BLOGS

Grounds for Divorce in India: A Comparative Look at Different Laws in India

Khushi Malviya · 16 Jun 2026

Introduction

In India, the process of getting a divorce is not governed by a single law but depends on the religion of the married couple. Different communities like Hindus, Muslims, and Parsis have their own specific personal laws, such as the Hindu Marriage Act or the Dissolution of Muslim Marriages Act.

While many of these laws share common grounds for divorce like cruelty or desertion, they also have unique rules, reflecting the country's diverse legal system.

The Hindu Marriage Act, 1955

The Hindu Marriage Act, 1955 (HMA), represents a significant piece of legislation that codified and reformed the law relating to marriage among Hindus, a term that also encompasses individuals identifying as Buddhists, Jains, and Sikhs for the purposes of this Act.

The HMA provides a comprehensive set of grounds for divorce, incorporating both fault-based reasons where one party is deemed responsible for the breakdown of the marriage, and no-fault grounds that acknowledge the irretrievable breakdown of the marital relationship without necessarily assigning blame.

Section 13 of the HMA enumerates the grounds available to either spouse seeking a divorce. These grounds include adultery, defined as voluntary sexual intercourse by a spouse with any person other than their own spouse, which is a prominent fault-based ground.

Section 13(1A) of the HMA introduced no-fault grounds based on the failure to resume cohabitation for a period of one year or upwards after a decree of judicial separation has been passed or after a decree for restitution of conjugal rights has been granted but not complied with.

Section 13(2) of the HMA provides specific additional grounds available only to the wife. These include situations where, in a marriage solemnized before the commencement of the Act, the husband had married again or had another wife living at the time of the marriage. A wife can also seek divorce if the husband has, since the solemnization of the marriage, been found guilty of rape, sodomy, or bestiality.

The Special Marriage Act, 1954

The Special Marriage Act, 1954 (SMA), serves as a secular legal framework for marriage and divorce in India, available to all citizens irrespective of their religious beliefs. It provides an alternative to the religion-specific personal laws and is commonly used for inter-faith marriages or by individuals who prefer a civil marriage.

The grounds for divorce under the SMA, as outlined in Section 27 of the Act, are largely aligned with those available under the Hindu Marriage Act, reflecting a degree of legislative harmonization in this area.

These grounds include adultery, desertion for a continuous period of not less than two years immediately preceding the presentation of the petition, and cruelty, the interpretation of which mirrors the evolving understanding of this ground in family law jurisprudence.

Other grounds include incurable unsoundness of mind or mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent, suffering from venereal disease in a communicable form, and suffering from a virulent and incurable form of leprosy, subject to similar considerations as under the HMA.

The Act also provides for divorce if a spouse has not been heard of as being alive for a period of seven years or more by those who would naturally have heard of them if they were alive.

Similar to the HMA, the SMA includes a specific ground for the wife if the husband has been guilty of rape, sodomy, or bestiality since the solemnization of the marriage. Furthermore, failure to comply with a decree of judicial separation or a decree for restitution of conjugal rights for a period of one year or upwards after the passing of such decree constitutes a ground for divorce under the SMA.

Complementing these grounds, Section 28 of the SMA provides for divorce by mutual consent, a no-fault option available when both parties have been living separately for a period of one year or

more, have been unable to live together, and have mutually agreed that the marriage should be dissolved.

The procedure for mutual consent divorce under the SMA is similar to that under the HMA, involving a waiting period of six to eighteen months between the first and second motion.

Muslim Personal Law

Divorce under Muslim Personal Law in India is a complex area, not governed by a single, unified statute that comprehensively covers all aspects for both husbands and wives. The legal framework draws from religious texts, traditional interpretations, and specific legislative interventions.

For Muslim women seeking divorce through judicial intervention, the Dissolution of Muslim Marriages Act, 1939, provides specific grounds upon which a court can grant a decree of divorce, a process known as *Faskh*.

These grounds include the husband's whereabouts not being known for a period of four years, neglect or failure of the husband to provide for her maintenance for a period of two years, and the husband being sentenced to imprisonment for a period of seven years or upwards.

Failure of the husband to perform his marital obligations for a period of three years is also a ground. A wife can seek divorce if the husband was impotent at the time of the marriage and continues to be so, or if he has been of unsound mind for a period of two years or is suffering from leprosy or a virulent venereal disease.

The Supreme Court of India, in the landmark case of *Shayara Bano v. Union of India* (2017), declared the practice of instant triple talaq (*talaq-e-biddat*) unconstitutional, holding that it violated the fundamental rights of Muslim women.

While instant triple talaq is now legally invalid, other forms of *talaq*, such as *talaq-e-ahasan* (where talaq is pronounced once during a period of purity and is revocable until the waiting period ends) and *talaq-e-hasan* (where talaq is pronounced three times over three successive periods of purity), are still recognized under Muslim law, although their procedural requirements and legal implications continue to be subjects of judicial interpretation and scrutiny.

The Parsi Marriage and Divorce Act, 1936

The Parsi Marriage and Divorce Act, 1936, governs the laws relating to marriage and divorce among the Parsi community in India.

A distinctive feature of the judicial process under this Act is that divorce proceedings are heard by Special Courts known as Parsi Matrimonial Courts. These courts are constituted with the assistance of delegates from the Parsi community who participate in the proceedings.

The grounds for divorce available under Section 32 of the Act are comprehensive and cover various situations leading to the breakdown of a marriage. These grounds include adultery, fornication, bigamy, rape, or the commission of an unnatural offence by the defendant.

Cruelty is also a recognized ground, as is voluntarily causing grievous hurt to the petitioner. Desertion for a continuous period of two years is another ground for seeking divorce. Conversion to another religion by the defendant provides a basis for divorce.

The Act also lists incurable unsoundness of mind that has continued for a continuous period of two years, suffering from venereal disease in a communicable form for two years, and suffering from leprosy for two years as grounds for divorce.

Conclusion

The legal framework governing divorce in India is characterized by its pluralistic nature, with distinct personal laws applicable to different religious communities.

While there are shared grounds for divorce, particularly concerning fault-based reasons like adultery, cruelty, and desertion, and a growing convergence towards the inclusion of mutual consent as a no-fault option, significant differences persist across the Hindu Marriage Act, the Special Marriage Act, the Indian Divorce Act, Muslim Personal Law, and the Parsi Marriage and Divorce Act.

Understanding the specific provisions and judicial interpretations under each of these laws is essential for comprehending the legal process of marital dissolution in India. The legal landscape is not static, with legislative amendments and landmark judicial pronouncements continuously shaping the application and interpretation of these personal laws, often driven by the imperative to address issues of gender equality, social justice, and the evolving dynamics of marital relationships in contemporary Indian society.

The broader discourse on a Uniform Civil Code reflects the ongoing societal and legal aspirations for a more unified and equitable system of personal laws in the country.