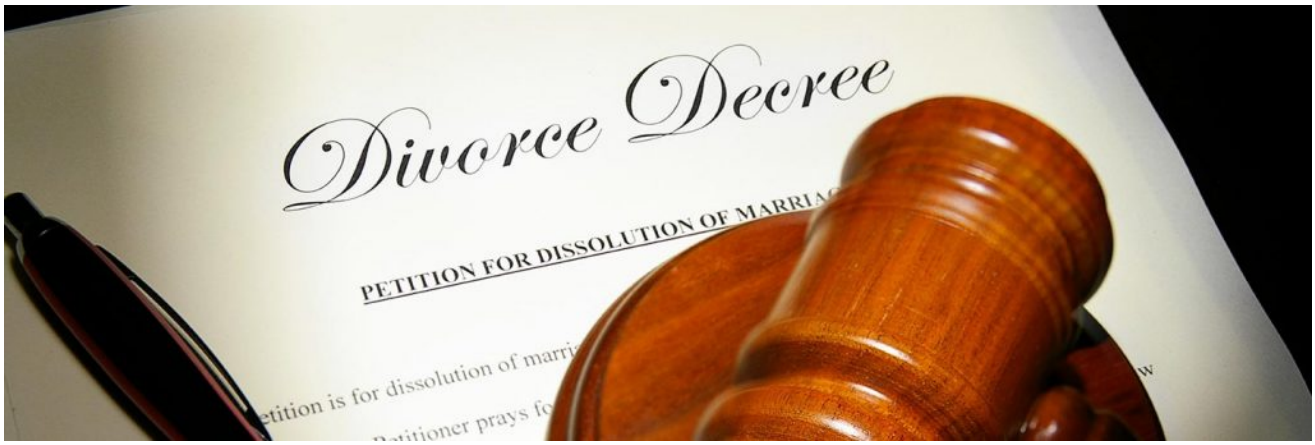
BLOGS

Divorce under The Hindu Marriage Act

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The law of divorce in Hindu Marriage Act has evolved from divorce under exceptional circumstances to divorce on demand because it is being increasingly realized that there is no point in thrusting a relationship on unwilling partners who see in marriage more of misery than happiness.



There are various theories regarding divorce such as

Offence or guilty or fault theory

Divorce is regarded as a mode of punishing the guilty party who rendered himself/herself unworthy of consortium. The guilt theory, on one hand, implies a guilty party, and on the other, it implies that the other party is innocent.

According to this theory, a marriage can be dissolved only if one of the spouses commits some matrimonial offence as mentioned under section 13(1) of the Hindu Marriage Act, 1955

According to section 13 of the Hindu Marriage Act, 1955 any marriage solemnized whether before or commencement of the Act may on a petition presented by either husband or wife be dissolved by a decree of divorce on the ground that other party:

1. Has after the solemnization of the marriage had voluntary sexual intercourse with any person other than his/her spouse and has committed the offence of adultery. A spouse is not guilty of

adultery if the act is not voluntary and committed under intoxication or unconsciousness or by force/ fraud. Also, if a woman mistakes another man to be her husband and willingly commits the act, she is not guilty of adultery.

2. Has, after the solemnization of marriage, treated the petitioner with cruelty. Cruelty is a course of conduct of one which adversely affects the other. It may be mental or physical intentional or unintentional. Cruelty does not depend upon the number of painful assaults but depends upon their nature and degree. In matrimonial relationships, cruelty means the absence of mutual respect and understanding between spouses which embitters relationship. Silence in some situations may also amount to cruelty. In the case of PRAVEEN MEHTA V. INDERJIT MEHTA 2002, it was held that mental cruelty is necessarily a matter of inference to be drawn from the facts and circumstances of the case. In the case of SUMAN KAPUR V. SUDHIR KAPUR 2009, it was held that mens rea is not a necessary element in cruelty. Continuous cessation of marital intercourse or total indifference on the part of the wife towards matrimonial obligations would lead to legal cruelty. In DASTANE V. DASTANE the court held that cruelty generally happens when a spouse does not care for the feelings and happiness of the other spouse and does a number of acts to injure the other spouse. It is a cumulative effect which makes behaviour cruel.
3. Has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition. Desertion may be defined as permanent abandonment of one spouse by the other without any reasonable cause and consent of the other. It is a withdrawal not only from a place but also from state of things i.e. total repudiation of marital obligations. Desertion may be actual, constructive or wilful neglect. Existences of the following five elements are necessary to constitute desertion:

- The factum of separation
- Intention to desert
- Desertion should be without reasonable cause
- Desertion should be without the consent of the other party
- The statutory period of two years must have run out before a petition is presented

The desertion can come to an end if the deserting party (a) resumes cohabitation, (b) resumes marital intercourse, (c) offers reconciliation or (d) deserted spouse commits an act which justifies the other to continue to live apart. The cause to leave the spouse must be sufficiently grave and

weighty so as to justify living away.

4. Has been incurable of unsound mind or has been suffering continuously from mental disorder of such a kind and to such extent that the petitioner cannot reasonably be expected to live with the respondent. In the case of **HEMA REDDY V. RAKESH REDDY 2002,** it was held that mental disorder cannot be equated with psychological depression.

5. Has ceased to be a Hindu by conversion to another religion. When one of the spouses voluntarily relinquishes one's religion and adopts distinctive religion after performing formal ceremonies, it is a conversion on his part. Mere renunciation of Hinduism and leading unorthodox life does not make a person cease to be a Hindu. Conversion does not itself result in divorce; a petition by the spouse who remains a Hindu has to be made to the court for a divorce. If a petitioner chooses to live with his/her converted spouse then there is nothing to debar him/her from doing so.

6. Has renounced the world by entering any religious order. A person, who renounces the world and joins some holy sect, is socially dead. He abjures all interests in society. It consists of both *tyag* (abandonment) and *sanyas*. Thus if a person merely announces that he has abjured the society and home but stays in the society he cannot use this ground as along with abjuration he needs to enter into a religious order with a view to living the remaining part of his life permanently there.

7. Has not been heard as being alive for a period of 7 years or more by those persons who naturally would have heard of it, had the party been alive. The petitioner may obtain a decree for dissolution of marriage on this ground.

8. Has been suffering from venereal disease in a communicable form or from an incurable form of leprosy. (this ground is no more available as these diseases are curable now)

Besides the above-mentioned grounds, a wife has been provided four additional grounds of divorce:

a. Where any marriage solemnized before the commencement of Hindu Marriage Act, 1955 and the husband had married again before such commencement, then the first wife of pre-Act marriage may file a petition for divorce on the ground that her husband has remarried. Similarly, the second wife of the pre-Act marriage may file a petition for divorce on the ground that her husband's first wife was alive at the time of solemnization of marriage. This ground will be

available if both the marriages are valid and both the wives are alive when a petition of divorce is filed.

b. If the husband, since the solemnization of marriage is guilty of the commission of the offence of rape (sexual intercourse by a man with a woman), sodomy (anal intercourse by a man with his wife/another woman or with a man) or bestiality (sexual intercourse by a man with an animal). A man is not guilty of raping his own wife unless she is under the age of 15 years.

c. If a wife has obtained an order of maintenance under section 125 CrPC or a decree under section 18, Hindu Adoption and Maintenance Act 1956 and cohabitation between the parties has not been resumed for one year or upwards after passing of the order or decree, then the wife may sue for divorce.

d. A wife who has married before she had attained the age of 15 years and who had repudiated the marriage either expressly (written or spoken words) or impliedly (through conduct) before she attains the age of 18 years, irrespective of the fact whether the marriage has been consummated or not may bring a petition for divorce after she attains the age of 18 years on this. (repudiation and dissolution of marriage is not the same thing)

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