



# HINDU LAW ON DIVORCE

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## **ABSTRACT:**

Under the general uncodified Hindu law divorce was not recognized; it was rather unknown to the old textual Hindu law of marriage. The reason is very simple that a marriage was an indissoluble tie between the husband and wife. Divorce was thus not recognized unless it was allowed by custom. Section 13 therefore introduces a vital and dynamic change in the marriage law of Hindus. Section 13 provides the circumstances wherein the right to divorce accrues while Section 14 limits this right by laying down a "one-year limit" of time. In cases of exceptional hardship to the petitioner or exceptional depravity on the part of the respondent a petition for divorce may be allowed to be made even though there is a time limit. It all depends upon the discretion of the court. Section 15 explains when divorced persons may marry again.

## **INTRODUCTION:**

The term 'divorce' is derived from the latin word 'divortium' which means to turn aside or separate.

The primary objective of the Hindu Marriage Act is to preserve and protect a Hindu Marriage, rather than allow it to disintegrate. Severance of marriage is therefore to be permitted only on substantial grounds. Now, since the amendment, the right to divorce has become more or less a statutory right subject to any right recognized by custom. Section 13 provides the circumstances wherein the right to divorce accrues while Section 14 limits this right by laying down a 'one-year limit' of time. In cases of exceptional hardship to the petitioner or exceptional depravity on the part of the respondent a petition for divorce may be allowed to be made even though there is a time limit. It all depends upon the discretion of the court. Section 15 explains when divorced persons may marry again.

## **Section 13 in The Hindu Marriage Act, 1955:**

(1) Any marriage solemnised, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party

16 [(i) has, after the solemnisation of the marriage, had voluntary sexual intercourse with any person other than his or her spouse; or]

16 [(ia) has, after the solemnisation of the marriage, treated the petitioner with cruelty; or]

16 [(ib) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or]

(ii) has ceased to be a Hindu by conversion to another religion; or

17 [(iii) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

Explanation .In this clause,

- (a) the expression mental disorder means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia;
- (b) the expression psychopathic disorder means a persistent disorder or disability of mind (whether or not including sub-normality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the other party, and whether or not it requires or is susceptible to medical treatment; or]
- (iv) has been suffering from a incurable form of leprosy; or
- (v) has been suffering from disease in a communicable form; or
- (vi) has renounced the world by entering any religious order; or
- (vi) has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of it, had that party been alive;

[ Explanation. In this sub-section, the expression desertion means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the wilful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly.]

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

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

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

- (i) in the case of any marriage solemnised before the commencement of this Act, that the husband had married again before such commencement or that any other wife of the husband married before such commencement was alive at the time of the solemnisation of the marriage of the petitioner: Provided that in either case the other wife is alive at the time of the presentation of the petition; or
- (ii) that the husband has, since the solemnisation of the marriage, been guilty of rape, sodomy or [bestiality; or]
- (iii) that in a suit under section 18 of the Hindu Adoptions and Maintenance Act, 1956 (78 of 1956), or in a proceeding under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) [or under the corresponding section 488 of the Code of Criminal Procedure, 1898 (5 of 1898)], a decree or order, as the case may be, has been passed against the husband awarding maintenance to the wife notwithstanding that she was living apart and that since the passing of such decree or order, cohabitation between the parties has not been resumed for one year or upwards; or
- (iv) that her marriage (whether consummated or not) was solemnised before she attained the age of fifteen years and she has repudiated the marriage after attaining that age but before attaining the age of eighteen years.

Explanation. This clause applies whether the marriage was solemnised before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976).State Amendment Uttar Pradesh: In its application to Hindus domiciled in Uttar Pradesh and also when either party to the marriage was not at the time of marriage a Hindu domiciled in Uttar Pradesh, in section 13

(i) in sub-section (1), after clause (i) insert (and shall be deemed always to have been inserted) the following clause, namely:

(1a) has persistently or repeatedly treated the petitioner with such cruelty as to cause a reasonable apprehension in the mind of the petitioner that it will be harmful or injurious for the petitioner to live with the other party; or, and (viii) has not resumed cohabitation after the passing of a decree for judicial separation against that party and

(a) a period of two years has elapsed since the passing of such decree, or

(b) the case is one of exceptional hardship to the petitioner or of exceptional depravity on the part of other party;

or

(ii) for clause (viii) (since repealed in the principal Act) substitute (and shall be deemed to have been substituted) following clause, namely:

[ Vide Uttar Pradesh Act 13 of 1962, sec. 2 (w.e.f. 7-11-1962)].

(i) Cruelty which is a ground for dissolution of marriage may be defined as wilful and unjustifiable conduct of such character as to cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger. The question of mental cruelty has to be considered in the light of the norms of marital ties of the particular society, to which the parties belong, their social values, status, environment in which they live. Cruelty need not be physical. If from the conduct of the spouse it is established or an inference can be legitimately drawn that the treatment of the spouse is such that it causes apprehension in the mind of the other spouse, about his or her mental welfare then this conduct amounts to cruelty; **Maya Devi v. Jagdish Prasad**, AIR 2007 SC 1426.

(ii) Making false allegations against husband of having illicit relationship and extramarital affairs by wife in her written statement constitute mental cruelty of such nature that husband cannot be reasonably asked to live with wife. Husband is entitled to decree of divorce; **Sadhana Srivastava v. Arvind Kumar Srivastava**, AIR 2006 All 7.

(iii) The expression "Cruelty" as envisaged under section 13 of the Act clearly admits in its ambit and scope such acts which may even cause mental agony to aggrieved party. Intention to be cruel is not an essential element of cruelty as envisaged under section 13 (1) (ia) of the Act. It is sufficient that if the cruelty is of such type that it becomes impossible for spouses to live together; **Neelu Kohli v. Naveen Kohli**, AIR 2004 All 1.

(iv) The levelling of false allegation by one spouse about the other having alleged illicit relations with different persons outside wedlock amounted to mental cruelty; **Jai Dayal v. Shakuntala Devi**, AIR 2004 Del 39.

(v) Mental disorder for relief under section 13 (1) (iii) should be of such a degree that it is impossible to lead normal marital life or it is unreasonable to expect a person to put up with a spouse with such condition; **B.N. Panduranga Shet v. S.N. Vijayalaxmi**, AIR 2003 Karn 357

(vi) Due to the criminal complaint filed by the wife, the husband remained in jail for 63 days and also his father and brother for 20 to 25 days. Therefore, even though the case of cruelty may not have been proved but as the facts emerging from the record clearly indicate that the living of the two as husband and wife would not only be difficult but impossible, the court has no alternative but to grant a decree of divorce; **Poonam Gupta v. Ghanshyam Gupta**, AIR 2003 All 51.

(vii) Unless the entire genesis of the quarrels in the course of which, one of the spouses holds out a threat to take his or her life is placed before the court, the very fact that some threat in the course of a quarrel is held out, cannot be viewed in isolation or construed as mental cruelty to the other spouse; **Nalini Sunder v. G.V. Sundar**, AIR 2003 Kar 86.

(viii) A husband cannot ask his wife that he does not like her company, but she can or should stay with other members of the family in matrimonial home. Such an attitude is cruelty in itself on the part of the husband; **Yudhishter Singh v. Sarita**, AIR 2002 Raj 382.

(ix) Removal of mangalsutra by wife at the instance of her husband does not amount to mental cruelty; **S. Hanumantha Rao v. S. Ramani**, AIR 1999 SC 1318.

(x) A threat to commit suicide by the wife amounts to infliction of mental cruelty on the husband but it should not be uttered in a domestic tiff; **Pushpa Rani v. Vijay Pal Singh**, AIR 1994 All 220.



(xi) Solitary instance of cruelty would not constitute cruelty so as to grant a decree for divorce rather the behaviour of the other party has to be persistently and repeatedly treating the other spouse with such cruelty so as to cause a reasonable apprehension in the mind of the husband/wife that it will be harmful or injurious for him or her to live with the other party. The expression "persistently" means continue firmly or obstinately and the expression "repeatedly" means to say or do over again; *Vimlesh v. Prakash Chand Sharma*, AIR 1992 All 261.

### **Analysis of the Section 13:**

When carefully analysed the section shows that there are in all fifteen grounds for divorce. When classified these grounds fall into the following three divisions:

- (i) Nine grounds based on —fault-liability theory of divorce. These grounds are laid down in sub-section (1) and only the party aggrieved may avail of them.
- (ii) Two grounds based on —breakdown theory of divorce which are contained in subsection (1-A). They may be availed of by any party to the marriage who is aggrieved or who is guilty.
- (iii) Four grounds which are special and which can be availed of by a wife only. These are shown in sub-section (2).

Grounds shown above in (i) and (ii) are available in every case of marriage, whenever solemnized. **Divorce by**

### **mutual consent: Section 13-B**

(1) Subject to the provisions of this Act a petition for dissolution of marriage by a decree of divorce may be presented to the district court by both the parties to a marriage together, whether such marriage was solemnised before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976), on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved.

(2) On the motion of both the parties made not earlier than six months after the date of the presentation of the petition referred to in sub-section (1) and not later than eighteen months after the said date, if the petition is not withdrawn in the meantime, the court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnised and that the averments in the petition are true, pass a decree of divorce declaring the marriage to be dissolved with effect from the date of the decree.]

(i) The period of 6 to 18 months provided in section 13B is a period of interregnum which is intended to give time and opportunity to the parties to reflect on their move. In this transitional period the parties or either of them may have second thoughts; *Suman v. Surendra Kumar*, AIR 2003 Raj 155.

(ii) The period of living separately for one year must be immediately preceding the presentation of petition. The expression living separately' connotes not living like husband and wife. It has no reference to the place of living. The parties may live under the same roof and yet they may not be living as husband and wife. The parties should have no desire to perform marital obligations; *Sureshta Devi v. Om Prakash*, AIR 1992 SC 1904.

(iii) The period of six to eighteen months time is given in divorce by mutual consent as to give time and opportunity to the parties to reflect on their move and seek advice from relations and friends. Mutual consent should continue till the divorce decree is passed. The court should be satisfied about the bona fides and consent of the parties. If there is no consent at the time of enquiry the court gets no jurisdiction to make a decree for divorce. If the court is held to have the power to make a decree solely based on the initial petition, it negates the whole idea of mutuality. There can be unilateral withdrawal of consent. Held, that since consent of the wife was obtained by fraud and wife was not willing to consent, there could be unilateral withdrawal, of consent; *Sureshta Devi v. Om Prakash*, AIR 1992 SC 1904.

Section 13-B introduces a revolutionary concept of "divorce by mutual consent". The section is retrospective.

**Requirements of the section-** the section requires the following:

- (i) That both the parties together should present a petition to the court;
- (ii) That they should wait for at least six months from the date they present a petition;
- (iii) That the parties may withdraw their petition during this time;
- (iv) That before the expiry of eighteen months they together should make a motion to the court for passing a decree;
- (v) That after due inquiries the court shall pass a decree.

Today we are living in an industrial age. The outlook on every aspect of life has changed. The industrial era has brought in new experiences which have considerably reshaped the ideology and demands of people of different communities. In **Ram Parkash v. Savitri Devi**, Bhandari, C.J., Punjab High Court said:

"With the passage of time and the advancing march of civilization people began to recognise that it was somewhat inequitable that the husband should be at liberty to pick all the plums from the tree of marriage and the wife should be left only with stones. The legislature accordingly proceeded to enact a number of measures, with the express objects of emancipating married women from the liabilities which the Hindu law attached to them, enlarging their rights and protecting the wife from the importunities of the husband. These measures introduce a fundamental change of public policy and lay down a new foundation of equality of husband and wife".

Thus, the recent reforms in the concept of marriage in Hindu law confirmed due respect for and adherence to the Indian Constitution and Fundamental Rights incorporated there under, wherefrom commences a movement of justice in social, economic and political fields.

### **CONCLUSION:**

As nothing is stable and permanent on the earth due to the changing nature of the world so the marriage or the institution of the marriage has been inevitably changed due to social, political, economic and fall of joint families. Now the conception of marriage has undergone a radical change, and so has to be the concept of divorce. The change would go on resulting, in continuous reform of society, family legislation and judicial precedents, with an object to achieve the common good and mutual benefit of the estranged parties.

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