Family Law - I

The Hindu Marriage Act, 1955
The Dissolution of Muslim Marriage Act, 1939
The Muslim Women (Protection of Rights on Divorce) Act, 1986
The Indian Christian Marriage Act, 1972
The Indian Divorce Act, 1869
The Special Marriage Act, 1954
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Divorce

Section 13

**Divorce: The law** relating to divorce is dealt under Section 13 of the Hindu Marriage Act, 1955. Divorce means separation or split. It is also known as dissolution of marriage. Divorce puts an end to the marital relations. According to the ancient Hindu law marriage comes to an end only with the death of the parties to the marriage. Hence there was no remedy of divorce, but under the modern Hindu law, the Hindu Marriage Act, 1955 provides the remedy of divorce. Thus the English matrimonial law had greatly influenced the Indian matrimonial law.

Either husband or wife who aggrieved may file a petition for divorce in the District Court or Family Court. On a petition presented by either the husband or the wife, the Court, if satisfied with the grounds specified under Section 13 shall pass a decree of divorce by dissolving the marriage. According to Section 14 no petition for divorce can be filed within one year from the date of the marriage. The Court will not pass a decree of divorce within one year. This one year time and opportunity is given to parties for reconciliation and adjustment. The parties are no longer be husband and wife after passing a decree of divorce. They are free to marry again as per their own choice.

**I. Grounds of divorce in favour of both wife and husband:**

Section 13(1) of the Hindu Marriage Act, 1955 lays down the following eleven guilty grounds on which a petition for divorce can be filled by either aggrieved husband or wife. That the other party
1. **Adultery**: Sec 13(1)(i): The spouse who engages in extra-marital intercourse is guilty of adultery. Living in adultery is not necessary. Even an isolated act of adultery is sufficient to file a divorce petition.

In *Subbarama Reddiar v. Saraswathy* AIR 1967 Mad 85 The husband who returned home late in the midnight. He found a stranger in his wife’s bedroom. Madras High Court held that, unless the act can be explained by some innocent explanation, adultery might be inferred. Therefore Court relied on the circumstantial evidence and granted a decree of divorce.

2. **Cruelty**: Section 13(1)(i-a): Cruelty means unkindness or brutality. Violent behaviour is the basis of cruelty. Prior to the amendment, cruelty was a ground only for judicial separation. By the Marriage Law (Amendment) Act, 1976 cruelty is one of the grounds on which divorce can be claimed. *e.g.* beating, harassment etc. The petition for divorce can be filed on the ground cruelty.

In *Dastane v. Dastane* AIR 1975 SC 1534 A reasonable apprehension that it will be harmful or injurious for the spouse to live with the other was held to be ‘Cruelty’ by the Supreme Court. The Court laid down that ‘cruelty’ requires danger to life, limb or health. Therefore a mere threat by the wife to commit suicide and set fire to the books written by her father-in-law does not amount to cruelty. Cruelty may be subtle or brutal, physical or mental. It may be by words, gestures or mere silence.

3. **Desertion**: Section 13(1)(i-b): Abandoning or leaving the spouse by the other spouse without any reasonable cause and without the consent or against the wish of the other is called desertion. Desertion may be actual or constructive. Withdrawal from the place is called actual desertion and withdrawal from a state of things *i.e.* under the same roof is called constructive desertion. The burden is on the petitioner to prove desertion.

In *Durga Prasanna Tripathy v. Arundhati Tripathy* 2005-AIR(SC)-0-3297 the Court *held* that a lengthy desertion of 14 years, impossible reconciliation leads to the presumption the marriage is irretrievably broken and therefore the decree of
divorce was upheld.

In *Rishikesh Sharma v. Saroj Sharma* 2007 (2) SCC 263 both husband and wife crossed 49 years and they were living independently for the past 25 years. On the ground of irretrievable breakdown of marriage the Court passed a decree of divorce.

In *B. Srinivasulu v. Mrs. Veena Kumari* AIR 2008 AP 20 The wife suspected her husband’s character and made unethical and unholy allegations by linking up character of husband with character of sister-in-law. Their marriage was irretrievably broke down. The husband and wife hardly lived together only for 11 months. The Court granted a decree of divorce on grounds of cruelty and desertion.

4. **Conversion:** Section 13(1)(ii): Conversion means change of religion i.e. conversion to any other religion from Hinduism. It is also known as ‘apostasy’. If either party to the marriage has voluntarily relinquishes his or her religion and adopts another religion after formal ceremonial conversion he or she shall be ceased to be a Hindu.

5. **Unsound mind:** Section 13(1)(iii): Unsoundness of mind is a mental disorder. If the respondent has been incurably of unsound mind or has been suffering from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent, is entitled to file a petition for divorce.

In *Dr.Kollam Padma Latha v. Dr. Kollam Chandra Sekhar* 2007 (1) ALD 598 (DB) it was held that Schizophrenia which is curable and treatable can not be a ground for divorce. Hence the petition for divorce filed by the husband was dismissed.

6. **Leprosy:** Section 13(1)(iv): If the respondent has been suffering from virulent and incurable from of leprosy, the petitioner has a right to file a petition for divorce.

In *Annapurna v. Nabakishore*, AIR 1965 SC 72, lepromatous leprosy, which is malignant (hateful) and contagious and in which prognosis is usually grave was held to be virulent leprosy.

1. Sec 13(2)(i) Bigamy of the husband
2. Sec 13(2)(ii) Husband guilty of rape, sodomy or bestiality
3. Sec 13(2)(iii) Decree or order of maintenance
4. Sec 13(2)(iv) Repudiation of marriage between 15-18 years

In *Vinita Saxena Vs. Pankaj Pandit* 2006-AIR (SCW)-0-1585 a gap of 13 years without the consummation of marriage was *held* to be a valid reason for the grant of divorce.

In *Mahendranath Yadav v. Sheela Devi* 2010 9 SCC 484 It was held that customary dissolution of marriage through panchayat can’t be a basis for divorce under Section 13 of Hindu Marriage Act,1955.

**Evaluation**

1. Describe the various grounds on which divorce can be obtained by either spouse under The Hindu Marriage act, 1955?
2. State the legal meaning of divorce and on what grounds the marriage can be dissolved under the provisions of Hindu Marriage Act,1955?
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Shortnotes

Acknowledgement of paternity: Muslim law does not recognise the institution of adoption but recognises the institution of ikar or doctrine of acknowledgement. The children born out of lawful wedlock are presumed to be legitimate children. The question of legitimacy arises where the marriage of the spouses is in dispute. In many cases, the parties may or may not acknowledge the paternity or materniy of the children.

Ad hoc guardian: A guardian appointed only to do a particular isolated transaction in respect of minor’s property is called ad hoc guardian. He is not a guardian in the eye of law. He is neither natural guardian nor guardian appointed by the Court, but he can be described as de facto guardian. However he is bound to manage the property like any other guardian.

Adoption: Adoption under ancient Hindu law was meant for spiritual and religious purposes. Hence it was based on ‘religious theory’. According to Shastric Hindu law adoption was a sacramental act than a secular act, but The Hindu Adoptions and Maintenance Act, 1956 has made adoption a secular institution and secular act. Adoption is a matter of status and not a matter of contract. Even religious ceremonies and sacramental formalities are not necessary for adoption.

Adoption by a Hindu female: A Hindu unmarried female, widow or divorcee can adopt but a Hindu married female has no capacity to adopt even with the consent of her husband. If there is to be an adoption, it must be made only by her husband with her consent. According to Section 11(iv) a Hindu female who adopts a male child, must be older to him by at least 21 years, otherwise the adoption is void.

Adoption by a Hindu male: A Hindu bachelor, married person, divorcee or widower can adopt. According to Section 5(1) an adoption made without the consent of wife is void. Therefore, a Hindu married male must obtain the consent of his wife for adoption. In Bhotooram v. Ram Law AIR 1989 MP 198, the Court held that even if the wife is living separately without dissolution of marriage, her consent is also necessary.

Adoption by a Hindu widow: A widow can also adopt a child without her husband’s authority and without the assent of her husband’s sapindas. A son adopted by his widow shall be deemed to be her husband’s son and
Dictionary

Abandoned: Neglected
Acknowledgement: Recognizing
Adoption: taking up a child
Adultery: willful extramarital sex
Affinity: relation, likeness
Age of major: of full age
Ahsan: best or very proper
Alienate: transfer
Allowance: pocket money
Amicus curiae: friend of the Court
Analogous: similar in some respect
Analogy: similarity, equivalent
Ancestors: forefathers
Annulment: cancellation
Arthangi: life partner
Ascendants: parents
Batil: Void marriage
Bequest: inheritance
Bride: female partner in wedding
Carnal conjunction: bodily union
Ceremonies: official rituals
Chastity: virtuous, pure
Commentators: reporters or analysts
Conjugal rights: marital privileges
Conjunction: combination, union
Consanguine: related by blood
Consanguinity: blood relationship
Consensus: agreement, consent
Custom: tradition, practice
Customary rites: traditional rituals
Dayabhaga law: Law of Dayabhaga
De facto: in fact, reality
Deceased ancestors: dead relatives
Deity: god or goddess
Descent: parentage, lineage
Desertion: leaving, forsaking
Devadasi: devadasis
Devolve: pass to, give to
Dharmapati: wife
Digests: publications, books
Disabilities: handicaps
Discrimination: bias, unfairness
Divine injunctions: godly bans
Divorce: break-up, split-up
Divorcee: a divorced woman
Equity: fairness, impartiality
False allegations: untrue charges
Family Court: Court of matrimony
Family custom: family tradition
Fasid: Irregular marriage
Faskh: cancellation of marriage
Fidelity: faithfulness
Formal ceremony: official ritual
Formalities: official procedure
Fosterage: bringing up
Ganapati Puja: Ganapati pooja
Garbha Dana: Garbha danam
Geeta: Holy Book of Hindus
Govern: administer
Hermit: vanaprastha, solitary person
Hostile: unfriendly
Idolatress: a woman idolater
Ijma: collective opinions and decisions of the commentators
Illa: vow of continence
Illegitimate: unlawful
Illegitimate child: unlawful baby
Illicit relation: illegal connection
Impotency: sexual weakness
Impotent: sexually powerless