BLOGS

Grounds of Divorce Under Hindu Marriage Act 1955

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Under Hindu Marriage Act 1955 (hereinafter referred as HMA), Section 13 deals with the various grounds on which the husband/ wife can file the petition for Divorce in the court of law. Section 13(1) lays down the grounds that can be taken by any aggrieved spouse where as the grounds under Section 13(2) can specifically be taken by aggrieved wife only.



Theories of Divorce

1. Mutual Consent: If both the spouses decide to end the marriage, they can file for divorce in the court of law.
2. Fault theory:When one spouse ends the marriage due to the fault of the other spouse and takes such ground for divorce, it is called as fault theory of divorce. The drawback of this theory is that no one can take this remedy if both the spouses are at fault.
3. Irretrievable Breakdown: The aggrieved spouse can take the divorce as the last resort if the matrimonial relationship cannot be repaired anymore. Grounds of Divorce under HMA 1. Adultery: Adultery is the voluntary and consensual sex between a married person and other person (married or unmarried). The other spouse can take the adultery as the ground for divorce. 2. Cruelty: By cruelty, it could be physical as well as mental cruelty. Dastane v Dastane is the landmark case in the topic of cruelty. Physical cruelty means causing any bodily injury whereas mental cruelty means causing any mental agony to the aggrieved spouse.

Consequently, the aggrieved spouse can file for Divorce. 3. Desertion: When one spouse abandons the other spouse without any reasonable justification, it is called as desertion. It is usually the denial to fulfil the matrimonial obligations and it is a ground for divorce. 4. Conversion: When one spouse converts to another religion without the consent of the other spouse, the other spouse can seek the remedy of divorce on the ground of this conversion. 5. Insanity: The literal meaning of the word insanity is the unsoundness of mind. When one spouse is of unsound mind, the other spouse can take it as a ground of divorce. 6. Leprosy: Leprosy is the infectious disease of the skin and can be communicated from one person to the another and hence it has been given as a ground for divorce. 7. Venereal Disease: If the disease is in communicable form and can be transmitted from one spouse to another, it is a valid ground for divorce. 8. Renunciation: If one spouse decided to renunciate the pleasures of the world and walk on the path of God or spirituality, the other spouse can seek the remedy of divorce from the court of law on this ground. 9. Presumption of Death: If the family or friends of one of the spouse have not heard about him/her in seven years, he/ she is presumed to be dead. Points to Remember 1. As per Section 14 of the HMA, no petition for divorce can be filed within one year of the marriage. 2. The concept of Divorce with Mutual consent is laid down under Section 13 B of the Hindu Marriage Act 1955. 3. As per Section 15 of the HMA, a person can remarry only after the the marriage gets dissolved and no further petition was filed by any of the spouses against the order of the court and the time for appeal has expired. 4. The concept of Irretrievable breakdown of marriage is a judgement made law and not mentioned under HMA