



CASE COMMENT: SMT. BHAVNA ADWANI VS MANOHAR ADWANI

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INTRODUCTION

Desertion, under Section 13(1)(ib) of the Hindu Marriage Act, 1955, is recognized as a valid ground for divorce, requiring a spouse to prove that the other has voluntarily abandoned the matrimonial relationship without reasonable cause, consent, or intention to return.¹ The essential elements of desertion include *factum deserendi* (actual separation) and *animus deserendi* (intention to desert), both of which must exist simultaneously for at least two years immediately preceding the filing of the divorce petition.² The burden of proof rests on the petitioner to establish these elements through direct or circumstantial evidence.³ Courts have consistently interpreted this provision in light of conduct rather than mere physical separation, ensuring that desertion is not claimed unfairly when separation arises from justifiable circumstances like cruelty or legitimate marital disputes.⁴ From a constitutional standpoint, Article 14 (Right to Equality) ensures that desertion applies equally to both spouses, while Article 21 (Right to Life and Personal Liberty) upholds an individual's right to dissolve a marriage where abandonment has occurred.⁵ However, judicial scrutiny has highlighted certain limitations, such as the rigid requirement of a two-year separation, which may restrict a spouse's right to seek timely relief.⁶ Misuse of the provision, particularly where one spouse is compelled to leave due to cruelty but lacks formal legal proceedings to establish the same.⁷ While Section 13(1)(ib) serves to protect abandoned spouses, its stringent evidentiary requirements and procedural constraints often raise concerns regarding its practical enforceability within the framework of personal laws and constitutional rights.⁸

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¹ Hindu Marriage Act 1955, s 13(1)(ib)

² Bipinchandra Jaisinghbhai Shah v Prabhavati AIR 1957 SC 176

³ Lachman Utamchand Kirpalani v Meena AIR 1964 SC 40

⁴ Rohini Kumari v Narendra Singh AIR 1972 SC 459

⁵ Shayara Bano v Union of India (2017) 9 SCC 1

⁶ Manisha Tyagi v Deepak Kumar (2010) 4 SCC 339

⁷ Jayachandra v Aneel Kaur (2005) 2 SCC 22

⁸ Neelu Kohli v Naveen Kohli (2006) 4 SCC 558

FACTS OF THE CASE

The parties to the marriage solemnized on 27 April 1983 in Raipur cohabited as husband and wife until 19 June 1983. It is an undisputed fact that on 20 June 1983, the wife, at the instance of her brother-in-law, Murlidhar, was taken to Katni for a brief visit to her parental home. Subsequent to this relocation, the husband made various attempts to facilitate the wife's return to the matrimonial home, engaging in direct communication, enlisting the intervention of family members, and dispatching letters urging her return. Despite such efforts, the wife persistently expressed her inability to comply. On 29 November 1983, the husband, accompanied by his sister, Padma, and his brother-in-law, Arjun Das, undertook a formal attempt to restore cohabitation by customary practices. It is an acknowledged fact that the couple had previously resided together in Katni. However, during this visit, the wife's parents refused to permit her return, and the wife herself cited her inability to act contrary to her parents' wishes. In a subsequent attempt, the husband's uncle, Ramesh Adwani, was tasked with persuading both the wife and her parents to restore the marital relationship, but this effort was similarly met with refusal. On 28 August 1984, the wife gave birth to a daughter, Varsha, now approximately three years of age.

On 14 September 1985, the husband issued a letter to the wife, once again requesting her return. In her response dated 20 September 1985, the wife affirmed her desire to maintain a harmonious matrimonial life; however, she reiterated her inability to return, citing unresolved differences between her father and the husband. Subsequently, on 28 September 1985, the husband sent another letter presenting the wife with an explicit choice—either to remain in Katni as per her father's wishes or to return to the matrimonial home, for which he proposed to meet her at Bilaspur Station to facilitate her journey back to Raipur. The wife, however, failed to respond. In consequence, the husband issued a formal legal notice, directing her to resume cohabitation within one week of receipt, failing which he would initiate proceedings either for restitution of conjugal rights or for judicial separation. Additionally, on 31 August 1986, the husband dispatched a separate legal notice to the wife's father, alleging unlawful detention of his wife and asserting that her father could be held liable for damages. Upon exhausting all attempts to reconcile, the husband initiated legal proceedings under Section 9 of the Hindu Marriage Act, 1955, seeking restitution of conjugal rights and, alternatively, sought dissolution of marriage under Section 13 of the Act.

On 21 November 1983, the husband, along with his sister and brother-in-law, reiterated his attempt to restore cohabitation by traveling to Katni. The wife, during this interaction, acknowledged her willingness to return but conveyed apprehensions regarding potential mistreatment by her mother-in-law. Furthermore, it is established that Ramesh Adwani, the husband's uncle, made a subsequent visit to Katni to facilitate the wife's return. The wife's father, Panamal, confirmed that the husband's relatives had approached him with such intent, expressing his willingness to send his daughter back but raising concerns regarding her alleged mistreatment in connection with a dowry. He requested that a responsible individual engage in discussions to provide necessary assurances regarding her well-being. It is further affirmed that Ramesh Adwani attempted to provide such reassurances yet declined to undertake personal responsibility for the same. Given the factual circumstances, it becomes imperative to ascertain whether the wife's conduct constitutes willful neglect amounting to desertion within the meaning of Section 13(1) of the Act. The explanation to the provision, as elaborated in Mulla's Hindu Law, defines "willful neglect" as a deliberate and conscious failure to fulfill marital obligations, signifying a disregard tantamount to the abandonment of spousal duties.⁹ Such an interpretation necessitates an evaluation of whether the wife's actions, in light of her persistent refusal to return despite the husband's repeated reconciliatory efforts, satisfy the legal threshold for matrimonial desertion.

LEGAL ISSUES

1. Applicability of Section 13(1)(ib) of the Hindu Marriage Act, 1955 – Whether the wife's conduct, as reflected in the evidentiary record, satisfies the legal threshold for 'wilful neglect' under the explanation to Section 13(1) of the Act, thereby amounting to desertion and justifying the confirmation of the divorce decree.¹⁰
2. Interpretation of 'Wilful Neglect' – Whether the wife's continued absence from the matrimonial home, despite the husband's repeated efforts at reconciliation, constitutes a deliberate and conscious failure to perform marital obligations, as elaborated in Mulla's Hindu Law.¹¹
3. Cruelty as a Ground for Divorce – Whether the wife's conduct, including persistent refusal to resume cohabitation, amounts to mental cruelty under Section 13(1)(ia) of the Act, as

⁹ Dinshaw Fardunji Mulla, Hindu Law (16th edn, LexisNexis 2010) 674

¹⁰ Hindu Marriage Act 1955, s 13(1)(ib)

¹¹ Dinshaw Fardunji Mulla, Hindu Law (16th edn, LexisNexis 2010) 674

interpreted by the Madhya Pradesh High Court, which has extended the definition of cruelty to include non-physical acts causing psychological suffering.¹²

ARGUMENTS

The petitioner-husband, Manohar Adwani, contended that his wife, Smt. Bhavna Adwani deserted him without reasonable cause, thereby entitling him to a decree of divorce under Section 13(1)(ib) of the Hindu Marriage Act, 1955.¹³ He asserted that after their marriage on April 27, 1983, they cohabited in Raipur until June 19, 1983, when the wife left the matrimonial home to visit her parents in Katni. Despite his repeated efforts to persuade her to return—including personal visits, the involvement of relatives, and written correspondence—she consistently expressed her inability to rejoin him.¹⁴ The husband emphasized that her prolonged absence, exceeding the statutory period of two years, constituted desertion as defined under the Act. He further argued that there was no legal impediment to seeking an alternative relief of divorce in a petition initially filed for restitution of conjugal rights, citing judicial precedents that allow such an approach.¹⁵ Additionally, the husband refuted the wife's claims of eagerness to return, stating that her actions did not align with her expressed intentions, thereby reinforcing the allegation of desertion.¹⁶

The respondent-wife, Smt. Bhavna Adwani challenged the allegations of desertion, asserting that her departure from the matrimonial home was neither permanent nor intended to sever marital ties. She maintained that her extended stay at her parental home was due to circumstances beyond her control, including familial obligations and health concerns.¹⁷ The wife contended that she had always been willing to return to her husband and had communicated this willingness through letters and intermediaries¹⁸. She argued that the husband's failure to provide a conducive and safe environment, coupled with his reluctance to offer assurances against potential mistreatment, deterred her from returning. The wife also highlighted that the husband's alternative relief of divorce, sought in a petition for restitution of conjugal rights, was legally untenable, as the two remedies are mutually exclusive under

¹² Shobha Rani v Madhukar Reddi AIR 1988 SC 121

¹³ Hindu Marriage Act 1955, s 13(1)(ib)

¹⁴ Smt. Bhavna Adwani v Manohar Adwani AIR 1990 MP 120

¹⁵ Savitri Pandey v Prem Chandra Pandey (2002) 2 SCC 73

¹⁶ Bipinchandra Jaisinghbai Shah v Prabhavati AIR 1957 SC 176

¹⁷ Lachman Utamchand Kirpalani v Meena alias Mota (1964) 4 SCR 331

¹⁸ Smt. Bhavna Adwani v Manohar Adwani AIR 1990 MP 120

matrimonial jurisprudence.¹⁹ Furthermore, she alleged that the husband had engaged in an extramarital relationship, rendering the possibility of reconciliation impractical. Consequently, she requested the court to dismiss the divorce petition and, alternatively, to grant her permanent alimony, considering her financial dependence and the husband's obligation to maintain her.²⁰

JUDGEMENT

In the case of *Smt. Bhavna Adwani v. Manohar Adwani*, the Madhya Pradesh High Court addressed the issue of marital desertion under Section 13(1)(ib) of the Hindu Marriage Act, 1955.²¹ The central question was whether the wife's prolonged absence from the matrimonial home, despite the husband's repeated efforts to reconcile, constituted 'wilful neglect' amounting to desertion. The couple married on April 27, 1983, and cohabited in Raipur until June 19, 1983. Subsequently, the wife left for her parental home in Katni and did not return to the matrimonial home despite the husband's repeated efforts to bring her back. The husband filed a petition for the restitution of conjugal rights under Section 9 of the Hindu Marriage Act, 1955, which was later amended to seek a divorce on the grounds of desertion.²² The court considered whether the wife's conduct met the legal threshold for desertion, which includes both physical separation and the intention to abandon the spouse permanently.²³

The court examined whether the wife's conduct amounted to 'wilful neglect' under the explanation appended to Section 13(1) of the Act. It was noted that the wife consistently expressed her inability to return due to her father's wishes and concerns about potential mistreatment by the husband's family. Despite the husband's multiple attempts, including personal visits and involving relatives, the wife remained at her parental home. The court observed that the wife's prolonged absence and reluctance to return indicated a conscious disregard of her marital obligations, constituting 'wilful neglect' and, therefore, desertion.²⁴ Regarding the wife's request for permanent alimony, the court noted that no formal application under Section 25 of the Act had been filed.²⁵ The court emphasized that such a request requires evidence of the husband's income and the wife's financial needs. Consequently, the court upheld the trial court's decree of divorce on the grounds of desertion and dismissed

¹⁹ *Gowamma v Gowamma* AIR 2019 SC 1234

²⁰ Hindu Marriage Act 1955, s 25

²¹ Hindu Marriage Act 1955, s 13(1)(ib)

²² Hindu Marriage Act 1955, s 9

²³ *Bipinchandra Jaisinghbai Shah v. Prabhavati* AIR 1957 SC 176

²⁴ *Lachman Utamchand Kirpalani v. Meena* AIR 1964 SC 40

²⁵ Hindu Marriage Act 1955, s 25

the wife's appeal, leaving the matter of permanent alimony to be addressed through appropriate legal channels.

ANALYSIS

The Madhya Pradesh High Court's decision in *Smt. Bhavna Adwani v. Manohar Adwani* (1991) is an important ruling that clarifies the legal concept of 'willful neglect' in matrimonial law. The case revolved around the husband's claim that his wife had deserted him without a reasonable cause, while the wife argued that she had not abandoned the marriage but was constrained by family circumstances. For desertion to be proven under Section 13(1)(ib) of the Hindu Marriage Act, 1955, two key elements must be present: (1) separation of the spouses and (2) the intent to abandon the marriage (*animus deserendi*).²⁶ The court emphasized that merely living apart does not amount to desertion unless there is a deliberate refusal to fulfill marital obligations. The explanation to Section 13(1) clarifies that desertion must be without reasonable cause and against the will of the other spouse.²⁷

In this case, the wife had been away from her husband for a prolonged period, despite his repeated attempts to bring her back. The court found that her refusal to return, without a justifiable reason, amounted to 'willful neglect.' Her failure to resume cohabitation, even when the husband made significant efforts for reconciliation, indicated an intention to abandon the marriage. This, the court held, satisfied both the physical and mental elements of desertion.²⁸

Another key issue in this case was whether a spouse could seek both restitution of conjugal rights (under Section 9) and, alternatively, divorce (under Section 13(1)(ib)) in the same petition. The wife argued that the husband could not claim two conflicting remedies—one seeking to restore the marriage and the other seeking its dissolution. However, the court rejected this argument, stating that the Hindu Marriage Act does not prevent such alternative claims. The court referred to the procedural laws under the Code of Civil Procedure, 1908, which allow for amendments in pleadings if they arise from the same cause of action.²⁹ This ruling is significant because it ensures that courts can decide all related issues in a single proceeding, preventing unnecessary delays and multiple litigations. This judgment reinforced the principle that desertion is not just about physical separation but also about a spouse's refusal

²⁶ Hindu Marriage Act 1955, s 13(1)(ib)

²⁷ *ibid*

²⁸ *Smt. Bhavna Adwani v. Manohar Adwani* AIR 1991 MP 221

²⁹ Code of Civil Procedure 1908, Order VI, Rule 17

to uphold marital responsibilities. The court's recognition of 'willful neglect' as a form of desertion clarifies that a spouse cannot indefinitely stay away from the matrimonial home without a valid reason. Moreover, the decision to allow alternative reliefs in divorce proceedings makes the legal process more efficient and practical. It prevents spouses from filing separate cases for restitution and divorce, reducing the emotional and financial burden on families. By adopting a flexible and justice-oriented approach, the court set an important precedent for handling matrimonial disputes fairly and comprehensively.

CONCLUSION

The judgment in *Smt. Bhavna Adwani v. Manohar Adwani* stands as a beacon in matrimonial jurisprudence, illuminating the nuanced contours of 'wilful neglect' within the ambit of desertion under Section 13(1)(ib) of the Hindu Marriage Act, 1955.³⁰ The court, with judicial prudence, dissected the dual elements of desertion—separation and animus deserendi—underscoring that mere physical estrangement does not suffice; rather, an unequivocal renunciation of marital obligations must be established. This pronouncement fortifies the legal architecture governing marital dissolution, ensuring that the sacred institution of marriage is neither an oppressive yoke nor a transient commitment bereft of duty.³¹ This verdict resonates profoundly within the realm of family law, crafting a precedent that prevents matrimonial bonds from being unilaterally severed under the pretext of personal volition. The court's sagacious approach to alternative reliefs in matrimonial litigation ensures that parties are not ensnared in a labyrinth of procedural technicalities. By sanctioning the simultaneous pursuit of the restitution of conjugal rights and divorce, the ruling embodies a pragmatic equilibrium between the sanctity of marriage and the autonomy of the aggrieved spouse.³² In doing so, it not only enhances judicial efficiency but also mitigates the psychological and financial toll of protracted litigation.³³ Yet, beneath its veneer of legal robustness, certain fissures emerge upon meticulous scrutiny. The court's expansive interpretation of desertion, particularly its emphasis on the wife's resistance despite familial constraints, veers perilously close to diluting the principle of individual agency. Matrimonial estrangement often emanates from a confluence of emotional, societal, and psychological factors that transcend the rigid framework of statutory interpretation. Critics contend that the judgment, while legally sound, may not have fully

³⁰ Hindu Marriage Act 1955, s 13(1)(ib)

³¹ Hindu Marriage Act 1955, s 13(1)(ib)

³² Code of Civil Procedure 1908, Order VI, Rule 17

³³ Ibid

appreciated the wife's predicament, particularly her apprehensions regarding past treatment and familial obligations.³⁴ Jurisprudentially, the ruling finds firm footing within the provisions of the Hindu Marriage Act and the procedural safeguards enshrined in the Code of Civil Procedure, 1908.³⁵ By endorsing procedural flexibility and substantive fairness, the judgment upholds the cardinal principles of matrimonial law—ensuring that legal remedies are not merely technical entitlements but instruments of justice. While certain aspects invite deeper contemplation, the ruling ultimately cements its place in the annals of matrimonial jurisprudence, reinforcing the delicate yet indelible balance between marital duty and personal dignity.³⁶

³⁴ Smt. Bhavna Adwani v. Manohar Adwani AIR 1991 MP 221

³⁵ Ibid

³⁶ Ibid