

## Study of related theories and sections of Hindu marriage act, 1955

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### Abstract

The aim of the paper is to make the peruser mindful of the arrangements of divorce under the Hindu Marriage Act, 1955. There are distinctive laws which administer separate from cases for various religion in India. Hindus (which incorporates Sikh, Jain, Budh) are administered by Hindu Marriage Act, 1955. The Act applies to all types of Hinduism (for instance, to a man who is a Virashaiva, a Lingayat or a supporter of the Brahmo, Prarthana or Arya Samaj) and furthermore perceives branches of the Hindu religion as determined in Article 44 of the Indian Constitution. Quite, these incorporate Jains and Buddhists. The Act likewise applies to any individual who is a lasting inhabitant in the India who isn't Muslim, Jew, Christian, or Parsi by religion.

**Keywords:** Hindu, marriage, act, theories, section

### Introduction

India, being a cosmopolitan nation, enables every native to be represented under individual laws pertinent to religious perspectives. This reaches out to individual laws bury alia in the matter of marriage and divorce.

As a feature of the Hindu Code Bill, the Hindu Marriage Act was instituted by Parliament in 1955 to change and to arrange marriage law between Hindus. And also managing the establishment of marriage (counting legitimacy of marriage and conditions for shortcoming), it likewise controls different parts of individual life among Hindus and the pertinence of such lives in more extensive Indian culture.

The Hindu Marriage Act gives direction to Hindus to be in an efficient marriage bond. It offers importance to marriage, living together rights for both the bride and prep, and a security for their family and kids with the goal that they don't experience the ill effects of their parental issues.

Under the Hindu Marriage Act, 1955 both the bridegroom and the wife have been given a privilege to get their marriage broke up by a declaration of divorce on in excess of one grounds particularly specified in Section 13. A portion of the grounds at first embedded were substituted and some more grounds came to be included. It was in the year 1964 that sub-area (1-A) was embedded by which either party to the marriage was additionally given a privilege to apply for disintegration of marriage by a pronouncement of divorce either where there has been no resumption of dwelling together for the period indicated in that, after the death of the declaration for legal partition; or where there has been no compensation of matrimonial rights for the period determined in that, after the death of the announcement for legal division; or where there has been no compensation of marital rights for the period indicated in that after the death of an announcement for compensation of matrimonial rights.

### Conditions for marriage

Section 5 of The Hindu Marriage Act specifies that conditions must be met for a marriage to be able to take place. If a

ceremony takes place, but the conditions are not met, the marriage is either void by default, or voidable.

### Void marriages

A marriage may be declared void if it contravenes any of the following:

1. Either party is under age. The bridegroom ought to be of 21 years old and the bride of 18 years.
2. Either party isn't of a Hindu religion. Both the bridegroom and the bride ought to be of the Hindu religion at the time of marriage.
3. Either party is as of now wedded. The Act expressly forbids polygamy. A marriage must be solemnized if neither one of the parties has a living spouse at the time of marriage.
4. The partys are sapindas or inside the level of denied relationship.

### Voidable marriages

A marriage may later be voidable (annulled) if it contravenes any of the following:

1. Either party is impotent, unable to consumspouse the marriage, or otherwise unfit for the procreation of children.
2. One party did not willingly consent. In order to consent, both parties must be sound of mind and capable of understanding the implications of marriage. If either party suffers from a mental disorder or recurrent attacks of insanity or epilepsy, then that may indicate that consent was not (or could not be) given. Likewise, if consent was forced or obtained fraudulently, then the marriage may be voidable.
3. The bride was pregnant by another man other then the bridegroom at the time of the marriage.

### Ceremonies

Section 7 of the Hindu Marriage Act perceives that there might be unique, however similarly substantial services and traditions of marriage. All things considered, Hindu marriage might be

solemnized as per the standard customs and services of either the bride or the groom. These customs and services incorporate the Saptapadi and Kreva.

### Registering a marriage

A marriage cannot be registered unless the following conditions are fulfilled:

1. A ceremony of marriage has been performed; and
2. The parties have been living together as husband and wife

Additionally, the partys more likely than not been living inside the locale of the Marriage Officer for a time of at least thirty days quickly going before the date on which the application is made to him for enrollment.

1. For the motivation behind encouraging the evidence of Hindu relational unions, the State Government may make decides giving that the partys to any such marriage may have the particulars identifying with their marriage entered in such way and subject to such condition as might be recommended in a Hindu Marriage Register kept for the reason.
2. Notwithstanding anything contained in sub-section (1), the State Government may, on the off chance that it is of conclusion that it is important or convenient so to do, give that the entering of the particulars alluded to in sub-area (1) will be obligatory in the State or in any part thereof, regardless of whether in all cases or in such cases as might be indicated and where any such course has been issued, and individual contradicting any administer made for this benefit will be culpable with fine which may stretch out to twenty-five rupees.
3. All guidelines made under this area will be laid before the State Legislature, when might be, after they are made.
4. The Hindu Marriage Register will at all sensible circumstances be open for review, and will be allowable as confirmation of the announcements in that contained and affirmed extricates there from will, on application, be given by the Registrar on installment to him of the endorsed charge.
5. Notwithstanding anything contained in this area, the legitimacy of any Hindu marriage will not the slightest bit be influenced by the oversight to make the passage. Compensation of Conjugal rights and legal partition.

### Restitution of conjugal rights

When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply, by petition to the district court, for restitution of conjugal rights and the court, on being satisfied of the truth of the statements made in such petition and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.

**Explanation:** Where a question arises whether there has been reasonable excuse for withdrawal from the society, the burden of proving reasonable excuse shall be on the person who has withdrawn from the society.

### Judicial divorce

1. Either party to a marriage, whether solemnized before or after the commencement of this Act, may present a petition praying for a decree for judicial divorce on any of the

grounds specified in sub-section (1) of Section 13, and in the case of a wife also on any of the grounds might have been presented.

2. Where a decree for judicial divorce has been passed, it shall no longer be obligatory for the petitioner to cohabit with the respondent, but the court may, on the application by petition of either party and on being satisfied of the truth of the statement made in such petition, rescind the decree if it considers it just and reasonable to do so.

### No petition for divorce to be presented within one year of marriage

1. Notwithstanding anything contained in this Act, it shall not be competent for any Court to entertain any petition for dissolution of marriage by a decree of divorce, unless at the date of the presentation of the petition one year has elapsed since the date of the marriage: Provided that the court may, upon application made to it in accordance with such rules as may be made by the High Court in that behalf, allow a petition to be presented before one year has elapsed since the date of the marriage on the ground that the case is one of exceptional hardship to the petitioner or of exceptional depravity on the part of the respondent, but, in the event that it appears to the court at the becoming aware of the request of that solicitor got leave to introduce the request of by any mis-portrayal or disguise of the idea of the case, the court may, in the event that it articulates a declaration, do as such subject to the condition that the pronouncement will not have impact until after the expiry of multi year from the date of the marriage or may expel the request of without preference to any request of which might be brought after the termination of the said multi year upon the same or significantly an indistinguishable actualities from those affirmed in help of the request of so expelled.
2. In discarding any application under this area for leave to display an appeal to for separate before the lapse of multi year from the date of the marriage, the court will have respect to the interests of any offspring of the marriage and to the inquiry whether there is a sensible likelihood of a compromise between the partys previously the termination of the said multi year.

Divorced persons. When may marry again. When a marriage has been dissolved by a decree of divorce and either there is no right of appeal against the decree or, if there is such a right of appeal, the time for appealing has expired without an appeal having been presented, or an appeal has been presented but has been dismissed, it shall be lawful for either party to the marriage to marry again.

### Legitimacy of children of void and voidable marriages

1. Notwithstanding that a marriage is null and void under Section 11, any child of such marriage who would have been legitispouse if the marriage had been valid, shall be legitispouse, whether such a child is born before or after the commencement of the Marriage Laws (Amendment) Act, 1976, and whether or not a decree of nullity is granted in respect of the marriage under this Act and whether or not the marriage is held to be void otherwise than on a petition under this Act.
2. Where a decree of nullity is granted in respect of a voidable marriage under Section 12, any child begotten or conceived

before the decree is made, who would have been the legitispose child of the parties to the marriage if at the date of the decree it had been dissolved instead of being annulled, shall be deemed to be their legitispose child notwithstanding the decree of nullity.

3. Nothing contained in sub-section (1) or sub-section (2) shall be construed as conferring upon any child of a marriage which is null and void or which is annulled by a decree of nullity under Section 12, any rights in or to the property of any person, other than the parents, in any case, where, but for the passing of this Act, such child would have been incapable of possessing or acquiring any such rights by reason of his not being the legitispose child of his parents.

### **Divorce**

Although marriage is held to be divine, the Hindu Marriage Act does permit either party to divorce on the grounds of unhappiness, or if he or she can prove that the marriage is no longer tenable.

A petition for divorce usually can only be filed one year after registration. However, in certain cases of suffering by the petitioner or mental instability of the respondent, a court may allow a petition to be presented before one year.

### **Grounds for divorce**

A marriage may be dissolved by a court order on the following grounds:

1. **Adultery:** the respondent has had voluntary sexual intercourse with a man or a woman other than the bridegroom after the marriage.
2. **Cruelty:** the respondent has physically or mentally abused the petitioner.
3. **Desertion:** the respondent has deserted the petitioner for a continuous period of not less than two years.
4. **Conversion to another religion:** the respondent has ceased to be a Hindu and has taken another religion.
5. **Unsound mind:** the respondent has been diagnosed since the marriage ceremony as being unsound of mind to such an extent that normal married life is not possible.
6. **Disease:** the respondent been diagnosed with an incurable form of leprosy or has venereal disease in a communicable form.
7. **Presumption of death:** the respondent has not been seen alive for seven years or more.
8. **No resumption of cohabitation after a decree of judicial divorce** for a period of at least one year.

In addition, a wife may also seek a divorce on the grounds that:

1. In case of marriages that took place before the Hindu Marriage Act 1955 was enacted, the husband was already married and that any other wife of the husband was alive at the time of the marriage ceremony.
2. The husband, after marriage, has been found guilty of rape, sodomy or bestiality.
3. Co-habitation has not been resumed within a year after an order for maintenance under Section 125 of the Criminal Procedure Code or alternatively, under the Hindu Adoptions & Maintenance Act 1956.
4. The wife was under-age when she married and she repudiates the marriage before attaining the age of 18 years.

### **Alimonies (permanent maintenance)**

At the time of the announcement of divorce or at any resulting time, the court may conclude that one party should pay to the next a sum for upkeep and support. This could be an erratic installment, or a periodical, (for example, regularly scheduled) installment. The sum to be paid is at the circumspection of the court.

### **Remarriage**

Remarriage is conceivable once a marriage has been broken up by a pronouncement of divorce and no longer ready to be claimed (regardless of whether there was no privilege of request in any case, or whether the ideal opportunity for engaging has lapsed, or whether an interest has been introduced yet rejected).

### **Conclusion**

The Hindus consider marriage to be a sacred bond. Prior to the Hindu Marriage Act of 1955, there was no provision for divorce. The concept of getting divorced was too radical for the Indian society then. The wives were the silent victims of such a rigid system. Now the law provides for a way to get out of an unpleasant marriage by seeking divorce in a court of law. The actual benefactors of such a provision are women who no longer have to silently endure the harassment or injustice caused to them by their husbands. However, to prevent hasty divorces, the law lays down certain restrictions and grounds for obtaining a divorce. Before obtaining divorce, the parties may first obtain a decree for judicial divorce after which divorce may be obtained.

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