



## DIVORCE UNDER HINDU LAW: BUT NOT FOR FREE

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### ABSTRACT

*The Hindu Marriage Act 1955<sup>1</sup> introduced the concept of divorce in Hindu law; before that, the concept of separate living from spouse was not prevalent in Hindu society. With the advancement of society, the law also evolved and brought the law of divorce. This paper studies the key grounds, such as adultery, cruelty, desertion, and mental illness, over which divorce is granted in the Hindu Marriage Act 1955 with the help of landmark judgments. Discuss the amendments that take place and evolve the law with the contemporary world. It also discusses the ongoing gender disparity in post-divorce consequences. Furthermore, this paper has analysed the situation of alimony and maintenance given to spouses with the help of a court ruling and delves into the discussion of gender-neutral reforms that need to be brought into divorce law. The focus of this study is to understand the divorce law under Hindu law and critically examine the alimony and maintenance provisions with conclusions.*

**Keywords:** Divorce, Hindu law, Alimony, Maintenance, Marriage.

### INTRODUCTION

The term divorce comes from the Latin word ‘divortium’, meaning ‘to separate’. “Divorce is the legal dissolution of a marriage by a court or other competent body.”<sup>2</sup> Hindu marriage is considered a sacrament rather than an agreement; hence, concepts like divorce never existed in them. Once married, the spouse cannot leave their partner, making it an indissoluble union. Marriage in India, especially under Hindu custom, has changed a lot over the years, following the same paths society, culture, and law have taken. In earlier times, a Hindu wedding was seen as a holy ceremony that created an unbreakable bond, held together by religious rituals. The

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<sup>1</sup> Hindu Marriage Act 1955

<sup>2</sup> Jonathan Law (ed), Oxford Dictionary of Law (9th edn, Oxford University Press 2018) sv ‘divorce’  
<https://www.oxfordreference.com/> accessed 9 June 2025

idea of divorce as we know it today barely featured in ancient Hindu rule. Instead, marriage was more than a legal deal; it was a sacred link meant to last through this life and the next, joining two families, not just two people. Still, that outlook faced serious questioning after independence, when people, lawmakers, and judges agreed personal laws needed to catch up with the Constitution's promises of equality and freedom for every individual.<sup>3</sup>

Pre-independence era, Hindu marriage was governed by the laws of Manu Smriti, Dharma Shastras, and **Smritis**; concepts of divorce or remarriage did not exist. Under the reform of the Hindu Widows Remarriage Act, 1856, personal laws began to be formulated in modern ways, which paved the way for remarriage, divorce, adoption, etc. societal needs. In the year 1955, a codified law was introduced under which acts of succession, marriage, divorce, guardianships, and adoption started to be rectified, which is now known as Hindu Law, which came under the personal laws of India. Under the Hindu Marriage Act of 1955, divorce is defined under section 13. It laid down the grounds and legal procedure for divorce. Section 13 (1) states that 'Any marriage solemnised, whether before or after the commencement of this act, may on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the grounds mentioned below.'<sup>4</sup>

Clause 1 of section 13 provides grounds such as adultery, cruelty, desertion, conversion to another religion, insanity, leprosy, venereal disease, renunciation, and presumption of death. Leprosy was a ground of divorce under section 13 clause (iv), but now it has ceased to exist due to the amendment of 2019 on the grounds that leprosy is a curable disease now. Clause 5 (2) of the section provides special grounds for the wife only. Sections 24 and 25 of the Act provide provisions for alimony and maintenance, although they are gender neutral and still reflect patriarchal norms. Women were considered dependable on husband for financial needs but today women are independent and some even earn more than their husband still claim for alimony and maintenance although court time and again through cases like Kusum Sharma v. Mahinder Kumar<sup>5</sup> recognize the financial independency of both the spouse and reflected on the need of equitable approach for maintenance claim. Similarly, in the case of Vinny Parmar v.

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<sup>3</sup> Shivani Chauhan, Dr. Amita Rathi, Dr. Piyush Trivedi, 'Evolving Perspectives on divorce: An analysis of the Hindu Marriage Act, 1955 in the context of contemporary legal norms' (2025) 5(2) IJIRL < <https://ijirl.com/wp-content/uploads/2025/03/EVOLVING-PERSPECTIVES-ON-DIVORCE-AN-ANALYSIS-OF-THE-HINDU-MARRIAGE-ACT-1955-IN-THE-CONTEXT-OF-CONTEMPORARY-LEGAL-NORMS.pdf> > accessed on 9 June 2025

<sup>4</sup> Hindu Marriage Act 1955, s 13 (1)

<sup>5</sup> Kusum Sharma v Mahinder Kumar Sharma [2015] DLT 217, [2015] AIR 53

Yuvraj Parmar,<sup>6</sup> the Supreme Court stressed the need for a dignified life post-divorce for both spouses.

The act assumes the traditional scenarios where women are dependent on men and men bear the responsibility of their maintenance, despite women enjoying considerable financial stability. In today's world, women have their fair share of financial independence, but still pressure men to pay for their lifestyle, leading to cases like Atul Shubhash, an engineer who committed suicide due to cases filed by his wife for hefty alimony. Indian judiciary has, with time, tried to expand the scope of the law, but Hindu law has still to adapt to the changing social scenarios and address the key issues.

### **AMENDMENTS WITH TIME**

Marriage Laws (Amendment) Act, 1976,<sup>7</sup> (1) Subject to the provisions of this Act a petition for dissolution of marriage by a decree of divorce may be presented to the district court by both the parties to a marriage together, whether such marriage was solemnized before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976), on the ground that they have been living separately for one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved. (2) On the motion of both the parties made no earlier than six months after the date of the presentation of the petition referred to in sub-section (1) and not later than eighteen months after the said date, if the petition is not withdrawn in the meantime, the court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnized and that the averments in the petition are true, pass a decree of divorce declaring the marriage to be dissolved with effect from the date of the decree. Under this amendment act adultery, cruelty, and desertion were made grounds for divorce. Mutual consent for divorce under section 13B was introduced; the minimum period for leprosy and venereal diseases has been omitted. Personal Law Amendment Act 2019<sup>8</sup> omitted section 13 (1) (iv), which held leprosy as a ground for divorce.

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<sup>6</sup> Vinny Parmvir Parmar v Parmvir Parmar [2011] SCC 13, [2011] SC 2748, INSC 507

<sup>7</sup> The Marriage Laws (Amendment) Act 1976, Act No 68 of 1976, Gazette of India, 27 May 1976

<sup>8</sup> The Personal Laws (Amendment) Act 2019, Act No. 6 of 2019, Gazette of India, 21 February 2019

## KEY GROUNDS FOR DIVORCE

The divorce concept under Hindu marriage law is based on the fault theory, which states that a marriage can be dissolved if either party is at fault. This theory was recognised in *N.G. Dastane v. S. Dastane* (1975)<sup>9</sup> by the Supreme Court. If both parties are at fault, divorce may not be granted even if the marriage has broken down, yet an exception of irretrievable breakdown theory is given and recognised by judicial activism, but not as a statute. Section 13(1) has enshrined nine grounds for divorce, like adultery, under section 13(1) (i), has, after the solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse;<sup>10</sup> or, in the landmark judgment of *Joseph Shine v. Union of India*, 2017<sup>11</sup> The Supreme Court has decriminalized adultery as a criminal offence and struck down Section 497 of the IPC.<sup>12</sup> and Section 198 of CrPC.<sup>13</sup> Section 13 (1) (i-a) talks about cruelty, has, after the solemnization of the marriage, treated the petitioner with cruelty.<sup>14</sup> This provision was first defined in *Russell v. Russell* as conduct of such character as to have caused danger to life, limb or bodily or mental, or give rise to a reasonable apprehension of such conduct. The petition can be filed by any party, but the scope of cruelty is very wide and depends on judicial interpretation.

In the case of *Dastane v. Dastane*,<sup>15</sup> the Supreme Court laid down guidelines to assert the existence of cruelty, and the Court set out a simple checklist to decide if a couple's behaviour counts as cruelty. Section 13 (1) (i-b) gives the third ground of desertion, which means giving up or leaving without any sufficient reason or intention to return, has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition.<sup>16</sup> The petitioner has to prove that the desertion is against their wish and that no sufficient reason was given to them. If the spouse comes back after the period of two years and deserts again, then the period of desertion will commence from the date when they left again. In *Bipin Chandra v. Prabhavati*<sup>17</sup> divorce case, the Supreme Court held that desertion shifted to the husband who refused to commence the marriage after his wife returned and showed an

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<sup>9</sup> *Dastane v Dastane* [1975] SCC 2, [1975] AIR 1975 SC 1534

<sup>10</sup> Hindu Marriage Act 1955, s 13(1)(i)

<sup>11</sup> *Joseph Shine v Union of India* [2018] SCC 194, [2018] 3 SCC 39, (WP (Crl) No 194/2017)

<sup>12</sup> Indian Penal Code 1860, s 497

<sup>13</sup> Code of Criminal Procedure 1973, s 198

<sup>14</sup> Hindu Marriage Act 1955, s 13(1)(i-a)

<sup>15</sup> *Dastane v. Dastane* [1975] SC 1534

<sup>16</sup> Hindu Marriage Act 1955, s 13(1)(i-b)

<sup>17</sup> *Bipinchandra Jaisinghbai Shah v Prabhavati* [1957] SC 176

intention to continue the marriage. There are two types of desertion: actual and constructive. When the animus deserendi, or the desire to permanently end cohabitation, and the fact of separation, the term "actual desertion" refers to the same party. Constructive desertion is when one spouse denies the other spouse the performance of marital rights and duties. A landmark case of the Supreme Court, *Savitri Pandey v. Prem Chand Pandey*<sup>18</sup> 2002, which held constructive desertion as a ground for divorce. An act of desertion can be terminated as well by the conduct of the deserting spouse through cohabitation, marital intercourse, and reconciliation, but all these through mutual consent only. Section 13 (1) (ii) has ceased to be a Hindu by conversion to another religion,<sup>19</sup> as conversion to another religion is a valid ground under Hindu law; mere declaration of not following Hinduism will not be sufficient. In *Sarla Mudgal v. Union of India* court held that direct conversion to another religion does not mean automatic divorce, and the Hindu husband can be held criminally for seven years for bigamy under Section 494 of IPC.<sup>20</sup>

Section 13 (1) (iii) provides mental illness as a valid ground for divorce, has been incurably of unsound mind, or has been suffering continuously or intermittently from a mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.<sup>21</sup> Clause (a) defines "mental disorder", and Clause (b) defines "psychopathic disorder". In *Ram Narayan Gupta v. Shrimati Rameshwari Gupta* 1988,<sup>22</sup> the Supreme Court held that if the degree of mental disorder is such that the spouse cannot continue to live with the other, then divorce should be granted. Section 13 (1) (iv), Leprosy was the grounds for divorce before the Personal Law Amendment Act of 2019 came. Section 13 (1) (v) has been suffering from venereal disease in a communicable form.<sup>23</sup> If either party is suffering from any kind of venereal disease which can be spread through sexual acts, then this will be a valid ground for divorce. Section 13 (1) (vi) has renounced the world by entering any religious order.<sup>24</sup> Section 13 (1)(vii) gives the last ground for divorce for both husband and wife, which is presumption of death, which is based on the Indian Evidence Act section 108 where a person is presumed dead if not heard alive for not less than seven years by relatives, friends, and others. When a person has not been heard of as being alive for seven years or more by those who

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<sup>18</sup> *Savitri Pandey v. Prem Chandra Pandey* [2002] SC 2785, [2002] 2 SCC 73

<sup>19</sup> Hindu Marriage Act 1955, s 13 (1) (ii)

<sup>20</sup> Indian Penal Code 1930, s 494

<sup>21</sup> Hindu Marriage Act 1955, s 13 (1) (iii)

<sup>22</sup> *Ram Narayan Gupta v. Smt Rameshwari Gupta* [1988] SC 2377, [1988] 4 SCC 247

<sup>23</sup> Hindu Marriage Act 1955, s 13 (1) (v)

<sup>24</sup> Hindu Marriage Act 1955, s 13 (1) (vi)

would naturally have heard of it, had that party been alive.<sup>25</sup> When the Hindu Marriage Law was passed in the year 1955, it gave special grounds for women to file for divorce initially. Only two grounds were given, but with the Amendment of 1976, two more grounds were added. Section 13 clause 2<sup>26</sup> gives pre-act polygamous marriages; according to the clause, if the husband had multiple wives before the start of this act, i.e., 1955, enables a wife or wives to request divorce if the other wife continues to exist currently at the time of the petition. The act aims to enact the policy of monogamy; this defence is available when a husband has two or more valid marriages, and either wife must be present when the divorce petition is filed.

Another ground is bestiality - rape and unnatural sex, sodomy, oral sex and sex against nature by the husband. Rape and unnatural sex are criminal offences as well under section 375 and 377 of IPC. Sub-clause (iii) prescribed non-resumption of cohabitation after a decree of maintenance has been obtained under section 18 of the Hindu Adoption and Maintenance Act,<sup>27</sup> or Section 125 of the CrPC. Sub-clause (iv) lays down the provision of underage marriage of the wife. If the wife at the time of marriage has not attained the age of fifteen after attaining puberty, she can file for a divorce. Section 13B<sup>28</sup> of the Act allows the spouse to go for divorce with mutual consent if no grounds under section 13 are available. A petition for mutual divorce can be filed before the district court under the ground of separate living for one year, although separate living is not a necessary ground; living under one roof and through mutual consent divorce can be filed. The parties must wait for six months, but not more than eighteen months. Section 14 of the act highlights that one year should have elapsed since marriage; otherwise, courts will not entertain such a petition. Section 15 lays down when divorced parties can get married again.<sup>29</sup> All these are grounds on how to end a Hindu marriage, and with time, amendments have been made to include social changes, global reforms like no fault divorce, where, without assigning blame, partners can file for divorce. One major progressive framework is “irretrievable breakdown of marriage”, over which the Indian Judiciary has given a ruling, but no permanent statute has been made.<sup>30</sup>

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<sup>25</sup> Hindu Marriage Act 1955, s 13 (1) (vii)

<sup>26</sup> Hindu Marriage Act 1955, s 13(2)

<sup>27</sup> Hindu Adoptions and Maintenance Act 1956, s 18

<sup>28</sup> Hindu Marriage Act 1955, s 13B

<sup>29</sup> Hindu Marriage Act 1955, ss 14 and 15

<sup>30</sup> Shivani Chauhan, Dr. Amita Rath, Dr. Piyush Trivedi, ‘Evolving Perspectives on divorce: An analysis of the Hindu Marriage Act, 1955 in the context of contemporary legal norms’ (2025) 5(2) IJIRL < <https://ijirl.com/wp-content/uploads/2025/03/EVOLVING-PERSPECTIVES-ON-DIVORCE-AN-ANALYSIS-OF-THE-HINDU-MARRIAGE-ACT-1955-IN-THE-CONTEXT-OF-CONTEMPORARY-LEGAL-NORMS.pdf> > accessed on 9 June 2025

## **IRRETRIEVABLE BREAKDOWN OF MARRIAGE AS A PERMANENT STATUTE**

Indian judiciary, with evolving social needs, has expanded the scope of divorce law of the Hindu Marriage Act 1955. Important amendments have paved the way for various rulings reflecting ever-changing social dynamics. Irretrievable breakdown of marriage means the marriage is beyond repair, and the spouse can no longer tolerate living together. The court cognises this through many landmark cases, in *Naveen Kohli v. Neelu Kohli*,<sup>31</sup> which became the first landmark case to recognise irretrievable breakdown of marriage as a ground for divorce. Two pivotal issues of Hindu marriage law were addressed in this case: mental cruelty as a ground for divorce and damage to marriage beyond repair, i.e., irretrievable breakdown of marriage. Although this ground is not explicitly mentioned in the act, the Supreme Court acknowledged this doctrine as a judicially sound and workable resolution. Another case of *V. Bhagat v. D. Bhagat*,<sup>32</sup> with eight yearlong litigation and accusation on each other of adultery and mental instability, the Supreme court acknowledged the irreparable damage of the marriage and that prolonged litigation has cause emotional distress and mutual loss of respect with reasonable ground to dissolution of marriage was justified, Supreme court with its power enshrined in article 142 dissolve the marriage.

In the case of *Anil Kumar Jain v. Maya Jain*,<sup>33</sup> the Supreme Court used its extraordinary power under Article 142 to do ‘complete justice’ even when the wife withdraws consent after filing for divorce under Section 13B. A property settlement has been carried out even though the wife refused to reconcile and live together. Irretrievable breakdown of marriage is not a statute, but time and again, courts of India have recognised the psychological and emotional understanding of spouses and given relief from the irreparable matrimonial bond. Free and fair distribution of assets post-divorce has become an international standard, and Hindu Marriage law needs to recognise this need and bring amendments that make irretrievable breakdown of marriage a permanent statute.

## **ALIMONY AND MAINTENANCE FOR GENDER NEUTRALITY**

Section 24 lays down interim maintenance and expenses of proceedings, and Section 25 talks about permanent maintenance and alimony provisions.<sup>34</sup> The court, if satisfied that there is a

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<sup>31</sup> *Naveen Kohli v. Neetu Kohli* [2006] SC 812, [2006] 4 SCC 558

<sup>32</sup> *V. Bhagat v. D. Bhagat* [1994] 1 SCC 337 (SC)

<sup>33</sup> *Anil Kumar Jain v. Maya Jain* [2009] SC 5952, [2009] 10 SCC 415

<sup>34</sup> Hindu Marriage Act 1955, ss 24 and 25



change in the circumstances, may modify such order as it may deem just. Under Hindu divorce laws, gender neutrality is seen, but many times favours women due to traditional patriarchal norms, and in today's world, women do enjoy considerable financial independence, yet in the majority of cases, men are the ones to bear the amount of alimony and maintenance on the decree of the court. These provisions, although they were for the betterment of women, but just like every other law they are also being misused. Women now use it to threaten men and demand hefty alimony amounts despite being financially better than men. In the recent incident of Atul Shubhash, we have seen how the estranged wife of the Bengaluru-based IT engineer, 34 years old, alleged harassment, extortion, and judicial corruption. Leaving behind 24 pages of suicide and an 81-minute video stating how nine cases have been registered, a sum of 3 crore was demanded to settle the case.<sup>35</sup>

Incidents like this are very much prevalent all over India, although courts have started to interpret this provision more equitably, *Kusum Sharma v. Mahinder Kumar Sharma*<sup>36</sup> Delhi High Court underscored the need for a more equitable approach, highlighting that maintenance should be based on factors like standard of living during marriage, the financial independence of both parties and it should not be based on gender. Similarly, in the case of *Vinny Parmar v. Yuvraj Parmar*<sup>37</sup>, a landmark judgement was handed down by the Supreme Court in marriage law, determining the need for social dynamics and pointing out how both men and women should be claimants of alimony based on the circumstances. Consideration of the standard of living and a dignified life should be given post-divorce as well.

The patriarchal underpinning of gender roles now does not reflect the reality of today's social scenarios very much. However, we cannot say that all women don't need financial assistance post-divorce; rather a more gender-neutral laws are the need of the hour. In a recent case Punjab and Haryana court dismissed a case of maintenance by an estranged wife who did not disclose her employment at a private university on July 3, 2017. Justice Bedi asserted, "In my opinion, this explanation is completely fallacious. The petitioner is an assistant professor and a highly educated person. At no stage of the proceedings up till her cross-examination did she disclose that she was employed. Assuming that the fact was missing in her petition under section 125,

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<sup>35</sup> The Week News Desk, 'Atul Shubhash Suicide: Here's what Supreme Court said on misuse of Cruelty laws in marital disputes' The Week (Delhi, 11 December 2024)

<sup>36</sup> *Kusum Sharma v. Mahinder Kumar Sharma* [2017] SCC Online 12534 (DEL)

<sup>37</sup> *Vinny Parmar v. Yuvraj Parmar* [2011] 13 SCC 122 (SC)



the court could have been informed during proceedings that there had been a change of circumstances regarding her obtaining employment”.<sup>38</sup>

Indian judiciary has, although adapted global trends and reforms that address the social dynamics, yet the need for more rigorous laws is felt. The gender-neutral laws will not only evolve the justice system of the country but will also upgrade the standard of gender equality for the nation. Contemporary judicial interpretation should address the gender disparity in not only Hindu laws but also in all laws of the country. In comparison to global concepts like no-fault divorce and irretrievable breakdown of marriage, the Indian statute is still lacking a firm ground.

## CONCLUSION

Through all the leading cases and their studies, this paper has analysed the ongoing need for gender neutral laws and grounds for divorce to be more asserted in the right. The Indian court, although through its landmark judgment, has expanded the scope of the Hindu Marriage Act 1955,<sup>39</sup> yet issues like child custody, maintenance, alimony, no statute regarding irretrievable breakdown of marriage, and the no-fault divorce concept require a progressive framework. The movement of the Indian judiciary towards progressive reforms is gradual but slow, which is not sufficient to address the issues of contemporary society. Gender neutral laws will not only evolve the justice system of India but also open forums for a more equitable standard of living and ensure the dignity of both parties involved.

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<sup>38</sup> Ajay Sura, 'Dignity of Courts undermined: Punjab and Haryana HC' Times of India (17 March 2022)

<sup>39</sup> Hindu Marriage Act 1955