antiquated in nature, its purpose is to serve as a basis for divorce should the parties in question refuse to make such reparation. In addition, the Court believed that it was up to the legislature to repeal Section 9 as a remedy, not the courts. Thus, in this historic decision, Section 9 was found to be constitutionally legitimate.

### Judicial Separation

Judicial separation in a generic sense means that the couple is separated from each other by a court order through an application instituted by them but is still married in the eyes of law. The court does not grant it for any reason except the grounds mentioned under the grounds of divorce [Section 13(1)].

Section 10(1) of HMA explains that if a marriage is solemnised under Hindu laws and if the party to marriage wants to seek a judicial separation they can do so by filing a petition of the same in the court. The party can present the application of separation by mentioning the grounds which are herein mentioned under [Section 13\(1\)](#) of the HMA and the wife can further also take support of the grounds of separation from Section 13(2) which we are going to study ahead in this article.

Section 10(2) of HMA additionally mentions that if a decree under Section 10(1) is passed, it is no longer obligatory for the parties to reside together and the court by the application of petition by either of the parties and being satisfied by the application their decree may be rescind.

The status of parties is not fully dissolved during the course of separation, though the parties would not have any mutual rights; they are still legally married under the Hindu law, [Narasimha Reddy v. M Boosamma; \(AIR 1976 AP 77\)](#). The court after passing the decree of judicial separation gives a gap of one year to the parties to which they can contemplate their status of relationship and decide on whether to or not reconcile, and so if the parties do not wish to rehabilitate together then the decree of judicial separation can be moved for divorce. Therefore it shows that judicial separation does not mean a complete cessation of rights but on a temporary basis. During the separation, the party is in no sense moved out of the line from the inheritance of property as they are lawfully still spouses in the eyes of law which were held in the case of [Krishna Bhattacharjee v. Sarathi Choudhary, \(2016\) 2 SCC 705](#).

If the court is of the view that the wife is unable to sustain herself during the time of judicial separation then maintenance to fulfil her basic needs shall be given to her which was also held in the case of [Rohini Kumari v. Narendra Singh; \(1972\) 1 SCC 1 and Sohan Lal v. Kamlesh; \(AIR 1984 PH 332\)](#).

The case of [Gomathi v. Kumaragurruapan, \(AIR 1987 Mad 259\)](#) held that after passing the decree of judicial separation if the parties do not resume to cohabit together then the parties can move to the court for divorce and the date of one year of judicial separation can be calculated from the date of announcement of such decree.

### **Void Marriages**

A void marriage is a marriage that is invalid or illegitimate. A void marriage is void from the beginning, *void ab initio*. A decree for void marriage is a judicial declaration of pre-existing fact. [Section 11](#) states that any marriage solemnised shall be deemed null and void by a decree of nullity if it violates the provisions of Section 5 (i), (iv), and (v).

Grounds for Void Marriage –

#### **1. Bigamy**

Bigamy is the act of marrying someone else while remaining legally married to someone. HMA, 1955, prohibits bigamy under Section 5(i). [Section 17](#) deals with the punishment of bigamy. Any marriage solemnised between two Hindus, including Buddhist, Jaina, or Sikh is void if either party had a husband or wife living at the time of the marriage and is subject to the provisions of [Sections 494](#) and [495](#) of the [Indian Penal Code, 1860](#).

In the case of [Shiromani Jain v. Dr Ashok Kumar Jain \(2017\)](#), the Hon'ble Supreme Court held that Section 17 of the Hindu Marriage Act mandates that the marriage be appropriately solemnised with the essential rites needed by law or by custom. The voidness of the marriage under Section 17 is a necessary component of Section 494 since the second marriage will become null

and void only when the provisions of Section 17 are satisfied.

#### **2. Parties are within the degrees of prohibited relationship**

The parties to the marriage are not in a prohibited relationship unless the custom or usage permits the marriage. [Section 3\(g\)](#) of the HMA, 1955, defines prohibited relationships.

The following situations fall under the definition of a prohibited relationship:

1. When one is a lineal ascendant of the other. Lineal ascendant includes father, grandfather and great grandfather; or
2. When one was the wife or husband of a lineal ascendant or descendant of the other; or
3. When one was the wife of the brother or of the father's or mother's brother or of the grandfather's or grandmother's brother of the other; or
4. If the two are siblings, uncle and niece, aunt and nephew, or children of brother and sister or cousins;

The Punjab-Haryana Court clarified in the case of [Kiran Kaur v. Jagir Singh Bamrah \(2014\)](#) that the provisions of [Section 23\(1\)\(a\)](#) of the Act do not preclude any party to the marriage from filing a petition under Section 11 of the HMA, 1955, seeking a declaration that the second marriage is null and void.

#### **3. Parties are Sapinda to each other**

[Section 3\(f\)](#) defines the Sapinda relationship. A person is considered to be in a Sapinda relationship if they can be traced upward from the individual in question, who is to be counted as the first generation, to the third generation in the line of ascent via the mother, and the fifth in the line of ascent through the father. If two persons share a lineal ascendant that falls within the boundaries of a Sapinda connection with regard to each of them, or if they are one

another's lineal ascendants within those parameters, they are said to be "sapindas" of one another.

#### 4. Legitimacy of children of void marriages

[Section 16\(1\)](#) deals with the legitimacy of children of void marriages. Whether the child was born before or after the Marriage Laws (Amendment) Act, 1976, whether a decree of nullity was granted in respect of that marriage, or whether the marriage was held to be void other than on a petition under this act, it is stated that any child of a void marriage will be legitimate in the same way as the children of a valid marriage.

According to [Section 16\(3\)](#), even if the child of a void marriage is declared genuine, such a child can acquire the property of their parents and acquire or possess the right to ancestral property.

In the case of *Balkrishna Pandurang Halde v. Yeshodabai Balkrishna Halde (2018)*, the Bombay High Court remarked that a child's ability to claim a share from a void marriage is restricted to the amount of their father's separate property and that they cannot make any claim during their father's lifetime. Their entitlement to their father's separate property will become available upon his death, through succession.

#### Voidable marriages

The term 'voidable' means the ability to be invalidated or nullified. [Section 12](#) of the HMA, 1955, deals with voidable marriages. A voidable marriage is a legally binding and lawful marriage. It can continue to exist until the competent court issues a decree annulling the marriage. It can be regarded as a legitimate marriage until one of the partners violates the prerequisites for marriage legality. The parties of a voidable marriage have all the rights and duties of marriage until the court dissolves the union by a decree.

Grounds for Voidable Marriage -

#### 1. Impotency

Impotency is the inability to perform an act of sexual intercourse. It can be a physical, psychological, or emotional aversion. Under HMA 1955, impotency would render marriage voidable under Section 12(1)(a). The ground of impotency can be claimed if either of the parties was impotent at the time of the marriage. In order to seek relief on the grounds of the impotency of the respondent, relevant facts and proofs must be established. A mere accusation cannot be made to claim the ground of impotency.

In the case of *Devki Nandan Das v. Smt. Manorama Das (2022)*, the Chattisgarh High Court held that a false allegation of torture and impotency amounts to mental cruelty.

The Hon'ble Supreme Court ruled in *Yuvraj Digvijay Singh v. Yuvrani Pratap Kumari (1969)* that a party is impotent if their mental or physical state makes marital consummation a realistic impossibility.

#### 2. Contravention of Section 5(ii)

A marriage shall be deemed voidable if it violates the provisions of Section 5(ii) if either the husband or the wife suffers any of the following at the time of the marriage:

1. Incapable of giving valid consent to it due to unsoundness of mind; or
2. Competent in providing valid consent but has been suffering from a mental disorder that renders them unfit for procreation; or
3. Suffering from recurring attacks of insanity.

The Andhra Pradesh High Court remarked in the case of *Tallam Suresh Babu v. T. Swetha Rani (2018)* that a person must prove under Section 12(1)(b) the unsoundness of mind-affecting consent, mental disorder, and severity that rendered the respondent unfit for procreation, or recurring attacks of insanity.

### 3. Consent obtained by coercion or deception

A marriage will be deemed voidable if consent is obtained by force or fraud. Force can be physical force or threat. Fraud can be committed by the nature of the ceremony, misrepresentation of age, concealment of facts, or any other circumstance of the respondent which may have affected the consent.

The consent of the guardian in the marriage of the petitioner obtained by force or by fraud will also be a ground for a voidable marriage within the ambit of Section 12(1)(c). The [Child Marriage Restraint Act, 1929](#), has been enacted to forbid child marriages in India. It also protects and assists victims of child marriage.

The Delhi High Court remarked in *Mamta Rani v. Sudhir Sharma (2014)* that the concealment of the appellant's mental condition is a ground for annulment of marriage under Section 12(1)(c) of the Hindu Marriage Act, 1955.

### 4. Concealment of pre-marriage pregnancy

Concealment of pre-marriage pregnancy by the respondent is a ground of voidable marriage. The suit must be instituted within a year of the commencement of the HMA, 1955, and within a year of solemnization of the marriage after the commencement of the act. The requirements for these grounds are

1. The respondent was pregnant at the time of marriage;
2. Respondent was pregnant by someone else other than the petitioner;
3. The petitioner was unaware that the respondent was pregnant at the time of their marriage.

In the case of *Neelawwa v. Maruti (2013)*, the Karnataka High Court held that the petitioner who is seeking the relief of decree of nullity is not liable to prove the ground under Section 12(1)(d), but needs proof to declare a marriage as a nullity. In other words, the proof necessary to establish in a civil suit that the respondent at the time of marriage was pregnant by someone

other than the petitioner is more than the case of likelihood but less than proof beyond a reasonable doubt. The petitioner must establish without a shadow of a doubt that the respondent was carrying another person's child at the time of the marriage.

### Divorce

The concept and the grounds of divorce is the same as the concept of judicial separation. The only difference between section 10 and divorce is that section 13 allows re-marriage under section 15 of the Hindu Marriage Act.

There are two sub-sections under section 13:

Section 13(A) - this section provides alternate relief in divorce proceedings, like, the maintenance, custody of children, etc.

Section 13(B) - this section allows parties to take divorce by mutual consent.

Under [Section 13 of the Hindu Marriage Act, 1955](#), following are the grounds for divorce -

1. Voluntary Sexual Intercourse - According to Section 13(1)(i), if any person after the solemnization of marriage had voluntary intercourse with any person other than his or her spouse, then the other person can file a suit for divorce in the court of law.
2. Cruelty - This is one of the main reasons of divorce among the parties to the marriage. Domestic violence and cruelty has taken a rise in the past few years. According to Section 13(1)(ia) of the Act, if any person, after the solemnization of his or her marriage has treated the other with cruelty then that person can file a suit for divorce in the court of law.
3. Desertion - Desertion means leaving the partner for a period of time without informing them about the reason of leaving. Thus, according to Section 13(1)(ib), if one of the parties to the marriage has deserted the other for a continuous period of two years immediately preceding the presentation

of the petition, then that person can file for divorce under the court of law.

4. Ceased to be a Hindu - According to Section 13(1)(ii) of the Act, any person who has ceased to be a Hindu by converting to any other religion, after the solemnization of marriage, then the other party to the marriage can file for a suit for divorce under this Act to the appropriate court of law.
5. Unsound Mind - According to Section 13(1)(iii) of the Act, any person who is of unsound mind and cannot possibly be cured or has been suffering continuously or temporarily from mental disorder of such a kind and to such an extent, that it makes impossible for the other person to live peacefully. In such a case, that person can file a suit for divorce under this section.
6. Leprosy - According to Section 13(1)(iv), if one of the parties to the marriage are suffering from a virulent or incurable form of leprosy, then the other party can file a suit for divorce under this Act.
7. Disease which is communicable - As per Section 13(1)(v) of this Act, if any of the parties to the marriage are suffering from a venereal disease which is communicable and that it puts a risk to the life of the other party, then the other party can file a suit for divorce as per this section.
8. Renunciation of the World - According to Section 13(1)(vi) of this Act, if any person has renounced the world by entering into a religious order, after the solemnization of marriage, thereby leaving the other party, then such party can file suit for divorce in the court of law.
9. Missing for Seven or more years - According to Section 13(1)(vii), if any person, after the solemnization of the marriage is not heard as of being alive for a period of seven years or more by those people who would have normally

heard if that person was alive, then the other party can file a suit for divorce under this ground.

Special Grounds For Divorce Granted to the wife

Under Section 13(2) of this Act, there are some special grounds for divorce which are only granted to the wife. Therefore, a wife may also present a petition for the dissolution of here marriage by a decree for divorce under the following grounds -

1. Another marriage by the husband - According to Section 13(2)(i), if the husband, in case of any marriage solemnized before the commencement of this Act, had married again before such commencement, or that any other wife of the husband was alive at the time of solemnization of the marriage of the petitioner, also provided that the other wife is alive at the time of presentation of the petition. Therefore, if a husband has married before, and he has a wife alive, he cannot marry another person unless at the time of the commencement of the marriage the other wife, whoever it may be has died.
2. Guilty of Rape or Sodomy - According to Section 13(2)(ii), the wife can file a decree for divorce if the husband has at any time after the solemnization of marriage, been guilty of rape, sodomy, or bestiality. In such a case, the wife can file a suit for divorce to the appropriate court.
3. Maintenance to the wife - As per Section 13(2)(iii), if a decree or 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, has been passed against the husband awarding maintenance to the wife notwithstanding that she was living apart and that even after the passing of such decree, cohabitation between them did not resume for a period of one year or more. In such a case, the wife

can file a suit for divorce in the court of law.

4. Consummation of Marriage - According to Section 13(2)(iv), a woman can file a petition for divorce, if her marriage was solemnized before she attained fifteen years of age and that she repudiated the marriage after attaining that age but before attaining eighteen years of age. In such a case, a divorce will also be granted to the wife by the court of law.

#### Divorce By Mutual Consent:

Section 13B of the Hindu Marriage Act, 1976, contains provisions for divorce which are done by mutual consent. This section further elaborates about the conditions of divorce by mutual consent.

Subject to the provisions of this Act, a petition for dissolution of marriage can be presented to the district court by both the parties to the marriage provided that they have been living separately for a period of one year or more; that they were not able to live together; and that they have mutually agreed to dissolve the marriage.

After the petition for dissolution of marriage is presented before the court by both the parties, a period of six months after the date of presentation of the petition, and not more than eighteen months of the presentation of such petition, is given to both the parties for thinking about their decision again and if after the said date the petition is not withdrawn then the court after making necessary enquiries as it thinks fit, pass a decree of divorce declaring the marriage to be dissolved with effect from the date of decree.

#### **Conclusion**

The Act of 1955 is an Act that modifies and codifies the law governing Hindu marriage. According to the Act, not all Hindus have the right to marry. The Act defines the prerequisites for a Hindu marriage and offers several matrimonial reliefs such as restitution of conjugal rights, nullity of marriage, judicial

separation, and divorce. There are some limits on marriage in the case of mental illness. Today, marriage has mostly devolved into a contract and lost much of its sanctity as a socio-religious institution.

Additionally, it is clear that the legislators were well cognizant of the fact that if social norms and values such as those regarding child marriage were disregarded, the Act would be of little use. Therefore, despite the fact that child marriages are forbidden, they have not been declared invalid until a court receives a petition challenging them. There is a provision for registration in order to make it easier to prove Hindu weddings. Nevertheless, the majority of Hindu marriages in India continue to go unregistered despite the Act's existence for almost 60 years. Any marriage can be social; there is no need for evidence.