

DIVORCE UNDER HINDU LAW

- The word 'Divorce' comes from the Latin word '*divortium*' which mean 'to separate'
- In a legal sense divorce means cessation of matrimonial bond. Decree of divorce is an end to the marital bond and the party is no longer remains husband and wife.
- Divorce was unknown to the old Hindu law. Marriage was considered to be an indissoluble union.
- Hindu Marriage Act 1955 introduced the concept of divorce for the first time.
- Provisions relating to divorce have been dealt in **section 13, 13[1A], 13A, 13B, 14 and 15** of Hindu Marriage Act 1955
- The Law of divorce has undergone a lot of changes since its Inception. Primarily the changes were brought about by **The Marriage Law [Amendment] Act 1976** and **Personal Law [Amendment] Act 2019**

Changes brought about by Marriage Law [Amendment] Act 1976 in the law of divorce

- A single act of adultery may constitute a ground for divorce. [section 13 (1)(i)]
- Cruelty and desertion were made the ground for divorce. Earlier they were grounds for judicial separation only[section 13 (1)(i-a) and 13(1)(i-b)]
- Minimum period prescribed under grounds like leprosy and venereal diseases has been omitted. [Section 13 (1)(i), (iv) and (v)]
- The court can now grant alternative relief in case of divorce proceedings by exercising discretion[**section 13 A**]
- Divorce by mutual consent had been introduced[**section 13 B**]

Change brought by the personal law amendment act 2019:

- It omitted **section 13 (1) (iv)** Which makes virulent and incurable form of Leprosy as a ground for divorce
- In **R Srinivasan vs. R Shametha 2019**, Supreme Court held that inherent powers under article 142 can be invoked by Supreme Court to dissolve marriage which has been broken down irretrievably.

Grounds of divorce

SECTION 13(1)	SECTION 13 [1-A]	SECTION 13(2)	SECTION 13-B
<ul style="list-style-type: none">• Adultery• Cruelty• Desertion• Conversion• Mental Disorder• Venereal Disease• Renunciation• Presumed Dead	<ul style="list-style-type: none">• No resumption of cohabitation for one Year or more after Judicial Separation decree• No Restitution of Conjugal rights for one year or more after passing decree	<ul style="list-style-type: none">• Husband Married again (Bigamy)• Husband proven guilty of Rape, Bestiality or Sodomy• Maintainence decreepassed under 125 Cr.P.C OR Sec. 18 HAMA and no cohabitation for 1 year or more• Marriage solemnized when wife was U-15 and she repudiated the marriage before she was 18	<ul style="list-style-type: none">• living separately for a period of one year or more, not been able to live together and that they have mutually agree that the marriage should be dissolved.

Section 13 deals with the grounds of divorce. Section 13 [1] deals with Grounds which are available to both husband and wife while section 13 [2] deals with ground which are available only to the wife.

Grounds Available to both Husband and Wife-Section 13(1) [FAULT THEORY]

1. Adultery [13(1)(i)]

- Sexual Intercourse (Voluntary) with any person other than his or her spouse.
- Even a single act of adultery is sufficient enough to attract the ground of divorce. after The Marriage Law [Amendment] Act 1976 the expression “ living in adultery” has been dispensed with
- Recently in ‘**Joseph Shine Vs. Union of India (2018)**’ adultery is held to be not a crime. But it is still a ground for divorce

2. Cruelty [13(1)(i-a)]

- It provides that the petition for divorce may be presented by either of the parties if after the solemnization of the marriage the other party has created the petitioner with cruelty.
- The term cruelty was defined in **Russell vs. Russell** for the first time. The court held that cruelty is conduct of such characters as to have caused danger to life, limb or, bodily or mental, or give rise to a reasonable apprehension of such conduct.
- **Narayan Ganesh Dastane v. Sucheta Narayan Dastane (1975)**
 - ✓ Court laid down test for determining whether the case qualifies for cruelty or not. The test laid down in determining whether a given conduct amounts to legal cruelty is as follows:
 - a. The alleged acts constituting cruelty should be proved according to the law of evidence.

- b. There should be an apprehension in the Petitioner's mind of real injury or harm from such conduct;
 - c. The apprehension should be reasonable having regard to the condition of the parties.
 - d. The Petitioner should not have taken advantage of his position.
 - e. The Petitioner should not have condoned the acts of cruelty.
- **Shobha Rani versus Madhukar Reddy 1988** Supreme Court held that demand for dowry also constitutes cruelty.
 - **Suman Kapur vs Sudhir Kapur 2009** - Mens Rea is not an essential element of cruelty. Relief cannot be denied on the ground that there was no intention to cause reality
 - **Other important cases related to cruelty**
 - ✓ **V Bhagat vs D Bhagat 1994**
 - ✓ **Naveen Kohli Vs Neelu Kohli 2006**
 - ✓ **Pravin Mehta vs Inderjit Mehta 2002**
 - ✓ **K Srinivasan Rao versus D.A. Deepa 2013**

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

- It provides that the petition for divorce may be presented by either party if other party has deserted the petitioner for a continuous period of not less than **two years** immediately preceding the presentation of petition
- The term desertion has not been defined in the Act but it means withdrawing from marital obligation. It is intentional for sitting and abandonment of one spouse by another without any reasonable cause and without the consent of other
- **Essential elements of desertion**
 - a. There is to be a factum of separation
 - b. There must be and intention to bring cohabitation to the end(animus deserendi)
 - c. Such conduct must be without any reasonable cause
 - d. It must be without consent of other party

- In '**Bipinchandra Jasinghbai Shah Vs. Prabhavati (1957)**' it was said that 'desertion' could be concluded by inference only whether desertion on has happened or not depends upon the facts and circumstances of the case
- The following could be used to prove desertion
 1. One party has abandoned the other party
 2. By abandoning married life has ended and that is the intention behind abandoning
 3. No reasonable ground for abandoning
 4. No consent of the person deserted
 5. The deserted person has not given any cause to the desertor so that he/she may behave in this way:
 6. Desertion has been for more than **2 years** before the application for divorce is made.
- **Savitri Pandey versus Prem Chandra Pandey 2002**- the court held that party seeking divorce on the ground of desertion is required to show that he/ she is not taking advantage of his/ her or her own.
- Desertion may be **actual or constructive**. Constructive desertion is not withdrawn from a particular place but withdrawal from the state of things. constructive desertion has 3 requirements are actual desertion

4. Conversion 13(1)(ii)

- This provides that a petition for divorce may be presented by either party if the other party has ceased to be a Hindu by conversion to another religion.
- Conversion does not itself result in divorce. the ground of divorce on basis of conversion will not be available to converting spouse as it would amount to taking advantage of his own wrong

5. Unsound mind or mental disorder[13(1)(iii)]

- This section provides that petition for divorce may be presented by either party if has been incurably of unsound mind, or have 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.
- The expression mental disorder is mental illness, arrest or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes **schizophrenia**.
- Supreme Court in **Ram Narayan Gupta versus Shrimati Rameshwari Gupta 1988** held that degree of mental disorder must be such that the spouse seeking relief cannot reasonably be expected to live with the other.

6. Virulent and incurable form of Leprosy[section 13(1)(iv) omitted]

- This ground has been omitted by The Personal Law Amendment Act 2019.

7. Venereal Disease[13(1)(v)]

- Venereal disease means a disease which is communicated via sexual conduct.
- This section provides that petition for divorce may be presented by either party if other party has been suffering from venereal disease in communicable form.

8. Renunciation of the world by entering into religious order [13(1)(vi)]

- Provides that petition for divorce presented by either party if the other party has renounced the world by entering any religious order.
- Renunciation of the world amounts to Civil death and therefore it is included as a ground of divorce

9. Presumed Dead

- It provides that petition for divorce presented by either party if the other party has not been heard of as alive for a period of 7 years or more by those persons who would actually have heard of it, had the party been alive. [**Section 108 of the Evidence Act**]

Section 13 (1-A) [BREAKDOWN THEORY]

- No resumption of cohabitation for one year or more after Judicial Separation Decree
- No Restitution of Conjugal rights for one year or more after passing decree
- The Supreme Court *Naveen Kohli v. Neelu Kohli* 2006 has recommended an amendment to the Hindu Marriage Act, whereby either spouse can cite irretrievable breakdown of marriage as a reason to seek the divorce. Expressing the concern that divorce could not be granted in a number of cases where marriages were virtually dead due to the absence of the provision of irretrievable breakdown, the court strongly advocated incorporating this concept in the law in view of the change of circumstances.
- The Court observed that public interest demands that the married status should, as far as possible, as long as possible and whenever possible, be maintained. However, where a marriage has been wrecked beyond any hope of being repaired, the public interest requires the recognition of the fact. The judgment notes that there is no acceptable way in which a spouse can be compelled to resume life with the consort and that situations causing misery should not be allowed to continue indefinitely as the law has a responsibility to adequately respond to the needs of the society. The profound reasoning is that in situations when there is absolutely no chance to live again jointly or when it is beyond repair, in such a case it would be futile to keep the marital tie alive. Here the ground of irretrievable breakdown is really needed. But it should not be oblivious that the ground, when introduced, needs to provide safeguards to ensure that no party is exploited.

Grounds Available only to Wife- Section 13(2)

- Husband Married again (Bigamy)
- Husband proven guilty of Rape, Bestiality or Sodomy.
- Maintenance decree passed under 125 Cr. P.C OR Sec. 18 HAMA and no cohabitation for 1 year or more

- Marriage solemnized when wife was U-15 and she repudiated the marriage before she was 18.

Section 13B- Divorce by mutual consent [MUTUAL CONSENT THEORY]

- Section 13B provides for divorce by mutual consent was added by **The Marriage Law Amendment Act 1976.**
- Parties to the marriage ceremony is whether before or after the amendment act can avail themselves of this provision

Essential of divorce by mutual consent:

- Both the parties must be living separately for a period of **one year** or more
- Both the parties have not been able to live together
- Both the parties have mutually agreed that marriage should be dissolved
- Both the parties will present a joint petition for dissolution of marriage by mutual consent
- After presentation of the petition the parties need to wait for a **minimum period of six months**
- After expiry of the said period[**not be less than 6 months and more than 18 months**] the parties will again make a motion before the court.
- If the court is satisfied that the marriage was solemnized and the averments in the petition are true then it will pass the decree of divorce by mutual consent
- The consent in the divorce by mutual consent should not be obtained by force, fraud or undue influence [section 23 1 (bb)]
- The supreme court in **Amardeep Singh Versus Harleen Kaur 2019** has held that the period of six months mentioned in section 13b (2) was not mandatory but directory. It will be open to the court to exercise its discretion in the facts and circumstances of each case where there was no possibility of the parties resuming cohabitation after exhausting all efforts of mediation and conciliation

Section 14 when parties can file for divorce-

- Under Section 14 of Hindu Marriage Act, parties can not file for divorce unless at the time of petition one year has elapsed since the date of marriage. (Exceptional cases can be heard on the ground that the case is one of exceptional hardship to the petitioner or of exceptional depravity on the part of the respondent)

Section 15 When can divorced parties remarry-

- Under section 15 the parties can remarry if:
 1. There lies no right to appeal against the decree of divorce.
 2. If the time period, of filling an appeal has expired.
 3. An appeal was presented but has been dismissed.

Section 29 Savings.—[CUSTOMARY DIVORCE]

(1) A marriage solemnized between Hindus before the commencement of this Act, which is otherwise valid, shall not be deemed to be invalid or ever to have been invalid by reason only of the fact that the parties thereto belonged to the same gotra or pravara or belonged to different religions, castes or sub-divisions of the same caste.

(2) **Nothing contained in this Act shall be deemed to affect any right recognized by custom or conferred by any special enactment to obtain the dissolution of a Hindu marriage, whether solemnized before or after the commencement of this Act.**

(3) Nothing contained in this Act shall affect any proceeding under any law for the time being in force for declaring any marriage to be null and void or for annulling or dissolving any marriage or for judicial separation pending at the commencement of this Act, and any such proceeding may be continued and determined as if this Act had not been passed.

(4) Nothing contained in this Act shall be deemed to affect the provisions contained in the Special Marriage Act, 1954, (43 of 1954) with respect to marriages between Hindus solemnized under that Act, whether before or after the commencement of this Act.