

CHAPTER – 3

DIVORCE IN HINDU LAW*

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ABSTRACT

This chapter examines the law of divorce under the Hindu Marriage Act, 1955, rooted in the classical understanding of Hindu marriage as a sacred sacrament (samskara), an indissoluble union grounded in dharma and religious duty as conceived by the Manusmriti. This sacral conception has shaped the enduring disinclination of both Parliament and the judiciary to dissolve matrimonial bonds lightly, with divorce consistently treated as a remedy of last resort and Section 23(2) imposing a statutory duty on courts to attempt reconciliation before proceeding on the merits. The chapter systematically analyses all grounds of divorce under Section 13, encompassing fault-based grounds including adultery, cruelty, desertion, conversion, and mental disorder; the four wife-specific grounds under section 13(2); and the no fault-based grounds including the breakdown-adjacent grounds under Section 13(1A) and mutual consent divorce under Section 13B. The chapter concludes that contemporary divorce law balances respect for marriage's sacramental origins with relief for genuinely broken unions.

Keywords: Divorce, Hindu Marriage, Cruelty, Desertion, Mutual Consent.

I. INTRODUCTION

Under Hindu law, marriage has seemed to be as a *samskara* (sacrament) rather than a mere civil contract. The classical Hindu conception of marriage was deeply influenced by *Manusmriti* which viewed marriage as a sacred and enduring union essential for the performance of dharma, procreation, the repayment of ancestral debts and the continuation of lineage. Manu declared that a wife, once given in marriage through the prescribed rites and in the presence of the sacred fire, remained united with her husband for the fulfilment of religious duties and in the worlds that follow.² Classical Hindu jurisprudence consequently treated marriage as an indissoluble status rather than a consensual arrangement capable of termination by the parties. The orthodox schools of Hindu law recognized that once a valid marriage had been solemnized, the marital bond was regarded as permanent and irrevocable.

During 19th and 20th century, the gradual spread of education, entry of women into paid employment, urbanisation and the loosening of caste bonds in India contributed to changing expectations as what marriage should involve and what legal options should be available when

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² Manusmriti 9.46, 9.101–102.

it fails. The Hindu Marriage Act, 1955, enacted in 1955 (hereinafter referred as ‘the Act’) provided for the first time a uniform statutory framework governing marriage and divorce among Hindus, with Section 13 specifically dealing with the divorce grounds. Ancillary reliefs including interim maintenance, permanent alimony and custody of children are covered by Sections 24, 25 and 26. The grounds available in the act were entirely fault-based where petitioner had to prove that the respondent had committed a recognised matrimonial wrong. Parliament returned to the statute in 1964 and 1976, expanding the list of grounds and, most significantly, introducing divorce by mutual consent under Section 13B.

On the other hand, the judiciary has consistently taken the position that a decree of divorce is a step of the last resort only and every reasonable possibility of reconciliation must be explored before a marriage is formally dissolved. Section 23(2) of the Act places a statutory duty on the court that before it proceeds on the merits of any matrimonial petition, to take reasonable steps to promote reconciliation between the spouses. Courts have consistently held that the evidence in support of any ground must be cogent and credible and must clearly establish the ground before a decree will follow. The Act is read by the courts as giving primacy to the preservation of the family while ensuring that a spouse who has genuinely suffered is not left without relief.

II. DIVORCE UNDER SECTION 13

Section 13 is the centrepiece of the Act for the dissolution of marriage. It was originally enacted with a set of fault-based grounds and was subsequently amended in 1964 and 1976. Under this model, either of the spouse (the petitioner), must prove that the other spouse (the respondent), has committed a recognised matrimonial wrong or is afflicted by a condition that the law treats as a ground for dissolution of marriage. The table below consolidates all the grounds presently available under the Act:

S.No.	Ground	Ground Available To	Section
1	Adultery	Both	S.13(1)(i)
2	Cruelty	Both	S.13(1)(ia)
3	Desertion (minimum two years)	Both	S.13(1)(ib)
4	Conversion to another religion	Both	S.13(1)(ii)
5	Unsoundness of mind or mental disorder	Both	S.13(1)(iii)
6	Virulent leprosy (now deleted by 2019 Act)	Both	S.13(1)(iv)
7	Venereal disease in communicable form	Both	S.13(1)(v)
8	Renunciation of the world	Both	S.13(1)(vi)
9	Presumption of death (seven years)	Both	S.13(1)(vii)
10	No resumption of cohabitation after judicial separation	Both	S.13(1A)(i)
11	No restitution of conjugal rights after decree	Both	S.13(1A)(ii)
12	Pre-Act polygamy by husband	Wife only	S.13(2)(i)
13	Husband guilty of rape, sodomy or bestiality	Wife only	S.13(2)(ii)

14	No cohabitation after maintenance order	Wife only	S.13(2)(iii)
15	Repudiation of marriage (option of puberty)	Wife only	S.13(2)(iv)
16	Mutual consent	Both	S.13B

Table 1: Grounds of Divorce under section 13.

Each ground is taken up in the following subdivisions.

A. Adultery [Section 13(1)(i)]

Section 13(1)(i) allows a divorce petition where the respondent has had voluntary sexual intercourse with a person other than the petitioner after the solemnization of the marriage. Initially, the Act required proof that the respondent was “*living in adultery*,” but the 1976 amendment replaced this requirement with the broader ground that the respondent “*has had voluntary sexual intercourse with any person other than his or her spouse*,” making a single proven act of adultery sufficient for divorce. The provision is gender-neutral in nature, conferring an equal right upon both the husband and the wife to seek dissolution of marriage on this ground. Consequently, voluntary sexual intercourse with a third person during the subsistence of the marriage, if established on the balance of probabilities, constitutes a valid ground for divorce under the Act.

The Supreme Court in *Joseph Shine v. Union of India*³ struck down Section 497 of the Indian Penal Code and decriminalized adultery on the grounds of constitutional principles of equality, dignity, privacy and individual autonomy. The Court held that adultery, though morally questionable, is essentially a private concern between consenting adults and does not warrant criminal sanction by the State. Adultery was seen as an arbitrary and discriminatory offence as it treated a woman as a husband's possession and did not consider her right of agency. Though adultery has been decriminalized, it does not mean that it is acceptable inside a marriage. The laws regarding marriage have their own principles separate from criminal law. Due to these separate principles, adultery continues to constitute a ground for divorce as it represents a violation of the marital duty of fidelity, undermining the trust, confidence, and companionship that form the foundation of the matrimonial relationship. The Supreme Court in *Joseph Shine* stated that adultery is not a crime against society, but there can be civil consequences of an act of adultery. As such, adultery has been removed from the domain of criminal liability but can still be considered a matrimonial wrong that is sufficient justification for granting a divorce pursuant to the Act.

B. Cruelty [Section 13(1)(ia)]

1. History

Traditionally, English courts have looked at cruelty primarily from the point of physical injury only. This approach to defining cruelty was based on the theological idea of a sacramental marriage that cannot be undone and on an idea that domestic disputes are not “issues” that

³ AIR 2018 SC 4898.

should be dealt with by the law. As time went on, courts gradually came to accept that a form of cruelty without an actual blow having been delivered could also create potential harm to the health of an individual as great as that caused by a physical attack. The point at which the definition of cruelty began to change was generally at the point of *Russell v. Russell*⁴. Although the House of Lords in this case continued to apply a predominantly “physical” standard of cruelty, the judicial developments since the 1940s, beginning with *Russell’s Case*⁵, demonstrate a growing recognition by courts that mental anguish and psychological suffering constitute important elements of cruelty. By the time the 20th century arrived, the question before a court was not simply did the respondent use physical abuse against the petitioner, but rather, did the entire course of conduct of the respondent risk the physical or mental health of the petitioner?

At the time of its enactment, the Act treated cruelty solely as a ground for judicial separation under Section 10 and not as a basis for dissolution of marriage. This meant that a spouse subjected to cruelty could obtain a court order relieving the obligation of cohabitation but could not dissolve the marriage itself. The position was clearly unsatisfactory and the Amendment Act, 1976⁶ corrected it by inserting cruelty as a basis of divorce under Section 13(1)(ia). Since then, cruelty has become the most frequently litigated ground in matrimonial courts across the country and its boundaries have been extensively tested in litigation at every level of the judiciary.

2. Concept of Cruelty: Physical and Mental

The Act content has been built up entirely by judicial decisions over more than six decades. The foundational exposition of cruelty in Indian matrimonial law is found in *N.G. Dastane v. S. Dastane*⁷ where the Supreme Court's analysis of cruelty has subsequently guided courts in divorce proceedings under Section 13(1)(ia). The Court emphasised that cruelty is a relative concept that must be assessed considering the circumstances of the spouses and their marriage. The Court observed that “*the inquiry therefore has to be whether the conduct charged as cruelty is of such a character as to cause in the mind of the petitioner a reasonable apprehension that it will be harmful or injurious for him to live with the other party.*” While addressing this issue, the Court stressed that the parties' social circumstances, level of education, temperament, habits, cultural values and way of life are relevant considerations. As the Court explained, conduct which may be intolerable in one marriage may be regarded as insignificant in another and therefore “*what constitutes cruelty in one case may not amount to cruelty in another case.*” In *Dastane*, the importance of cruelty is in examining how the actions of one spouse affect their partner's mental and physical state. Therefore, it is important to look not only at the type of act but to determine whether the act caused enough pain to the spouse who is alleging its impact that they will no longer be able to continue living with the other person; the focus should also be on what happened over the period of their marriage.

⁴ [1897] AC 395 (HL).

⁵ Ibid.

⁶ The Hindu Marriage Laws (Amendment) Act, 1976 (Act 68 of 1976).

⁷ (1975) 2 SCC 326.

Two different categories of cruelty are typically used to discuss the issue of cruelty in domestic law; these are *physical cruelty* and *mental cruelty*. Physical cruelty is easier to define than mental cruelty, as it occurs when a person harms the other through actions such as beating, kicking, burning or some other type of violence against the other party. Mental cruelty is a much more difficult concept to define; it never includes visible evidence and is usually belittled by the person who has inflicted it. However, courts have historically found that mental cruelty can affect an individual's health and well-being equal to or greater than physical violence. The courts have consistently found that the following behaviours, when they occur over time and in relation to the other behaviours, can constitute a pattern of mental cruelty such as persistent verbal abuse that degrades or humiliates a person; repeated false allegations of adultery or immoral acts; the prolonged use of cold silence as a method of psychologically pressuring the victim; intentional efforts to isolate the victim from their friend and family support systems; exertion of economic control to create dependence. In a recent case of *Mangayakarasi v. M. Yuvaraj*⁸, the Supreme Court held that “*unwarranted and unsubstantiated allegations of dowry demands or such allegations which exposes husband or his relatives to criminal litigation constitute mental cruelty and furnish ground of divorce*”.

While single incidents may be serious, in most cases they will not be enough to establish mental cruelty. For example, an outburst of anger, words said during an argument or a short period of friction will not be sufficient on their own to satisfy the definition of mental cruelty. The question that the court must ask is whether the respondent's conduct, assessed cumulatively and over the relevant period, has caused the petitioner genuine suffering of a kind and degree that makes it unreasonable to expect the petitioner to continue living together with the respondent.

3. Cruelty and the Irretrievable Breakdown of Marriage

One of the most significant developments in the judicial treatment of cruelty has been its gradual emergence as a basis for establishing irretrievable breakdown of marriage in cases where the parties have been locked in bitter and protracted litigation for years. The courts have increasingly recognised that where both parties have made serious and unsubstantiated allegations against each other, where they have lived apart for a prolonged period with no prospect of returning to cohabitation and where the very conduct of the litigation has widened the gap between them beyond any possibility of repair, the cumulative effect of these circumstances can amount to cruelty sufficient to warrant dissolution.⁹

The Supreme Court's most comprehensive treatment of this question appears in *Samar Ghosh v. Jaya Ghosh*¹⁰ where the Court in that case laid down 16 categories of mental cruelty. It compiled a non-exhaustive catalogue of situations that courts across India have treated as constituting mental cruelty such as a persistent and unexplained refusal to have sexual relations; making false criminal complaints against the spouse or the spouse's family; a unilateral decision by one spouse never to have children when the other strongly desires a family; habitual

⁸ (2020) 3 SCC 786.

⁹ *Ravinder Kaur v. Manjeet Singh*, (2019) 8 SCC 308

¹⁰ (2007) 4 SCC 511.

drunkenness or drug dependence; conduct designed to humiliate or demean the other in public or in private; and the sustained maintenance of a state of hostility that has effectively destroyed the marriage as a living institution. The Court repeatedly emphasised that mental cruelty cannot be reduced to a formula or checklist. Rather, it is the task of the court is to assess the cumulative impact of the parties' conduct upon the complaining spouse. A single act, however unpleasant, may not by itself justify dissolution unless its consequences are sufficiently grave. The decision therefore reinforces the principle first articulated in *Dastane* that cruelty is fundamentally contextual and must be evaluated considering the parties' personalities, social background, marital history and the overall realities of their relationship.

The relationship between mental cruelty and irretrievable breakdown of marriage received one of its clearest judicial expositions in *Naveen Kohli v. Neelu Kohli*¹¹. In this case, the parties had been married in 1975 and were engaged in a long series of bitter disputes involving allegations of financial misconduct, property conflicts and multiple court proceedings initiated against each other. The husband contended that the wife had initiated multiple complaints and legal proceedings against him and his family members, and that the prolonged period of separation between the parties had effectively extinguished any possibility of reconciliation.

The Supreme Court observed that the cumulative effect of wife actions had caused such deep mental pain and suffering as to constitute “cruelty” within the meaning of Section 13(1)(ia). The Court emphasised that matrimonial cruelty is not confined to physical violence and observed that “*to constitute cruelty, the conduct complained of should be 'grave and weighty' so as to come to the conclusion that the petitioner spouse cannot reasonably be expected to live with the other spouse.*” The Court further mentioned that the wife's conduct has generated continuous harassment and litigation, making the husband's life extremely difficult and rendering the continuance of the marital relationship unreasonable. After reviewing the history of hostility between the parties, the Court stated that “*the marriage between the parties has broken down irretrievably and there is no chance of their coming together or living together again*” In a judgement that has since become a major element of matrimonial law, The Court remarked that “*once the marriage has broken down beyond repair, it would be unrealistic for the law not to take notice of that fact.*” The Court also stated that where all emotional, social and practical bases for the marriage have disappeared, then continuing to keep the legal connection serves no practical purpose and will merely continue the anguish of the parties to the marriage. The Court emphasized that the objective of preserving marital relationships should be pursued wherever possible; however, where a marriage has disintegrated beyond the prospect of reconciliation, society and the law must recognize that reality.

Even though the Court granted the application for relief against the established ground of cruelty, as opposed to the ground of irretrievably broken down, the Court, however, took a significant opportunity to make an important suggestion regarding changes to the law. The Court observed that “*the Legislature in its wisdom should consider seriously introducing an amendment in the Act to incorporate irretrievable breakdown of marriage as a ground for the grant of divorce.*” The Court noted that the existing fault-based grounds of divorce do not

¹¹ (2006) 4 SCC 558.

always properly address those marriages where there is an irretrievable breakdown. Therefore, the Court urged the Parliament to recognise the social reality of dead marriages and create a separate statutory basis for dissolving them as a result of the marriage being completely broken down.

4. The Law Commission's Recommendations on Cruelty

In its 59th Report¹², the Law Commission recommended that the definition of cruelty be expanded to make clear that mental cruelty was as much a ground for relief as physical cruelty. The Commission noted that the courts had already moved in this direction through case law but that a clearer statutory statement would provide better guidance and reduce the need for lengthy litigation on the threshold question. The 1976 amendment to the Act, which introduced “cruelty” as a ground for divorce under Section 13(1)(ia), was partly a response to this recommendation, though the legislature chose not to enact a statutory definition and left the content of the term to the courts.

The Law Commission returned to related questions in its 71st Report¹³ and its 217th Report¹⁴ where it recommended irretrievable breakdown of marriage be incorporated as an independent statutory basis for divorce. In the course of these reports, the Commission took view that the courts' developing jurisprudence on cruelty had already brought Indian law some way towards a functional equivalent of the breakdown principle, because a prolonged and irreconcilable estrangement between the parties is now routinely treated as capable of constituting mental cruelty. The Commission nonetheless maintained that an explicit statutory ground would be preferable to reliance on this indirect route.

5. Effect of Condonation on the Ground of Cruelty

Condonation is one of the principal bars to matrimonial relief under Section 23 of the Act. It refers to the forgiveness of a matrimonial offence by the aggrieved spouse on the express or implied condition that the act will not be repetitive. The doctrine favours reconciliation and preserving marriage whenever possible. For condonation to be established, there are two essentials: (i) forgiveness of the matrimonial offence; and (ii) restoration of the spouse to the same marital position. However, neither element by itself is sufficient because forgiveness without restoration of normal marital relations does not amount to condonation and mere cohabitation without genuine forgiveness is equally inadequate. Thus, the law requires more than physical proximity and it requires evidence of reconciliation and resumption of normal married life.

The most authoritative case concerning this issue is *N.G. Dastane v. S. Dastane*¹⁵ where the husband requested judicial separation based upon cruelty committed by his wife. The dispute

¹² Law Commission of India, “59th Report on the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954” (1974).

¹³ Law Commission of India, “71st Report on the Hindu Marriage Act, 1955 Irretrievable Breakdown of Marriage as a Ground of Divorce” (1978).

¹⁴ Law Commission of India, “217th Report on Irretrievable Breakdown of Marriage Another Ground for Divorce” (2009).

¹⁵ AIR 1975 SC 1534.

emerged from the wife's plea that the husband's conduct amounted to condonation of the alleged acts of cruelty. After the parties had resumed living together as man and wife, the Court partially agreed with the wife's argument; however, also stated that condonation is conditional on the spouse subsequently committing acts of cruelty. Thus, where a party resumes a normal relationship with his/her spouse, all prior acts of cruelty will be treated as having been condoned. However, the Court also emphasized that condonation is not absolute; it can be revoked if subsequently, the offending spouse again commits an act of cruelty. The acts of cruelty committed by the offending spouse are not erased; rather, they are in a dormant state, but they can be revived if the conditions upon which forgiveness was given are violated.

The Supreme Court elaborated these principles in *Hirachand Srinivas Managaonkar v. Sunanda*¹⁶. The case arose from matrimonial proceedings in which the question was whether the conduct of the parties after the alleged matrimonial offence amounted to condonation so as to disentitle the petitioner from relief. In examining the issue, the Court undertook a detailed review of both Indian and English matrimonial jurisprudence and emphasised that condonation is not a matter of legal presumption arising merely from continued cohabitation. Rather, it is a question of intention and conduct to be gathered from the totality of the circumstances.

The Court reiterated the classical definition of condonation, observing that it means “*forgiveness of the matrimonial offence and restoration of the offending spouse to the same position as he or she occupied before the offence was committed.*” The judgment explains that the doctrine contains both a subjective and an objective component. The subjective component concerns the state of mind of the aggrieved spouse whether there was a genuine intention to forgive. The objective component concerns the outward manifestation of that forgiveness through restoration of normal marital relations. Unless both elements are present, condonation cannot be inferred. The Court noted that spouses may continue to live together for numerous reasons unrelated to forgiveness such as economic necessity, social obligations, concern for children, or hope that the marriage may improve. Therefore, the fact that a couple has lived in the same residence together or has continued to have relations for a time is not, in and of itself, sufficient evidence of condonation. According to the Court, the fundamental question that must be answered is whether the spouse who has been hurt wishes to forgive and rehabilitate the wrongdoer spouse back to his or her original marital position.

The Court further explained that condonation should always be evaluated in terms of its conditional nature. Relying on settled principles of matrimonial law, the Court observed that forgiveness is not absolute but is subject to the expectation that the guilty spouse will not repeat the wrongful conduct and will subsequently maintain a relationship marked by conjugal kindness. The Court also made it clear that condonation does not equate to complete forgiveness of the offense and that the offense will not be forgotten or forgiven; it will, instead, exist as a dormant subject. If the innocent spouse witnesses an additional act of misconduct by the offending spouse after the grant of condonation, the previous offense of misconduct can be raised as a justification for obtaining a remedy from a court of law. The Court discussed the policy behind the law of condonation and, as a result, determined that the goal of family law is

¹⁶ (2001) 4 SCC 125

to promote reconciliation between parties without fear of losing their ability to bring a subsequent legal proceeding if the parties are subsequently unsuccessful in achieving reconciliation. The Supreme Court in the case of *Suman Singh v. Sanjay Singh*¹⁷ observed that “few isolated incidents of long past and that too found to have been condoned due to compromising behaviour of parties cannot constitute cruelty within the meaning of Section 13(i)(ia).” Thus, the doctrine of condonation therefore promotes reconciliation while preserving fairness between the parties.

C. Desertion [Section 13(1)(ib)]

The history of desertion as a divorce ground reflects the legislature’s changing approach towards divorce. At the time of enactment in 1955, desertion was recognised as an independent ground for divorce under Section 13(1)(viii), which entitled a spouse to seek dissolution of marriage where the other party had deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition. The law was based on the theory of fault and treated desertion as a reason for the end of a marriage. The 1964 amendment changed the way desertion was dealt with in legislation by removing it, but at the same time added Section 13 (1)(A), which allowed either party in the marriage to apply for a divorce after they had been separated or one party had not fulfilled their duty to cohabit, even if there had been no court order declaring the couple to be separated or requiring them to cohabit, based solely on the fact there had been no cohabitation or restitution of living as husband and wife. The purpose of the amendment was to allow divorce in situations where a couple's marriage had ended, even if the couple had sought court assistance to fix the problem. After the 1964 amendment, desertion was no longer an independent matrimonial offence that was itself sufficient for obtaining a divorce. Desertion typically provided the factual basis for obtaining a court order separating the parties through judicial separation, and the parties' non-compliance with these orders could be used as a basis for obtaining a divorce under Section 13(1)(A). Consequently, the 1964 amendment was a significant development in the evolution of matrimonial law in Canada by signalling an ongoing migration away from the fault-based theory of divorce and towards recognising that a marriage could come to an end without fault on the part of either party.

The Marriage Laws (Amendment) Act 1976; address the issues surrounding the original position had been revised by providing an alternative definition to the previous definition of desertion as an independent matrimonial offence in terms of Section 13(1)(ib) of the Act. The new clause allows either spouse to petition for divorce if the spouse has “*deserted petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition*”. The second significant amendment was the inclusion of an Explanation to define desertion as any voluntary removal of a spouse from a matrimonial home without consent and/or without any lawful justification for doing so; and to include “*wilful neglect*” as part of that definition of abandonment. These two amendments clarify the meaning of desertion and establish the principles developed by way of judicial interpretation. Since 1976, no substantive

¹⁷ (2017) 4 SCC 85

legislative changes were made to section 13(1)(ib) regarding the issue of desertion; therefore, the 1976 amendments constitute one of the most significant pieces of legislation concerning the present law of desertion under the Hindu Marriage Act.

1. Elements of Desertion

Under Section 13(1)(ib), a spouse may seek a decree of divorce if the other spouse has abandoned the marital relationship and remained in desertion for a continuous period of not less than two years before the filing of the petition. The first element is separation which means that the parties are in fact living apart and the second element is the *animus deserendi* i.e., the intention to permanently abandon the other and to forsake all marriage duties and rights. The third element is the absence of the petitioner's consent to the separation. If the petitioner agreed to the parties living apart or was responsible for creating conditions that made the respondent leave, the necessary elements are not established. All three must be present throughout the two-year period. A reconciliation that restores normal cohabitation, however briefly, breaks the continuity of the desertion and the time duration must start again.

2. Constructive Desertion

The doctrine of constructive desertion prevents dodging of the law by recognizing that a spouse whose conduct compels the other to leave the matrimonial home may be treated as the deserter, even though he or she remains physically in residence. The leading case of this principle is found in *Bipinchandra Jaisinghbai Shah v. Prabhavati*¹⁸ wherein the Supreme Court emphasised that when one spouse makes the matrimonial home intolerable through unreasonable or hostile conduct, effectively compelling the other to leave, the spouse responsible for those conditions is, in law, the deserting party, even though it is the innocent spouse who has physically departed. Thus, the spouse who creates the conditions leading to the breakdown of cohabitation may be found to possess the necessary *animus deserendi*, notwithstanding continued physical residence in the matrimonial home.

This principle was directly applied in *Kailashwati v. Ayodhia Parkash*¹⁹, where the Punjab and Haryana High Court held that a husband whose conduct had rendered cohabitation impossible could not rely upon the fact that the wife had physically left the matrimonial home. The Court looked beyond the fact of departure and examined the circumstances that led to it, concluding that the husband's treatment of the wife had effectively compelled her to leave. Accordingly, he was regarded as the deserting spouse in the eyes of the law. The decision illustrates the central rationale of constructive desertion i.e., the courts determine desertion by identifying the party responsible for the breakdown of matrimonial cohabitation, not merely by identifying the party who physically walked out of the house.

3. The Role of the Animus Deserendi

To establish desertion under Section 13(1)(ib), a party must have intended to go away from the other party at the date of separation or had that intention sometime after the couple has lived

¹⁸ AIR 1957 SC 176

¹⁹ 1977 CLJ 109 (P.&H.).

apart. The parties must have separated for a significant amount of time but if there is an ongoing matter, like a job in a different city, an illness, or a serious family emergency, then there will not have been any intention to abandon the marriage. In *Malathi Ravi v. B.V. Ravi*²⁰, the Supreme Court held that the statutory requirement of desertion was not satisfied where the husband admitted to having stayed with the wife for two days during the two-year period immediately preceding the presentation of the divorce petition, as such cohabitation interrupted the continuity of the alleged desertion and defeated the claim founded on that ground.

In another case of *Swaraj Garg v. K.M. Garg*²¹, the Delhi High Court stated that proof of a considerable time of separation does not mean that the parties have deserted one party or another. The Court observed that if the separation was with the knowledge (or permission) of the petitioner, then the element of abandonment is missing. The petitioner may not always need to prove that they permitted the separation expressively but rather can imply from the conduct of the parties at the time and pursuant to the situation. The object of Section 13(1)(ib) is to provide a remedy where there has been a unilateral abandonment by one party, but not where both parties by their own agreement have become separate. Therefore, if the petitioner has given their permission to either of the parties to become separated, they will not be able to call the separation desertion thereafter. The judgment therefore reinforces the principle that desertion is determined not merely by physical separation but by examining the parties' intentions, conduct and the circumstances in which the separation arose and continued.

D. Conversion [Section 13(1)(ii)]

Under Section 13(1)(ii), conversion from Hinduism to another faith by the respondent constitutes a recognized ground for divorce. The logic of this provision is straightforward i.e. the Act applies to the parties because both are Hindus. When one of them converts and steps outside that legal category, the marriage exists in a state of legal anomaly. This ground is attracted when a spouse ceases to be a Hindu by converting to Christianity, Islam, Judaism, Zoroastrianism, or any other religion falling outside the ambit of the Act. However, a mere curiosity or act of gaining knowledge about another religion, or the adoption of some of its cultural practices without a break from Hinduism is not conversion for this purpose.

E. Unsoundness of Mind and Mental Disorder [Section 13(1)(iii)]

Under the Hindu Marriage Act, 1955, Section 13(1)(iii) provides that a marriage may be dissolved by a decree of divorce where “*the other party has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.*” The provision further clarifies through the Explanation that “*mental disorder*” includes “*mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia.*” It additionally defines “*psychopathic disorder*” as “*a persistent disorder or disability of mind (whether or not including sub-normality of intelligence) which results in abnormally aggressive or seriously*

²⁰ (2014) 7 SCC 640.

²¹ AIR 1978 Del. 296.

irresponsible conduct on the part of the other party, and whether or not it requires or is susceptible to medical treatment.” Thus, the Act recognizes incurable unsoundness of mind and severe mental disorders as grounds for divorce when their nature and degree make continued cohabitation unreasonable for the petitioner.

There are two notable points about this section i.e., first, the mental disorder must attain such a degree of severity whether manifested continuously or intermittently that a reasonable spouse cannot be expected to continue cohabitation. An isolated episode of mental illness that responds effectively to treatment, or a condition that can reasonably be accommodated within ordinary married life, will generally not meet this standard. Secondly, the Marriage Laws (Amendment) Act, 1976²² relaxed the earlier requirement that the disorder be incurable. Consequently, it is no longer necessary to establish that the condition is medically incapable of treatment; it is sufficient to show that the disorder is of such a nature, extent and duration that continued marital life cannot reasonably be expected between the parties.

F. Venereal Disease [Section 13(1)(v)]

Section 13(1)(v) provides for dissolution of marriage where the respondent suffers from a venereal disease in a communicable state, thereby posing a risk of transmission. The communicable character of the disease is what gives the provision its relevance i.e., the concern is the risk of transmission to the petitioner through the physical intimacy that marriage ordinarily involves. This ground requires no proof of immoral conduct as it is available regardless of how the respondent contracted the disease. Its practical significance has diminished considerably as most venereal diseases are now treatable, but it remains on the statute book.

G. Renunciation of the World [Section 13(1)(vi)]

When a respondent renounces the world by entering a religious order, the petitioner may file for divorce petition. The Hindu tradition of *sanyasa*, the formal surrender of all secular ties and entry into an ascetic order, is the example the provision principally had in mind. The law treats the adoption of *sanyasa* as giving rise to a status akin to civil death, reflecting the individual's complete withdrawal from worldly and familial obligations. The matrimonial relationship cannot practically or conceptually continue.

H. Presumption of Death [Section 13(1)(vii)]

Under Section 13(1)(vii), a marriage may be dissolved where the respondent has remained unheard of for seven years or longer by those who would naturally have received information regarding the respondent's survival if alive. The provision operates in conjunction with the statutory “presumption of death” contained in Section 108 of the Indian Evidence Act, 1872, now Section 111 of the Bharatiya Sakshya Adhiniyam, 2023. This clause addressed the practical realities of the situation by allowing for the legal dissolution of the marriage rather than allowing the surviving spouse to have no timetable on which to figure out an end to the

²² *Supra* Note 5.

uncertainty he or she has been facing. An applicant must provide satisfactory evidence that he or she made real efforts to locate the respondent and that those efforts yielded no results.

III. ADDITIONAL GROUNDS UNDER SECTION 13(1A)

The Hindu Marriage (Amendment) Act, 1964 introduced Section 13(1A) which corrected fault-based theory by creating two independent grounds of divorce, available to *either* spouse, where a decree has already been passed in earlier matrimonial proceedings, but the parties have failed to act upon it. A natural objection arose from Section 23(1)(a), which bars a petitioner from obtaining relief by “taking advantage of his or her own wrong.” If construed broadly, Section 23(1)(a) could neutralize the remedy provided under Section 13(1A), since a spouse who did not comply with a decree for restitution of conjugal rights could always be accused of deriving a benefit from his or her own non-compliance. The courts had to draw a line between this legitimate statutory bar and the legislative intent of 1964, which was precisely to allow relief in cases of prolonged non-compliance.

The question was first settled in the case of *Dharmendra Kumar v. Usha Kumar*²³, where a decree for restitution of conjugal rights was passed against the husband, who later sought divorce under Section 13(1A)(ii) on the ground that there had been no restitution for the statutory period. The respondent contended that the husband was attempting to benefit from his own default and was therefore barred by Section 23(1)(a). Rejecting this contention, the Court emphasized that “*the conduct has to be something more than a mere disinclination to agree to an offer of reunion*” and further held that “*the mere fact that there are no acts of restitution by the party against whom the decree for restitution of conjugal rights has been passed does not amount to taking advantage of his own wrong.*” The Court thus treated the right to seek divorce as a statutory consequence of continued non-compliance with the decree rather than as a benefit flowing from the petitioner's misconduct. The decision makes it clear that mere non-compliance with a decree, without more, does not constitute the type of “wrong” contemplated by Section 23(1)(a).

The principle was subsequently refined in *Hirachand Srinivas Managaonkar v. Sunanda*²⁴, where the Court was required to determine the relationship between Section 13(1A) and the bar contained in Section 23(1)(a). In this case, a previous decree of judicial separation was issued against the husband on the basis of adultery. After some time has passed with no resumption of cohabitation, he sought dissolution based on Section 13(1A)(i) of the law. The wife argued against his request for a dissolution of marriage because he had continued with his affair after the decree and had disobeyed the orders of the court regarding maintenance payments. Therefore, the main question for the Court to determine was whether or not the husband could be considered to be “taking advantage of his own wrong” pursuant to Section 23(1)(a) of the law.

The Court held that, although Section 13(1A) confers an absolute right to obtain a divorce upon expiration of the statutory period, the latter section does not operate independently from Section 23(1)(a). Further, the Court expressed concern regarding an interpretation of the statute

²³ (1977) 4 SCC 12.

²⁴ (2001) 4 SCC 125.

which would defeat the intent of the legislature in passing the 1964 and 1976 amendments. The Court observed that “*the conduct alleged has to be serious enough to justify denial of the relief to which the petitioner is otherwise entitled.*” Stressing that every act of matrimonial misconduct cannot automatically disentitle a spouse from obtaining divorce, the Court explained that the expression “*taking advantage of his or her own wrong*” must be construed in a practical and purposive manner. The judgment emphasised that the wrong relied upon should be such as to have a direct bearing upon the non-resumption of cohabitation or upon the relief sought by the petitioner. Mere allegations of misconduct unconnected with the statutory ground cannot by themselves attract the bar under Section 23(1)(a). The court reasoned that if every prior matrimonial fault were treated as a continuing bar, the object of Section 13(1A) to permit dissolution of marriages that had effectively ceased to function would be frustrated. The Court therefore declined to adopt an interpretation that would permanently disable a spouse from seeking divorce merely because the decree for judicial separation had originally been passed against him or her.

The case of *T. Srinivasan v. T. Varalakshmi*²⁵ offers clarification on the impact of the interplay between Section 13(1A) and Section 23(1)(a) as it relates to a spouse’s ability to file for divorce after a prior decree of dissolution has been issued. The Court observed that since the spouse against whom an earlier decree was entered cannot bring forth a motion for divorce based upon non-resumption of cohabitation, it would be inherently unfair for that spouse to be permitted to do so at a later time. In this instance, this issue was fostered by a dispute between a spouse who was initially found to be at fault in their marriage and whether such a spouse could rely upon the statutory ground created by the 1964 amendment. The spouse asserted that it would, in essence, allow the spouse who was initially found to be at fault, to take advantage of his or her own wrongdoing, and to ultimately obtain a decree of divorce. The Court firmly rejected the spouse’s contention, affirming its prior procedural rule, which was based upon the rationale that Section 13(1A) is not intended to continue an inquiry into fault indefinitely, but rather, is intended to acknowledge that a marriage has ended, regardless of the judicial interventions involved.

Regarding the legislation supporting this provision, the Court stated the intention of the amendment was to give relief when one spouse has effectively severed their marital ties, even though they are still legally married. The Court also pointed out that the legislature used “neutral” language in Section 13(1A) when giving either party to the marriage the authority to apply for a divorce. This legislative intent is also important, because it indicates that Parliament did not intend to limit the relief under Section 13(1A) to only the former spouse who received the early decree of default. Therefore, the Court held that simply because the petitioner was the party at fault in the prior proceedings does not create a presumption that the prohibitory clause of Section 23(1)(a) would apply.

As a result, the Court reiterated the principle that the prior decree itself and the prior fault do not constitute the “wrong” as defined in Section 23(1)(a). It is necessary for the petitioner to establish a subsequent and relevant matrimonial “wrong” that has a direct relationship to the relief that is requested. The ruling has confirmed again that Section 13(1A) provides an

²⁵ (1999) 3 SCC 287.

independent statutory right for a party to ask for a divorce if the requirements of Section 13(1A) have been met. Furthermore, the ruling has also clarified that the right created in Section 13(1A) cannot be defeated simply because the party seeking the statutory right to terminate the marriage is the spouse against whom the original decree was made. The ruling also highlights the growing acceptance by the courts that the matrimonial law needs to take into consideration not just fault as a reason to terminate a marriage, but also the reality that married couples who have failed to live together have done so after the courts have made a bona fide effort to get them back together. In this regard, the Court stated repeatedly that since the legislature provided any party with the right to seek a divorce under Section 13(1A), the exercise of that right under Section 13(1A) shall not be a disqualifying wrong.

A. No Resumption of Cohabitation after Judicial Separation [Section 13(1A)(i)]

Any spouse can obtain a divorce from the other spouse if a court has all the required legal documentation (the actual decree of Judicial Separation) to prove that no couple has lived together for one year or longer after the judgment for Judicial Separation. Judicial Separation is a legal remedy that the court gives to a married couple to end their legal obligation to live together, however, it does not terminate the actual marriage. Unlike divorce, judicial separation does not sever the marital tie, the parties continue to remain legally married, although they are no longer required to live together. A decree of judicial separation merely suspends the obligation to cohabit, giving the spouses a period for reflection and a possible opportunity for reconciliation.

The legislative objective underlying Section 13(1A)(i) is that where the parties continue to live apart even after a judicial decree has afforded them an opportunity to restore their marital relationship, the marriage may have ceased to function in any meaningful sense. The underlying assumption is that if the parties do not resume married life even after this extended opportunity for reconciliation, the marriage has, for all practical purposes, broken down. In such circumstances, the law recognises that the continuation of the legal tie may serve little practical purpose and therefore permits either spouse to seek a decree of divorce.

The scope of this ground was examined by the Supreme Court in *Saroj Rani v. Sudarshan Kumar Chadha*²⁶, where the contention was that the spouse seeking divorce after non-compliance with a decree was taking advantage of his or her own wrong and was therefore barred by Section 23(1)(a) of the Act. This claim was rejected by the court, which stated that simply disobeying or not following the decree does not constitute a ground for attracting section 23(1)(a) on their own. The court also noted that section 13(1A) reflects the legislature's acknowledgment that even with previous judicial action to try to preserve a marriage, it still may have failed and that once the statutory time period has passed with no cohabitation, a spouse has the right to get a divorce regardless of whom obtained the decree. Thus, this decision supports the breakdown-oriented philosophy on which section 13(1A)(i) is based.

B. No Restitution of Conjugal Rights [Section 13(1A)(ii)]

Section 13(1A)(ii) of the Hindu Marriage Act permits either spouse to seek a decree of divorce where a decree for restitution of conjugal rights has been passed under Section 9 and there has

²⁶ (1984) 4 SCC 90.

been no restitution of conjugal rights between the parties for a period of one year or more after the passing of such decree. The provision reflects the legislative policy introduced through the 1964 amendment and subsequently retained in modified form by the 1976 amendment, namely that where judicial intervention has failed to restore matrimonial life, the law should recognise the practical reality of a marriage that has ceased to function. The ground is not based upon the original matrimonial wrong that led to the decree under Section 9; rather it is based upon the continued failure of the parties to resume cohabitation despite a judicial determination that consortium ought to be restored.

In the case of *Saroj Rani v. Sudarshan Kumar Chadha*²⁷ where one of the principal issues before the Court was the constitutional validity of Section 9 was challenged on the ground that it violated individual autonomy and privacy. While upholding the provision, the Court explained the distinctive purpose served by restitution of conjugal rights within the statutory scheme of the Hindu Marriage Act. Rejecting the argument that Section 9 constituted an instrument of coercion, the Court observed that “*the object of restitution decree is to bring about cohabitation between the estranged parties so that they can live together in the matrimonial home.*” The judgment stressed upon the goal of preserving the marriage together and emphasized that this goal was meant to help them reconcile with one another. The Court also stated that all remedies available under Section 9 are intended to protect the marriage as a whole. The Court mentioned that after considering the issue of whether or not Section 9 provides a foundation from which a divorce can be obtained pursuant to Section 13(1A)(ii) when the parties don't resume living together within the time limit provided for in Section 9, a future right to a divorce order under Section 13(1A)(ii) does not limit the court's ability or duty to determine whether or not a viable chance exists for a couple to continue the marriage or whether their claim deserves to be proven on its own facts. The fact that a person may eventually obtain a statutory right under Section 13(1A)(ii) does not affect the rule on the merits of the case under Section 9.

Thus, Saroj Rani's reasoning serves a valuable doctrinal purpose in explaining Section 13(1A)(ii). While the law recognizes a lengthy period of non-compliance with a restitution of conjugal rights decree as proof that there has been an irretrievable breakdown of the marriage relationship, the decree itself was not intended to be simply a prelude to the dissolution of the marriage by way of divorce. The Supreme Court has confirmed that there are different legislative purposes for Sections 9 and 13(1A)(ii): Section 9 encourages reconciliation and the restoration of consortium, whereas Section 13(1A)(ii) provides for a legal basis for the dissolution of a marriage when reconciliation attempts made pursuant to Section 9 have not been successful within the time period specified in the statute.

IV. SPECIAL GROUNDS AVAILABLE TO THE WIFE [SECTION 13(2)]

Section 13(2) lists four grounds for divorce that only the wife may invoke. The legislature included these grounds in recognition of the fact that at the time the Act was framed and indeed

²⁷ *Ibid.*

to a significant degree still, women occupy a more economically and socially vulnerable position within a marriage and require specific statutory protections.

A. Pre-Act Polygamy [Section 13(2)(i)]

A wife may file petition for divorce where, at the time of the marriage, the husband had a living spouse from a prior marriage that was validly subsisting under the law applicable before the commencement of the Act. Before 1955, several Hindu communities permitted polygamy. The Act prohibited further polygamous unions but could not retroactively dissolve those already subsisting. This provision gave the wives in such situations a remedy. Its practical relevance today is primarily historical, but it remains on the statute book.

B. Husband Guilty of Rape, Sodomy or Bestiality [Section 13(2)(ii)]

In cases in which a woman would like to file a divorce because after the marriage ceremony, her husband had committed any of these heinous sexual crimes (i.e., “rape”, “sodomy”, or “bestiality”) she can proceed with her proceedings under the statutory framework of the Act. As it stands, there is a blanket exemption (marital rape) to any independent ground for dissolution of marriage under Section 13 of the Act; however, under Section 13(2)(ii), the wife can still obtain a divorce from her husband in the event that he has committed any of the three aforementioned criminal acts after the solemnisation of the marriage.

C. Maintenance Order Without Resumption of Cohabitation [Section 13(2)(iii)]

Where a maintenance order has been made in favour of the wife under Section 18 of the Hindu Adoptions and Maintenance Act, 1956, or Section 144 of the BNSS, 2023, and marital cohabitation has not been restored within one year of such order, the wife may file petition for divorce. A maintenance order of this kind is judicial recognition that the husband has failed in his matrimonial duties; this provision allows the wife to take the further step of seeking complete dissolution if the ordered maintenance has not led to a reconciliation.

D. Repudiation of Marriage: The Option of Puberty [Section 13(2)(iv)]

A woman can annul her marriage if she was married before her 15th birthday and has since turned 15 but has not yet turned 18 years old. This has been possible since 1976 when the law regarding child marriage was passed. The Prohibition of Child Marriage Act, 2006²⁸ allows child marriages to be annulled but has given the girl a clear and time-limited option to cancel the marriage with no reason other than the fact that at the time of marriage, she was too young to have given consent. In addition, there are no formal requirements for repudiating one's marriage as simply not acknowledging or being active in the marriage will be adequate evidence of repudiation.

²⁸ The Prohibition of Child Marriage Act, 2006 (Act 6 of 2007).

V. DIVORCE BY MUTUAL CONSENT [SECTION 13B]

Section 13B acknowledges that the adversarial legal system does not properly represent the full spectrum of collapsed marriages. By requiring spouses to prove or exaggerate wrongdoing by one or both spouses to obtain a dissolution, the legal system converts an already failed marriage into an even more contentious and hostile relationship. The parties may present their petition together so that they will be able to receive a dissolution without ascribing blame to either spouse.

A. Conditions

Under Section 13B, there are three conditions:

- i. First, the parties must have lived apart for one year or more prior to filing their petition.
- ii. Second, both parties must be truly in agreement that they have not been able to live together.
- iii. Third, that they have mutually agreed that the marriage should be dissolved.

The parties' consent must be real; therefore, a party who gives his or her consent to dissolve his or her marriage due to duress or deception will not have grounds for filing a petition under this section. In the case of *Rinku Baheti v. Sandesh Sharda*²⁹, the Supreme Court observed that “*Sub-section (1) of Section 13B of HMA has to be contrasted with Section 13 of the HMA, inasmuch as the parties to the marriage would neither have to allege anything against each other nor would have to prove fault on the part of the other spouse before seeking divorce and that is why, it is called divorce by mutual consent. The only aspect on which the Court has to be satisfied is that the marriage had been solemnised between the parties and the averments in the petitions are true and the Court is satisfied that the consent has been arrived at out of free volition of the parties and without any coercion or undue influence exercised by any of them on the other*”

B. Two-Motion Procedure

Section 13B of the Divorce Act details a two-step process to obtain a divorce by mutual consent. The first part of this two-step process involves filing for divorce jointly with an agreed-upon settlement regarding spousal support, child custody, and distribution of property, after filing an acknowledgment of the parties' statements before the court, following which there is a period of time for the parties to reflect on their decision to divorce (consisting of no less than six months and no more than eighteen months). The second part of this process involves the parties appearing before the court at the end of the waiting period to reaffirm their intent to obtain a divorce, at which point they may move forward with obtaining the divorce decree from the court.

1. Can Consent to Divorce Be Withdrawn Prior to the Second Motion?

²⁹ (2025) 3 SCC 686.

This issue was addressed by the Supreme Court in the case of *Sureshta Devi v. Om Prakash*³⁰. In this case, the parties had jointly presented a petition for divorce by mutual consent. However, before the second motion could be made, the wife withdrew her consent and expressed her unwillingness to proceed with the dissolution of the marriage. The principal question before the Court was whether a party who had initially consented to the divorce could subsequently revoke such consent before the decree was passed. Answering the question in the affirmative, the Court emphasized that mutual consent must continue to exist throughout the statutory process and cannot be presumed merely because the parties had signed the initial petition.

The Court observed that “*the mutual consent should continue till the divorce decree is passed*” and further held that “*the consent given by the parties at the time of filing of the petition for mutual divorce should subsist till the second stage when the petition comes up for orders and a decree of divorce is finally passed.*” Consequently, the Court concluded that if either spouse withdraws consent before the second motion, “*the court gets no jurisdiction to make a decree for divorce by mutual consent. If the view is otherwise, the Court could make an enquiry and pass a divorce decree even at the instance of one of the parties and against the consent of the other. Such a decree cannot be regarded as decree by mutual consent.*” The judgment thus establishes that consent under Section 13B is not irrevocable and that the statutory interval between six and eighteen months serves as a safeguard to ensure that the decision to dissolve the marriage remains voluntary, informed, and free from coercion. By permitting withdrawal of consent before the decree, the ruling protects parties who may have acted under emotional pressure, undue influence, or changed circumstances, while reinforcing the principle that mutual consent divorce is founded upon the continuing and unequivocal agreement of both spouses.

2. Can the Court Waive the Six-Month Waiting Period?

The scope of the cooling-off period prescribed under Section 13B(2) of the Hindu Marriage Act, 1955 was clarified by the Supreme Court in *Amardeep Singh v. Harveen Kaur*³¹. This case arose from a petition for divorce by mutual consent where the parties had been living separately for a long period and had already settled all issues including alimony, custody, and other matrimonial disputes. The issue before the Court was whether the statutory waiting period of six months between the first and second motions was mandatory? Interpreting the object of Section 13B, the Supreme Court held that the provision was intended to facilitate reconciliation and not to perpetuate a marriage that had completely broken down.

Accordingly, the Court observed that “*The object of the provision is to enable the parties to dissolve a marriage by consent if the marriage has irretrievably broken down and to enable them to rehabilitate them as per available options....The object of the cooling off the period was to safeguard against a hurried decision if there was otherwise possibility of differences being reconciled. The object was not to perpetuate a purposeless marriage or to prolong the agony of the parties when there was no chance of reconciliation. Though every effort has to be made to save a marriage, if there are no chances of reunion and there are chances of fresh*

³⁰ AIR 1992 SC 1904.

³¹ (2017) 8 SCC 746.

rehabilitation, the Court should not be powerless in enabling the parties to have a better option.”

Laying down the conditions for waiver, the Court stated that the waiting period may be dispensed with where the statutory period of separation has already been completed, all efforts at mediation and reconciliation have failed, the parties have genuinely settled their disputes, and further waiting would only serve to prolong their suffering. At the same time, the Court cautioned that the power to waive the cooling-off period is discretionary and must be exercised judiciously on the facts of each case. Thus, the judgment transformed the understanding of Section 13B(2) by recognizing that the six-month period is directory rather than mandatory, while ensuring that waivers are granted only where the court is satisfied that the marriage has irretrievably failed and there remains no realistic prospect of reunion.

VI. CONCLUSION

This chapter has reviewed all aspects of Divorce law as outlined by the Act. It has done so within the context of how Hindu Marriage Law has developed over time to understand what Divorce means today for Hindus and others. Divorce was previously regarded as an unbreakable relationship in Hindu Culture with no legal mechanism to allow for the dissolution of that bond; this shift in thinking regarding divorce represents a significant change in society's views. As Divorce Laws have evolved over time, The Act has allowed for additional grounds for requesting a divorce, specific grounds to be used by Women requesting a divorce on their own and Mutual Consent by mutual agreement to rescind marital vows as per Section 13B of The Act specifies. The Act provides for both the preservation and release from marriage depending upon whether or not continuing with the relationship is feasible or makes sense anymore from an economic; social; psychological or otherwise point of view to Society.

The law itself continues to evolve with regards to how marriage was originally perceived -- as a relationship that is not easily terminated. By establishing the definition of a divorce along with its application through the Courts, the law enables judges to apply the law based on each individual's specific situation as it pertains to both the permissible statutory reasons for requesting a divorce defined under the various statutory provisions as well as how each person applied them based on their own situation, irrespective of gender or any other discriminatory aspect of their respective situations. The courts have consistently emphasized that every reasonable effort at reconciliation must be explored before a marriage is dissolved and that divorce remains a remedy of last resort. The contemporary law of divorce under the Act therefore seeks to maintain a balance between preserving the institution of marriage and providing relief where the marital relationship has, in substance, ceased to exist.