The
Hindu Marriage Act, 1955

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The
Hindu Marriage Act, 1955

[Act 25 of 1955]

[*18th May, 1955*]

An Act to amend and codify the law relating to marriage among Hindus

Be it enacted by Parliament in the Sixth Year of the Republic of India as follows:—

Statement of Objects and Reasons.—"The Hindu Code as drafted by the Rau Committee was introduced in the Legislative Assembly in 1947 and was referred to a Select Committee of the Constituent Assembly of India (Legislative) on 9th April, 1948. The Select Committee submitted its report on the 29th August, 1948 and their revised draft was discussed at considerable length by the Provisional Parliament, but as the Bill could not be passed before the dissolution of that Parliament it now stands lapsed.

2. As stated earlier by Government, the Code is now being split up into separate parts for the purpose of facilitating discussion and passage in Parliament, and the present Bill is the first of a series of such parts and deals with marriage and divorce. The earlier Bill has now been considerably revised, one significant change being the omission of all provisions relating to civil marriages, a subject dealt with in the Special Marriage Bill now pending before the Council of States (see the Special Marriage Act 43 of 1954)".

Statement of Objects and Reasons of Amendment Act 68 of 1976.—The Hindu Marriage Act, 1955 (25 of 1955), became law on the 18th May, 1955. It applies to all Hindus, Buddhists, Jains or Sikhs. It applies also to all other persons who are not Muslims, Christians, Parsis or Jews unless they establish that they were not governed by Hindu law, custom, or usage prior to the Act.

Since the passing of the Hindu Marriage Act, various suggestions for amending the same, as well as the Special Marriage Act, 1954, were received from some Members of Parliament and the general public. The Special Marriage Act, 1954, being a civil law applicable to all has necessarily to keep pace with any reform of matrimonial laws. The Law Commission was requested to examine the matter and they have presented the fifty-ninth report which contains their recommendations. The Bill seeks to amend both the Acts aforesaid so as to implement, with necessary modifications, the recommendations contained in that report. The Committee on Status of Women in India have generally supported the amendments proposed by the Law Commission and suggested, inter alia, the incorporation of a suitable provision for mutual consent in the Hindu Marriage Act more or less on the lines of a provision in that behalf in Section 28 of the Special Marriage Act. It is, however, felt that when, once the parties have chosen to move the Court for divorce by mutual consent, it is not necessary to make them wait for a further period of one year to obtain relief. This period of waiting is, therefore, proposed to be reduced from one year to six months. The Committee has further suggested that having regard to the frequent violations of the provisions of the Child Marriage Restraint Act, it is necessary to provide in the Hindu Marriage Act a suitable provision conferring the right of repudiation on girls who are subject to such marriages, whether the marriage was consummated or not. The right of repudiation is proposed to be conferred on such girls subject to their exercising the same before attaining the age of 18 years. To avoid multiplicity of litigation and consequent delay, it is also proposed to apply the amended law in relation to all pending proceedings under the relevant Acts. Notes on clauses appended to the Bill indicate the changes proposed to the statutes. The objects of the legislation are mainly, (1) to liberalise the provisions relating to divorce; (2) to enable expeditious disposal of proceedings under the Act; and (3) to remove certain anomalies and handicaps that have come to light after the passing of the Acts.

The Bill seeks to achieve the abovementioned purposes.

Statement of Objects and Reasons of Amendment Act 2 of 1978.—The Bill seeks to amend the Child Marriage Restraint Act, 1929, to increase the minimum age of marriage from fifteen to sixteen for females and from eighteen to twenty one for males and to make consequential amendments in the Hindu Marriage Act, 1955, and the Indian Christian Marriage Act, 1872. It is also being provided that offences under the Child Marriage Restraint Act may be investigated upon by a police officer under the Code of Criminal Procedure as if it were a cognizable offence. The police officer shall, however, not have the power to arrest without a warrant or an order of a Magistrate.

CASE LAW ▸ Object.—Object and purpose of the Act is to maintain marital relationship and not to encourage the snapping of such relationships, *Hirachand Srinivas Managaonkar* v. *Sunanda*, (2001) 4 SCC 125.

▸ **One uniform rule.**—One uniform rule cannot apply for deciding the maintainability of all proceedings involving issues relating to marital status. The question will be dependent upon the nature of the action and law governing the same. The provisions of the relevant statute relating to a proceeding in question will be very material, *Maharani Kusumkumari* v. *Kusumkumari Jadeja*, (1991) 1 SCC 582.

PRELIMINARY

1. Short title and extent.—(1) This Act may be called the Hindu Marriage Act, 1955.

(2) It extends[1] to the whole of India [2][* * *] and applies also to Hindus domiciled in the territories to which this Act extends who are outside the said territories.

CASE LAW ▸ Applicability.—The 1955 Act applies to Hindus domiciled in India even if they reside outside India. This extra-territorial operation of law is saved not because of the nexus with Hindus but Hindus domiciled in India. Hence, 1955 Act will apply to a Hindu outside the territory of India only if such a Hindu is domiciled in the territory of India, *Sondur Gopal* v. *Sondur Rajini*, (2013) 7 SCC 426.

2. Application of Act.—(1) This Act applies—

(*a*) to any person who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj,

(*b*) to any person who is a Buddhist, Jaina or Sikh by religion, and

(*c*) to any other person domiciled in the territories to which this Act extends who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

Explanation.—The following persons are Hindus, Buddhists, Jainas or Sikhs by religion, as the case may be—

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1. The Act was applied to the State of Jammu & Kashmir by the J&K Hindu Marriage Act, 1955 (J&K Act 8 of 1955) subject to certain modifications.
   The Act has been now extended to the Union Territory of—
   (1) Dadra, Nagar Haveli by Regn. 6 of 1963 (w.e.f. 1-7-1965);
   (2) Pondicherry by Regn. 7 of 1963 (w.e.f. 1-10-1963).
   (3) Sikkim by Noti. No. S.O. 311(E), dt. 28-4-1989 (w.e.f. 1-5-1989).
2. The words "except the State of Jammu and Kashmir" *omitted* by Act 34 of 2019, Ss. 95, 96 and Sch. V (w.e.f. 31-10-2019).

(*a*) any child, legitimate or illegitimate, both of whose parents are Hindus, Buddhists, Jainas or Sikhs by religion;

(*b*) any child, legitimate or illegitimate, one of whose parents is a Hindu, Buddhist, Jain or Sikh by religion and who is brought up as a member of the tribe, community, group or family to which such parent belongs; and

(*c*) any person who is a convert or re-convert to the Hindu, Buddhist, Jaina or Sikh religion.

(2) Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled Tribes within the meaning of clause (25) of Article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs.

(3) The expression "Hindu" in any portion of this Act shall be construed as if it included a person who, though not a Hindu by religion, is, nevertheless, a person to whom this Act applies by virtue of the provisions contained in this section.

STATE AMENDMENTS

JAMMU AND KASHMIR[3].—In its application to the State of Jammu & Kashmir, in Section 2 *omit* sub-section (2).

PONDICHERRY[4].—In its application to the Union Territory of Pondicherry in Section 2, *insert* the following sub-section (2-A):

"Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the Renocants of the Union Territory of Pondicherry."

CASE LAW ▸ Applicability.—Extent of the Hindu Marriage Act, 1955 is limited, and does not extend to State of Jammu and Kashmir. Extent of the Jammu and Kashmir Hindu Marriage Act, 1980 is limited to, that State, therefore, there can be no inconsistency in the two enactments, *Shashi Leekha* v. *Sheila Shashi Leekha*, (2012) 6 Mah LJ 594 (Bom).

Hindu Marriage Act, 1955 is a socially beneficial legislation. It must be given a purposive interpretation to further and not to frustrate its object and intent, *Shashi Leekha* v. *Sheila Shashi Leekha*, (2012) 6 Mah LJ 594 (Bom).

The Hindu Marriage Act, 1955 is a special Act dealing with the provisions relating to marriages, restitution of conjugal rights and judicial separation as also nullity of marriage and divorce. The approach of a court of law in matrimonial matters is much more constructive, affirmative and productive rather than abstract, theoretical or doctrinaire. Matrimonial matters must be considered by courts with human angle and sensitivity. Delicate issues affecting conjugal relations have to be handled carefully and legal provisions should be construed and interpreted without being oblivious or unmindful of human weaknesses, *Jagraj Singh* v. *Birpal Kaur*, (2007) 2 SCC 564.

The applicability of the Hindu Marriage Act is comprehensive and applicable to all persons domiciled in the territory of India who are not Muslims, Christians, Parsis or Jews by religion. In the absence of a notification or order under Article 342 of the Constitution [tribals] are deemed to be Hindus. Even if a notification is issued under the Constitution, the Act can be applied to Scheduled Tribes as well by a further

3. J&K Act 8 of 1955, S. 3 and Sch. (w.e.f. 10-11-1955).
4. Regn. 7 of 1963, S. 2 and Sch. (w.e.f. 1-10-1963).

notification in terms of sub-section (2) of Section 2 of the Act, *Surajmani Stella Kujur (Dr)* v. *Durga Charan Hansdah*, (2001) 3 SCC 13 : 2001 SCC (Cri) 1305.

Hindu Marriage Act, 1955 applies to Hindu marriages performed in Goa, and annulement proceedings can be heard by any court having jurisdiction within the territories to which 1955 Act applies, *Vinsha Jitesh Tolani* v. *Jitesh Kishore Tolani*, (2010) 5 SCC 748.

► **Domicile.**—Right to change domicile of birth is available to any person not legally dependent and such person can acquire domicile of choice by residing in the country of choice by establishing their intention of continuing to reside there indefinitely. Unless provide to the contrary, there is a presumption against change of domicile and person who alleges it has to prove the same. Residence for a long period is evidence of intention to change domicile, so also is change of nationality, *Sondur Gopal* v. *Sondur Rajini*, (2013) 7 SCC 426.

3. Definitions.—In this Act, unless the context otherwise requires,—

(*a*) the expression "custom" and "usage" signify and rule which, having been continuously and uniformly observed for a long time, has obtained the force of law among Hindus in any local area, tribe, community, group or family:

Provided that the rule is certain and not unreasonable or opposed to public policy: and

Provided further that in the case of a rule applicable only to a family it has not been discontinued by the family;

(*b*) "district court" means, in any area for which there is a city civil court, that court, and in any other area the principal civil court of original jurisdiction, and includes any other civil court which may be specified by the State Government, by notification in the Official Gazette, as having jurisdiction in respect of the matters dealt with in this Act;

(*c*) "full blood" and "half blood"—two persons are said to be related to each other by full blood when they are descended from a common ancestor by the same wife and by half blood when they are descended from a common ancestor but by different wives;

(*d*) "uterine blood"—two persons are said to be related to each other by uterine blood when they are descended from a common ancestress but by different husbands;

Explanation.—In clauses (*c*) and (*d*), "ancestor" includes the father and "ancestress" the mother;

(*e*) "prescribed" means prescribed by rules made under this Act;

(*f*)(*i*) "sapinda relationship" with reference to any person extends as far as the third generation (inclusive) in the line of ascent through the mother, and the fifth (inclusive) in the line of ascent through the father, the line being traced upwards in each case from the person concerned who is to be counted as the first generation;

(*ii*) two persons are said to be "sapindas" of each other if one is a lineal ascendant of the other within the limits of sapinda relationship, or if they have a common lineal ascendant who is within the limits of sapinda relationship with reference to each of them;

(*g*) "degrees of prohibited relationship"—two persons are said to be within the "degrees of prohibited relationship"—

(*i*) if one is a lineal ascendant of the other; or

(*ii*) if one was the wife or husband of a lineal ascendant or descendant of the other; or

(*iii*) if one was the wife of the brother or of the father's or mother's brother or of the grandfather's or grandmother's brother of the other; or

(*iv*) if the two are brother and sister, uncle and niece, aunt and nephew, or children of brother and sister or of two brothers or of two sisters;

Explanation.—For the purposes of clauses (*f*) and (*g*), relationship includes—

(*i*) relationship by half or uterine blood as well as by full blood;

(*ii*) illegitimate blood relationship as well as legitimate;

(*iii*) relationship by adoption as well as by blood;

and all terms of relationship in those clauses shall be construed accordingly.

STATE AMENDMENTS

JAMMU AND KASHMIR[5].—In its application to the State of Jammu & Kashmir, in Section 3, for (*b*) *substitute* the following, namely:

"(*b*) 'district Court' means the principal Civil Court of original jurisdiction in any area and includes any other Civil Court which may be specified by the Government of Jammu & Kashmir by notification in the Government Gazette as having jurisdiction in respect of the matters dealt within this Act."

4. Overriding effect of Act.—Save as otherwise expressly provided in this Act,—

(*a*) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;

(*b*) any other law in force immediately before the commencement of this Act shall cease to have effect in so far as it is inconsistent with any of the provisions contained in this Act.

HINDU MARRIAGES

5. Conditions for a Hindu marriage.—A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely:—

(*i*) neither party has a spouse living at the time of the marriage;

[6][(*ii*) at the time of the marriage, neither party—

(*a*) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or

5. J & K Act 8 of 1955, S. 3 and Sch. (w.e.f. 10-11-1955).
6. *Subs.* by Act 68 of 1976 (w.e.f. 27-5-1976).

(*b*) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or

(*c*) has been subject to recurrent attacks of insanity [7][* * *];]

(*iii*) the bridegroom has completed the age of [8][twenty-one years] and the bride the age of [9][eighteen years] at the time of the marriage;

(*iv*) the parties are not within the degrees of prohibited relationship, unless the custom or usage governing each of them permits of a marriage between the two;

(*v*) the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two;

(*vi*) [10][* * *]

CASE LAW ▸ Interpretation.—The term 'spouse' does not include former spouse because even after the divorce, when a second marriage is contracted, if the former spouse is living that would not prohibit the parties from contracting the marriage within the meaning of Section 5(1)(i), *Lila Gupta* v. *Laxmi Narain*, (1978) 3 SCC 258.

▸ **Ceremonies, Performance of/Presumption of.**—The non-belief in rituals or even in some dogmas does not ipso facto remove a person from the fold of Hinduism. If a person is born as a Hindu, he continues to be one till he takes to another religion, *Chandrasekhara Mudaliar* v. *Kulandaivelu Mudaliar*, (1963) 2 SCR 440.

For custom to have the colour of a rule or law, it is necessary for the party claiming it, to plead and thereafter prove that such custom is ancient, certain and reasonable. Custom being in derogation of the general rule is required to be construed strictly. The party relying upon a custom is obliged to establish it by clear and unambiguous evidence, *Surajmani Stella Kujur (Dr)* v. *Durga Charan Hansdah*, (2001) 3 SCC 13 : 2001 SCC (Cri) 1305.

If parties are Hindus at time of marriage but marrying according to Buddhist rites then the fact that such marriages are taking place for last 10 to 15 years is not enough to establish custom, *Shakuntala* v. *Nilkanth*, 1973 Mah LJ 310.

▸ **Presumption of Marriage.**—If a man and woman live together for long years as husband and wife then a presumption arises in law of legality of marriage existing between the two. But the presumption is rebuttable, *S.P.S. Balasubramanyam* v. *Suruttayan*, (1994) 1 SCC 460.

Where a man and woman have been proved to have lived together as husband and wife, the law will presume, until contrary be clearly proved, that they were living together in consequence of a valid marriage and not in a state of concubinage, *Reema Aggarwal* v. *Anupam*, (2004) 3 SCC 199 : 2004 SCC (Cri) 699.

Strong presumption arises in favour of wedlock where the partners have lived together for a long spell as husband and wife, *Chanmuniya* v. *Virendra Kumar Singh Kushwaha*, (2011) 1 SCC 141.

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7. The words "or epilepsy" *omitted* by Act 39 of 1999, S. 2 (w.e.f. 29-12-1999).
8. *Subs.* by Act 2 of 1978, S. 6 and Sch., for "eighteen years" (w.e.f. 1-10-1978).
9. *Subs.* by Act 2 of 1978, S. 6 and Sch., for "fifteen years" (w.e.f. 1-10-1978).
10. *Omitted* by Act 2 of 1978, S. 6 and Sch. (w.e.f. 1-10-1978). Prior to omission it read as:
"(*vi*) where the bride has not completed the age of eighteen years, the consent of her guardian in marriage, if any, has been obtained for the marriage."

A presumption of valid marriage though is refutable, a heavy burden lies on the person who seeks to prove that no marriage has taken place, *Challamma* v. *Tilaga*, (2009) 9 SCC 299.

▸ **Dissolution of Marriage.**—The marriage sought to be dissolved under the Act has to be a Hindu marriage. It can be dissolved only in accordance with the provisions of the Act. Section 2 of the Act applies to any person who is a Hindu. It also contemplates a person who was a Hindu at the time of marriage but has since ceased to be a Hindu at the time when the petition is prosecuted. The relevant date on which both the parties are required to be Hindus, for the Act to apply is the date of the marriage, for it is a Hindu marriage which is sought to be dissolved, *Vilayat Raj* v. *Sunila*, ILR (1984) 1 Del 201.

▸ **Requirements of Valid Marriage.**—A marriage can be solemnised between two Hindus if the conditions indicated in Section 5 were fulfilled. In other words, in the event the conditions remain unfulfilled, a marriage between two Hindus could not be solemnised. The expression 'may' used in Section 5 is not directory, but mandatory and non-fulfillment thereof would not permit a marriage under the Act between two Hindus, *Gullipilli Sowria Raj* v. *Bandaru Pavani*, (2009) 1 SCC 714.

▸**Marriage when void and when voidable.**—Section 5 specifies conditions on which marriage may be solemnised between two Hindus. Contravention of Conditions (i), (iv) and (v) of Section 5 would make marriage void. Violation of Conditions (ii) or (iii) of Section 5 would not make marriage null and void. It makes marriage voidable at the option of an under-aged party or who could not have validly consented to marriage. A marriage which is null and void is no marriage in the eye of the law. Where the marriage is a nullity application for maintenance is liable to be set aside on that ground alone, *Krishnaveni Rai* v. *Pankaj Rai*, (2020) 11 SCC 253.

6. Guardianship in marriage.—[11][*Omitted*]

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11. *Omitted* by Act 2 of 1978, S. 6 and Sch. (w.e.f. 1-10-1978). Prior to omission it read as:

"6. *Guardianship in marriage.*—(1) Wherever the consent of a guardian in marriage is necessary for a bride under this Act, the persons entitled to give such consent shall be the following in the order specified hereunder, namely:—

(*a*) the father;
(*b*) the mother;
(*c*) the paternal grandfather;
(*d*) the paternal grandmother;
(*e*) the brother by full blood; as between brothers the elder being preferred;
(*f*) the brother by half blood; as between brothers by half blood the elder being preferred:
Provided that the bride is living with him and is being brought up by him;
(*g*) the paternal uncle by half blood; as between paternal uncles by half blood the elder being preferred;
(*h*) the paternal uncle by half blood; as between paternal uncles by half blood the elder being preferred;
Provided that the bride is living with him and is being brought up by him;
(*i*) the maternal grandfather;
(*j*) the maternal grandmother;
(*k*) the maternal uncle by full blood; as between maternal uncles the elder being preferred:
Provided that the bride is living with him and is being brought up by him.

(2) No person shall be entitled to act as a guardian in marriage under the provisions of this section unless such person has himself completed his or her twenty-first year.

(3) Where any person entitled to be the guardian in marriage under the foregoing provisions refuses, or is for any cause unable or unfit, to act as such, the person next in order shall be entitled to be the guardian.

(4) In the absence of any such person as is referred to in sub-section (1), the consent of a guardian shall not be necessary for a marriage under this Act.

7. Ceremonies for a Hindu marriage.—(1) A Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto.

(2) Where such rites and ceremonies include the Saptapadi (that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire), the marriage becomes complete and binding when the seventh step is taken.

CASE LAW ▸ Applicability.—In the Hindu Marriage Act, 1955, there is a State amendment by the State of Tamil Nadu, which has inserted Section 7-A. The said section applies to any marriage between two Hindus solemnized in the presence of relatives, friends or other persons. Presence of priest is not considered necessary for the performance of valid marriage under this section, *S. Nagalingam* v. *Sivagami*, (2001) 7 SCC 487 : 2001 SCC (Cri) 1273.

▸ **Ceremonies, Performance/Presumption of.**—There may be a valid marriage according to Hindu law, certain religious rites have to be performed. Invoking the fire and performing Saptapadi around the sacred fire have been considered to be two of the basic requirements for a traditional marriage. There can be a marriage acceptable in law according to customs which do not insist on performance of such rites, i.e. invoking the fire and performing Saptapadi and marriages of this type give rise to legal relationship which law accepts, *Sumitra Devi* v. *Bhikan Choudhary*, (1985) 1 SCC 637.

Mere living as husband and wife does not confer status of husband and wife. Without pleading any custom prevalent in the area and performance of ceremonies and a mere statement that gur was distributed after marriage and the couple lived as husband and wife is not a sufficient ground to establish marriage, *Surjit Kaur* v. *Garja Singh*, (1994) 1 SCC 407 : 1994 SCC (Cri) 259.

▸ **Absence of evidence.**—When the fact of celebration of marriage is established, it will be presumed in the absence of evidence to the contrary that all the rites and ceremonies to constitute a valid marriage have been gone through. Also, if it is accepted as valid by relatives, friends and others for a long time, it cannot be declared as invalid, *Reema Aggarwal* v. *Anupam*, (2004) 3 SCC 199 : 2004 SCC (Cri) 699.

▸ **Kanyadanam.**—Kanyadanam is an essential ceremony in marriage though non-observance of it does not invalidate the marriage, *Ramlal Agarwal* v. *Shanta Devi*, (1999) 1 APLJ 106 (SN).

▸ **Saptapadi.**—Marriage will be deemed as completed and binding when the seventh step is taken, only in cases where the rites and ceremonies include the performance of "Saptapadi" as per Section 7(2) of the Act. The Act does not, prescribe the ceremonies requisite for solemnisation of the marriage but leaves it to the parties to choose a form of ceremonial marriage, which is in accordance with any custom or usage applicable to either party, *Chandrabhagabai Ganpati Karwar* v. *Sambhaji Narhari Karwar*, (2007) 6 Mah LJ 471.

▸ **Solemnisation of marriage.**—Solemnisation of marriage if proved is sufficient to hold that there was proper marriage in accordance with section 7(1) of the Act, *A. Sankaranarayanan* v. *Mani*, (2009) 81 AIC 894 (Mad).

STATE AMENDMENTS

Section 7-A

TAMIL NADU.—In its application to the State of Tamil Nadu, after Section 7, *insert* the following:

"7-A. *Special provision regarding suyamariyathai and seerthiruththa marriages.*—(1) This section shall apply to any marriage between any two Hindus, whether called suyamariyathai marriage

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(5) Nothing in this Act shall affect the jurisdiction of a court to prohibit by injunction an intended marriage, if in the interests of the bride for whose marriage consent is required, the court thinks it necessary to do so."

or seerthiruththa marriage or by any other name, solemnized in the presence of relatives, friends or other persons—

(*a*) by each party to the marriage declaring in any language understood by the parties that each takes the other to be his wife or, as the case may be, her husband; or

(*b*) by each party to the marriage garlanding the other or putting a ring upon any finger; of the other; or

(*c*) by the tying of the thali.

(2)(*a*) Notwithstanding anything contained in Section 7, but subject to the other provisions of this Act, all marriages to which this section applies solemnized after the commencement of the Hindu Marriage (Madras Amendment) Act, 1967, shall be good and valid in law.

(*b*) Notwithstanding anything contained in Section 7 or in any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of the Hindu Marriage (Madras Amendment) Act, 1967, or in any other law in force immediately before such commencement or in any judgment, decree or order of any court, but subject to sub-section (3), all marriages to which this section applies solemnized at any time before such commencement, shall be deemed to have been, with effect on and from the date of the solemnization of each such marriage, respectively, good and valid in law.

(3) Nothing contained in this section shall be deemed to—

(*a*) render valid any marriage referred to in clause (*b*) of sub-section (2), if before the commencement of the Hindu Marriage (Madras Amendment) Act, 1967,—

(*i*) such marriage has been dissolved under any custom or law; or

(*ii*) the woman who was a party to such marriage has, whether during or after the life or the other party thereto, lawfully married another; or

(*b*) render invalid a marriage between any two Hindus solemnized at any time before such commencement, if such marriage was valid at that time; or

(*c*) render valid a marriage between any two Hindus solemnized at any time before such commencement, if such marriage was invalid at that time on any ground other than that it was not solemnized in accordance with the customary rites and ceremonies of either party thereto:

Provided that nothing contained in this sub-section shall render any person liable to any punishment whatsoever by reason of anything done or omitted to be done by him before such commencement.

(4) Any child of the parties to a marriage referred to in clause (*b*) of sub-section (2) born of such marriage shall be deemed to be their legitimate child:

Provided that in a case falling under sub-clause (*i*) or sub-clause (*ii*) or clause (*a*) of sub-section (3), such child was begotten before the date of the dissolution of the marriage or, as the case may be, before the date of the second of the marriages referred to in the said sub-clause (*ii*)."—T.N. Act 21 of 1967 (20-1-1968).

8. Registration of Hindu marriages.—(1) For the purpose of facilitating the proof of Hindu marriages, the State Government may make rules providing that the parties to any such marriage may have the particulars relating to their marriage entered in such manner and subject to such conditions as may be prescribed in a Hindu Marriage Register kept for the purpose.

(2) Notwithstanding anything contained in sub-section (1), the State Government may, if it is of opinion that it is necessary or expedient so to do, provide that the entering of the particulars referred to in sub-section (1) shall be compulsory in the State or in any part thereof, whether in all cases or in such cases

as may be specified, and where any such direction has been issued, any person contravening any rule made in this behalf shall be punishable with fine with may extend to twenty-five rupees.

(3) All rules made under this section shall be laid before the State Legislature, as soon as may be, after they are made.

(4) The Hindu Marriage Register shall at all reasonable times be open for inspection, and shall be admissible as evidence of the statements therein contained and certified extracts therefrom shall, on application, be given by the Registrar on payment to him of the prescribed fee.

(5) Notwithstanding anything contained in this section, the validity of any Hindu marriage shall in no way be affected by the omission to make the entry.

STATE AMENDMENTS

JAMMU AND KASHMIR[12].—In its application to the State of Jammu & Kashmir, in Section 8, for the words "State Government" *substituted* the words "Government of Jammu & Kashmir".

CASE LAW ▸ Compulsory Registration, Requirement of.—Registration of Marriage avoids dispute concerning soleminsation of marriage to a large extent. Though the registration itself cannot be a proof of valid marriage per se, and would not be the determinative factor regarding validity of a marriage, yet it has a great evidentiary value in the matters of custody of children, right of children born from the wedlock of the two persons whose marriage is registered and the age of parties to the marriage. It is in the interest of the society, if marriages are made compulsorily registerable, *Seema* v. *Ashwani Kumar*, (2006) 2 SCC 578.

RESTITUTION OF CONJUGAL RIGHTS AND JUDICIAL SEPARATION

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

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

(2) [14][* * *]

CASE LAW ▸ Restitution of conjugal rights.—An application for restitution of conjugal rights is not maintainable if there is no valid marriage in the first place, *Ranjana Vinod Kejriwal* v. *Vinod Babulal Kejriwal*, (2009) 6 Mah LJ 20.

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12. J & K Act 8 of 1955, S. 3 and Sch. (w.e.f. 10-11-1955).
13. *Ins.* by Act 68 of 1976 (w.e.f. 27-5-1976).
14. Sub-section (2) *omitted* by Act 68 of 1976 (w.e.f. 27-5-1976). Prior to omission it read as:
"(2) Nothing shall be pleaded in answer to a petition for restitution of conjugal rights which shall not be a ground for judicial separation or for nullity of marriage or for divorce."

Restitution of conjugal rights is a right which follows marriage. When factum of marriage remain unproved there can be no decree for restitution of conjugal rights, *Sharmila Devi* v. *S. Sridhar*, (2009) 1 CTC 481.

When there is evidence establishing that it was respondent husband who withdrew from appellant's company without any reasonable cause, appellant is entitled to decree for restitution of conjugal rights, *Suman Singh* v. *Sanjay Singh*, (2017) 4 SCC 85.

► **Refusing to cohabit.**—Husband refusing to cohabit with wife inspite of decree of restitution of conjugal rights against him cannot be said to take advantage of his own wrong while seeking divorce, *Saroj Rani* v. *Sudarshan Kumar Chadha*, (1984) 4 SCC 90.

► **Enforcement of the decree.**—When a decree is passed under Section 9, the only sanction for enforcement of the decree under Order 21, Rule 32, CPC is attachment of property against disobedience of the decree where the disobedience follows as a result of wilful conduct i.e. where conditions are there for a wife or a husband to obey the decree but the same is disobeyed by one of them in spite of such conditions. There are sufficient safeguards in Section 9 to prevent it from being a tyranny. It serves a social purpose as an aid to the prevention of breakup of marriage. Having regard to the purpose of the decree for restitution of conjugal rights in its proper perspective and the method of its execution in cases of disobedience, Section 9 cannot be said to be violative of Articles 14 or 21, *Saroj Rani* v. *Sudarshan Kumar Chadha*, (1984) 4 SCC 90, 100 to 102.

► **Specific pleading.**—Petition for restitution of conjugal rights by husband and alternative reliefs cannot be granted or comprehended under Section 9, Hindu Marriage Act in the absence of a specific pleading or invoking the power of the court under Section 13, Hindu Marriage Act, *Uma Parekh* v. *Ajeet Pareek*, (2005) 9 SCC 600.

► **Mutual consent.**—The decree for restitution of conjugal rights cannot be passed in case husband and wife residing separately with mutual consent, *Virendra* v. *Rajni*, (2009) 1 MP LJ 661.

► **Sufficient Cause.**—'Reasonable excuse' to stay away from the company of the other spouse is sufficient to satisfy Section 9. Treating the wife with cruelty within the meaning of the Hindu Marriage Act amounts to reasonable excuse and is sufficient for justifying the wife to keep away from husband, *Pakala Radha Krishna Murthy* v. *Pakala Vijayalakshmi*, (1983) 1 AP LJ 145 (AP).

10. Judicial separation.—[15][(1) Either party to a marriage, whether solemnized before or after the commencement of this Act, may present a petition praying for a decree for judicial separation on any of the grounds specified in sub-section (1) of Section 13, and in the case of a wife also on any of the grounds specified in sub-section (2) thereof, as grounds on which a petition for divorce might have been presented.]

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

15. *Subs.* by Act 68 of 1976 (w.e.f. 27-5-1976).

STATE AMENDMENTS

JAMMU AND KASHMIR.—In Section 10(1)(*d*) for "has immediately before" *substitute* "has, for a period of not less than three years immediately preceding".—J & K Act 20 of 1957.

CASE LAW ▸ Interpretation/Construction.—Neither Section 10 of the Act which enumerates the grounds on which a petition for judicial separation may be presented nor Section 23 which governs the jurisdiction of the court to pass a decree in any proceeding under the Act requires that the petitioner must prove his case beyond a reasonable doubt. Section 23 confers on the court the power to pass a decree if it is 'satisfied' on matters mentioned in clauses (a) to (e) of the section. Considering that proceedings under the Act are essentially of a civil nature, the word 'satisfied' must mean "satisfied on a preponderance of probabilities" and not "satisfied beyond a reasonable doubt". Section 23 does not alter the standard of proof in civil cases, *Narayan Ganesh Dastane* v. *Sucheta Narayan Dastane*, (1975) 2 SCC 326.

▸ **Judicial Separation.**—The judicial sanction of separation creates many rights and obligations. A decree or an order for judicial separation permits the parties to live apart. There would be no obligation for either party to cohabit with the other. Mutual rights and obligations arising out of a marriage are suspended. The decree, however, does not sever or dissolve the marriage. It affords an opportunity for reconciliation and adjustment. Though judicial separation after a certain period may become a ground for divorce, it is not necessary and the parties are not bound to have recourse to that remedy and the parties can live keeping their status as wife and husband till their lifetime, *Jeet Singh* v. *State of U.P.*, (1993) 1 SCC 325.

▸ **Maintenance.**—Grant of judicial separation and payment of maintenance, while reversing decree for divorce is impermissible, *Trupti Das* v. *Rabindranath Mohapatra*, (2005) 11 SCC 553.

▸ **Decree for judicial separation.**—The decree for judicial separation does not sever or dissolve the marriage tie which continues to subsist. It affords an opportunity to the spouse for reconciliation and readjustment, *Hirachand Srinivas Managaonkar* v. *Sunanda*, (2001) 4 SCC 125.

Decree for judicial separation cannot be granted by the Court when there exists no ground for divorce, *Prabhakar* v. *Satyabhama*, (2008) 3 Mah LJ 627.

Decree under Section 10 means a decree of judicial separation reached to its finality, *Sunita Mishra* v. *Prashant Mishra*, (2006) 37 AIC 719 (Chh).

▸ **Cruelty.**—The term cruelty, used in Section 10(1)(b) is no doubt sufficiently comprehensive to take in not only physical acts of cruelty but also acts which are capable of producing mental anguish with resultant deleterious effects on the health of the concerned spouse and it is also true that reckless imputation of unchastity to a married Hindu woman is equated to cruelty, *Miriyala Venkateswara Rao* v. *Miriyala Lakshmikanthamma*, (1970) 1 APLJ 54 (SN).

▸ **Reasonable apprehension.**—In order to entitle a party to a marriage to obtain judicial separation under Section 10 of the Act, the cruelty to be proved should be such as to cause a reasonable apprehension in the mind of the petitioning spouse that it would be harmful or injurious for him or her to live with the other. This section does not of course allow any discrimination to be made between a husband and a wife or to apply different standards while judging whether a particular act would amount to cruelty but it should not be forgotten that it is the effect which the act of cruelty is capable of producing on the particular spouse that should ultimately decide the matter and not the act itself in as much as the same act need not necessarily have the same effect on both the spouses, *Miriyala Venkateswara Rao* v. *Miriyala Lakshmikanthamma*, (1970) 1 APLJ 54 (SN).

NULLITY OF MARRIAGE AND DIVORCE

11. Void marriages.—Any marriage solemnized after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto [16][against the other party], be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (*i*), (*iv*) and (*v*) of Section 5.

CASE LAW ► Decree of Divorce.—A Hindu marriage can be dissolved only in accordance with the provisions of the Act by obtaining a decree of divorce from the court. In the absence of any decree of dissolution of marriage from the court, first marriage remains in subsistence, *Rameshchandra Rampratapji Daga* v. *Rameshwari Rameshchandra Daga*, (2005) 2 SCC 33.

► **Void/Voidable Marriages.**—Marriage of a woman in accordance with the Hindu rites with a man having a living spouse, is a complete nullity in the eye of law and she is not entitled to the benefit of Section 125 of the Criminal Procedure Code as such marriage is void ipso jure under Section 11 of the Act, *Yamunabai Anantrao Adhav* v. *Anantrao Shivram Adhav*, (1988) 1 SCC 530, 533 : 1988 SCC (Cri) 182.

If a spouse is living at the time of marriage then the second marriage is null and void, *M.M. Malhotra* v. *Union of India*, (2005) 8 SCC 351 : 2005 SCC (L&S) 1139.

Marriage contracted by Hindu male after advent of T.N. Hindu (Bigamy Prevention and Divorce) Act, 1949 and Hindu Marriages Act, while first Marriage is subsisting is totally void, illegal and opposed to public policy. Consent by first wife or custom or any length of cohabitation cannot validate second marriage. No sympathy should be shown towards persons who violate such provision, *Chinnammal* v. *Elumalai*, (2002) 2 CTC 214.

A minor girl claiming to have been married can be allowed to join her husband but such marriage cannot be held to be invalid, illegal or null and void either under the Child Marriage Restraint Act, 1929 or under the Hindu Marriage Act, 1955 although it is an offence, *Makemalla Sailoo* v. *Supdt. of Police Nalgonda District*, (2006) 1 APLJ 447 (AP).

► **Declaration of nullity of second marriage.**—Seeking formal declaration of nullity of second marriage during subsistence of earlier marriage of one of the spouses is normally optional but where there is dispute with regard to factum of earlier marriage of one of the spouses, declaration of nullity of second marriage must be obtained from competent court and not from a court adjudicating claim for maintenance, *Deoki Panjhiyara* v. *Shashi Bhushan Narayan Azad*, (2013) 2 SCC 137.

► **Conversion to Islam.**—The second marriage of a Hindu husband after his conversion to Islam is a void marriage in terms of Section 494 IPC, *Sarla Mudgal* v. *Union of India*, 1995 SCC (Cri) 569.

► **Flaw in the marriage.**—The effect of granting a decree of nullity is to discover the flaw in the marriage at the time of its performance and accordingly to grant a decree declaring it to be void. Therefore, an application under Section 11 before its amendment in 1976, was maintainable at the instance of a party to the marriage even after the death of the other spouse, *Maharani Kusumkumari* v. *Smt Kusumkumari Jadeja*, (1991) 1 SCC 582.

► **Fraud.**—Meaning given to word 'fraud' under Indian Contract Act, 1872 cannot be imported into Hindu Marriage Act. Under contract law fraud renders act void and in matrimonial law fraud does not render

16. *Ins.* by Act 68 of 1976 (w.e.f. 27-5-1976).

marriage void but only makes it voidable at instance aggrieved party, *V. Raja* v. *Bhuvaneswari*, (1997) 2 CTC 526.

▸ **Complaint under Section 494 IPC.**—A complaint under Section 494 IPC is maintainable only when the second marriage is valid according to Hindu Marriage Act and custom, *Public Prosecutor High Court of A.P.* v. *Chundi Subba Rao*, (1992) 2 AP LJ 435.

▸ **Bigamous or polygamous marriages.**—Bigamous or polygamous marriages are null and void ipso jure as per Section 5 of the Act. Under the Act, only monogamous forms of marriages are accepted as legal, *Ranjit Kumar Bhattacharyya (Dr)* v. *Sabita Bhattacharyya*, AIR 1996 Cal 301 : (1996) 1 CHN 360.

▸ **Bona fide intention of conversion.**—Purification or expiatory is not considered as a necessary element for conversion into Hindu faith. The essential requirement is the bona fide intention of conversion. Marriage of a Hindu with non Hindu performed as per Hindu rites cannot be declared as null and void in the absence of purification ceremony, *Madhavi Ramesh Dudani* v. *Ramesh K. Dudani*, (2006) 40 AIC 446 (Bom HC).

▸ **Conduct of proceedings.**—Conduct of proceedings under Family Courts Act, 1984 through videoconferencing upon request of only one party, impermissible. However, only after settlement fails, either upon consent and application of both parties, or, if Family Court finds it appropriate, direction for videoconferencing may be made by Family Court only. Direction for videoconferencing cannot be passed in transfer proceedings. There directions to apply only prospectively. Videoconferencing, in absence of consent of the other party, held would be contrary to Section 11. Physical presence of both parties in matrimonial proceedings held in camera is essential as it creates environment of trust, confidentiality, privacy and emotional bond. Videoconferencing at the first instance, without consent of both parties, would create a dent in settlement process and affect affirmative rights to dignity, privacy and choice, particularly of women, *Santhini* v. *Vijaya Venketesh*, (2018) 1 SCC 1.

12. Voidable marriages.—(1) Any marriage solemnized, whether before or after the commencement of this Act, shall be voidable and may be annulled by a decree of nullity on any of the following grounds, namely:—

[17][(*a*) that the marriage has not been consummated owing to the impotence of the respondent; or]

(*b*) that the marriage is in contravention of the condition specified in clause (*ii*) of Section 5; or

(*c*) that the consent of the petitioner, or where the consent of the guardian in marriage of the petitioner [18][was required under Section 5 as it stood immediately before the commencement of the Child Marriage Restraint (Amendment) Act, 1978 (2 of 1978)] the consent of such guardian was obtained by force [19][or by fraud as to the nature of the ceremony or as to any material fact or circumstance concerning the respondent]; or

(*d*) that the respondent was at the time of the marriage pregnant by some person other than the petitioner.

(2) Notwithstanding anything contained in sub-section (1), no petition for annulling a marriage—

17. *Subs.* by Act 68 of 1976 (w.e.f. 27-5-1976).
18. *Subs.* by Act 2 of 1978, S. 6 and Sch. (w.e.f. 1-10-1978).
19. *Subs* by Act 2 of 1978, S. 6 and Sch. (w.e.f. 1-10-1978).

(*a*) on the ground specified in clause (*c*) of sub-section (1), shall be entertained if—

(*i*) the petition presented more than one year after the force had ceased to operate or, as the case may be, the fraud had been discovered; or

(*ii*) the petitioner has, with his or her full consent, lived with the other party to the marriage as husband or wife after the force had ceased to operate or, as the case may be, the fraud had been discovered;

(*b*) on the ground specified in clause (*d*) of sub-section (1) shall be entertained unless the court is satisfied—

(*i*) that the petitioner was at the time of the marriage ignorant of the facts alleged;

(*ii*) that proceedings have been instituted in the case of a marriage solemnized before the commencement of this Act within one year of such commencement and in the case of marriages solemnized after such commencement within one year from the date of the marriage; and

(*iii*) that marital intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of the existence of [20][the said ground].

CASE LAW ► Void/Voidable Marriages.—Decree of a nullity of marriage is a higher class of decree than the decree for voidable marriage under Section 12 of the Act. When the parties are entitled for a higher relief and the said relief has been granted, a grievance cannot be made that a decree of a lower category, namely, a decree for a voidable marriage should have been granted, *Mangala* v. *Laxman Ganpat Jadhav*, (2008) 1 Mah LJ 244.

► **Diseases/Unsoundness of Mind.**—Marriage should not be annulled on grounds of mental incapacity unless expert evidence of lunacy or idiocy adduced cogently and clearly. Consequence of declaration of nullity of marriage is grave and Court would look for satisfactory and convincing evidence to grant such decree. Court should eschew irrelevant and extraneous matters in granting such decree. Standard of proof must be proof beyond reasonable doubt, *Shanthi* v. *V. Vijayaraghavan*, (2002) 2 CTC 291.

An objection to a marriage on the ground of mental incapacity must depend on a question of degree of the defect in order to rebut the validity of a marriage. The onus of bringing a case under this clause lies heavily on the petitioner who seeks annulment of the marriage on the ground of unsoundness of mind or mental disorder, *R. Lakshmi Narayan* v. *Santhi*, (2001) 4 SCC 688.

► **Impotency.**—Impotency is one of the grounds of nullity of marriage. However, there is a marked distinction between infertility and impotency. In the absence of any material on record showing the impotency, or frigidity of the wife so as to render the consummation of the marriage impossible, it cannot be said that the provisions of Section 12(1)(*a*) are attracted, *Pramila Shankar Ghante* v. *Shankar Vishwanath Ghante*, (2012) 5 Mah LJ 911 (Bom).

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20. *Ins.* by Act 68 of 1976 (w.e.f. 27-5-1976).

For a decree of nullity of marriage, impotency at the time of marriage and continuance of it until the institution of proceedings must be proved, *Digvijay Singh* v. *Pratap Kumari*, (1969) 2 SCC 279.

▸ **Consent for Marriage.**—Fraud does not mean any fraudulent representation or concealment. Non-disclosure or concealment of curable epilepsy for consent of solemnization of marriage does not amount to fraud within Section 12(1)(*c*), *Raghunath* v. *Vijaya*, 1972 Mah LJ 110 : AIR 1972 Bom 132.

Section 12(1)(c) of the Hindu Marriage Act does not deal with fraud in a general way, nor deals with every misrepresentation or concealment, the object of which may be fraudulent, *Provat Kumar Chatterjee* v. *Gita Chatterjee*, (1994) 2 CHN 63.

▸ **Concealment of Fact.**—Annulment of marriage cannot be granted unless material fact affecting marital life is concealed, *A. Premchand* v. *V. Padmapriya*, (1996) 2 CTC 620.

▸ **Annulment of marriage.**—In terms of Section 12(1)(*c*), HM Act, 1955, only minor spouse has right to seek annulment of marriage, *Bhagwati* v. *Anil Choubey*, (2017) 13 SCC 582.

13. Divorce.—(1) Any marriage solemnized, 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 ground that the other party—

[21][(*i*) has, after the solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse; or

(*i-a*) has, after the solemnization of the marriage, treated the petitioner with cruelty; or

(*i-b*) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or]

(*ii*) has ceased to be a Hindu by conversion to another religion; or

[22][(*iii*) 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.

Explanation.—In this clause,—

(*a*) the expression "mental disorder" means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia;

(*b*) the expression "psychopathic disorder" means a persistent disorder or disability of mind (whether or not including sub-normality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the other party, and whether or not it requires or is susceptible to medical treatment; or]

(*iv*) [23][* * *]

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21. *Ins.* by Act 68 of 1976 (w.e.f. 27-5-1976).
22. *Ins.* by Act 68 of 1976 (w.e.f. 27-5-1976).
23. *Omitted* by Act 6 of 2019, S. 5 (w.e.f. 1-3-2019). Prior to omission it read as: "(*iv*) has, [* * *] been suffering from a virulent and incurable form of leprosy; or"

(*v*) has, [* * *][24] been suffering from venereal disease in a communicable form; or

(*vi*) has renounced the world by entering any religious order; or

(*vii*) has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of it, had that party been alive; [25][* * *]

[26][*Explanation*.—In this sub-section, the expression "desertion" means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the wilful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly].

(*viii*) [27][* * *]

(*ix*) [28][* * *]

[29][(1-A) Either party to a marriage, whether solemnized before or after the commencement of this Act, may also present a petition for the dissolution of the marriage by a decree of divorce on the ground—

(*i*) that there has been no resumption of cohabitation as between the parties to the marriage for a period of [30][one year] or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties; or

(*ii*) that there has been no restitution of conjugal rights as between the parties to the marriage for a period of [31][one year] or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.]

(2) A wife may also present a petition for the dissolution of her marriage by a decree of divorce on the ground,—

(*i*) in the case of any marriage solemnized before the commencement of this Act, that the husband had married again before such commencement or that any other wife of the husband married before such commencement was alive at the time of the solemnization of the marriage of the petitioner:

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24. The words "for a period of not less than three years immediately preceding the presentation of the petition" *omitted* by Act 68 of 1976 (w.e.f. 27-5-1976).
25. The word "or" at the end of clauses (*vii*) *omitted* by Act 44 of 1964, S. 2 (w.e.f. 20-12-1964).
26. *Ins.* by Act 68 of 1976 (w.e.f. 27-5-1976).
27. *Omitted* by Act 44 of 1964, S. 2 (w.e.f. 20-12-1964). Prior to omission it read as:
"(*viii*) has not resumed cohabitation for a space of two years or upwards after the passing of a decree for judicial separation against that party; or"
28. *Omitted* by Act 44 of 1964, S. 2 (w.e.f. 20-12-1964). Prior to omission it read as:
"(*ix*) has failed to comply with a decree for restitution of conjugal rights for a period of two years or upwards after the passing of the decree."
29. Sub-section (1-A) *inserted* by Act 44 of 1964, S. 2, w.e.f. 20-12-1964.
30. *Subs.* by Act 68 of 1976 (w.e.f. 27-5-1976).
31. *Subs.* by Act 68 of 1976 (w.e.f. 27-5-1976).

Provided that in either case the other wife is alive at the time of the presentation of the petition; or

(*ii*) that the husband has, since the solemnization of the marriage, been guilty of rape, sodomy or [32][bestiality; or]

[33][(*iii*) that in a suit under Section 18 of the Hindu Adoptions and Maintenance Act, 1956 (78 of 1956), or in a proceeding under Section 125 of the Code of Criminal Procedure, 1973 (2 of 1974), [or under the corresponding Section 488 of the Code of Criminal Procedure, 1898 (5 of 1898)], a decree or order, as the case may be, has been passed against the husband awarding maintenance to the wife notwithstanding that she was living apart and that since the passing of such decree or order, cohabitation between the parties has not been resumed for one year or upwards; or

(*iv*) that her marriage (whether consummated or not) was solemnized before she attained the age of fifteen years and she has repudiated the marriage after attaining that age but before attaining the age of eighteen years.

Explanation.—This clause applies whether the marriage was solemnized before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976).]

STATE AMENDMENTS

UTTAR PRADESH[34].—In its application to Hindus domiciled in U.P. and also when either party to the marriage was at the time of marriage a Hindu domiciled in U.P., in Section 13—

(*i*) in sub-section (1), after clause (*i*) *insert* and deem always to have been inserted the following:

"(*i-a*) has persistently or repeatedly treated the petitioner with such cruelty as to cause a reasonable apprehension in the mind of the petitioner that it will be harmful or injurious for the petitioner to live with the other party; or", and

(*ii*) for clause (*viii*)(since repealed) *substituted* and deem always to have been so substituted the following.

"(*viii*) has not resumed cohabitation after the passing of a decree for judicial separation against that party, and—

(*a*) a period of two years has elapsed since the passing of such decree, or

(*b*) the case is one of exceptional hardship to the petitioner or of exceptional depravity on the part of other party; or"

CASE LAW ▸ Alternate Dispute Resolution.—"Mediation" is an effective method of alternative dispute resolution in matrimonial matters, *K. Srinivas Rao* v. *D.A. Deepa*, (2013) 5 SCC 226.

Grounds for Divorce

▸ ***Generally***

Legislation for the purpose of dissolving the marriage constitutes a departure from that primary principle, and the legislature is extremely circumspect in setting forth the grounds on which a marriage may be dissolved. The history of all matrimonial legislation will show that at the outset conservative attitudes influenced the grounds on which separation or divorce could be granted. Over the decades, a more liberal

32. *Subs.* by Act 68 of 1976 (w.e.f. 27-5-1976).
33. *Ins.* by Act 68 of 1976 (w.e.f. 27-5-1976).
34. U.P. Act 13 of 1962, S. 2 (w.e.f. 7-11-1962). But see amendment to clause (*i*) by Central Act 68 of 1976.

attitude has been adopted, fostered by a recognition of the need for the individual happiness of the adult parties directly involved. But although the grounds for divorce have been liberalised, they nevertheless continue to form an exception to the general principle favouring the continuation of the marital tie. In our opinion, when a legislative provision specifies the grounds on which divorce may be granted they constitute the only conditions on which the court has jurisdiction to grant divorce. If grounds need to be added to those already specifically set forth in the legislation, that is the business of the legislature and not of the courts. It is another matter that in construing the language in which the grounds are incorporated the courts should give a liberal construction to it, *Reynold Rajamani* v. *Union of India*, (1982) 2 SCC 474.

▸ ***Irretrievable breakdown of marriage***

Irretrievable breakdown of marriage is not a ground for divorce under Hindu Marriage Act, 1955. However, where marriage is beyond repair on account of bitterness created by Acts of either of the spouses or of both, courts have always taken irretrievable breakdown of marriage as a very weighty circumstance amongst others necessitating severance of marital tie. Marriage which is dead for all purposes cannot be revived by court's verdict, if parties are not willing since marriage involves human sentiments and emotions and if they have dried up, there is hardly any chance of their springing back to life on account of artificial reunion created by court decree, *K. Srinivas Rao* v. *D.A. Deepa*, (2013) 5 SCC 226.

Petitioner must approach court with clean hands. Grounds of divorce under Section 13(1) are based on matrimonial offence or fault theory. It is only commission of matrimonial offence by one spouse that entitles the other spouse to seek divorce. Hence if petitioner himself/herself is guilty or at fault, he/she would be disentitled to seek divorce, *Darshan Gupta* v. *Radhika Gupta*, (2013) 9 SCC 1.

In a matrimonial dispute, it would be inappropriate to expect outsiders to come and depose. Family members and sometimes the relatives, friends and neighbours are the most natural witnesses. Veracity of their testimony is to be tested on objective parameters and not to be thrown overboard on ground that witnesses are related to either spouse, *Vishwanath Agrawal* v. *Sarla Vishwanath Agrawal*, (2012) 7 SCC 288 : (2012) 3 SCC (Cri) 347 : (2012) 4 SCC (Civ) 224.

Events occurring subsequent to filing of divorce petition can be taken into consideration, *Vishwanath Agrawal* v. *Sarla Vishwanath Agrawal*, (2012) 7 SCC 288 : (2012) 3 SCC (Cri) 347 : (2012) 4 SCC (Civ) 224.

Under the breakdown theory, divorce should be seen as a solution and an escape route out of a difficult situation. The court, no doubt, should seriously make an endeavour to reconcile the parties; yet, if it is found that the breakdown is irreparable, then divorce should not be withheld, *Samar Ghosh* v. *Jaya Ghosh*, (2007) 4 SCC 511.

On the ground of irretrievable breakdown of marriage, the court must not lightly dissolve a marriage. It is only in extreme circumstances that the court may use this ground for dissolving a marriage, *Shyam Sunder Kohli* v. *Sushma Kohli*, (2004) 7 SCC 747.

Divorce on ground of irretrievable breakdown of marriage is to be granted where marriage is totally unworkable, emotionally dead, beyond salvage and broken down irretrievably, even if facts of case do not provide ground in law on which divorce could be granted. Decree of divorce is granted in such a case to put quietus to all litigation between parties and to save them from further agony where grounds for divorce not provided by legislature in statute, *Manish Goel* v. *Rohini Goel*, (2010) 4 SCC 393 : (2010) 2 SCC (Civ) 162.

▸ ***Cruelty***

'Cruelty' and 'mental disorder' are two separate grounds for grant of divorce, *Vinita Saxena* v. *Pankaj Pandit*, (2006) 3 SCC 778.

The word 'cruelty' is used relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct and one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. There may be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted, *Vinita Saxena* v. *Pankaj Pandit*, (2006) 3 SCC 778.

The instances indicating the 'mental cruelty' in the succeeding paragraphs are only illustrative and not exhaustive:

(*i*) On consideration of the complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make it possible for the parties to live with each other, could come within the board parameters of mental cruelty;

(*ii*) On a comprehensive appraisal of the entire matrimonial life of the parties, if it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party;

(*iii*) Mere coldness or lack of affection cannot amount to cruelty; but frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable;

(*iv*) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of the other for a long time, may lead to mental cruelty;

(*v*) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse;

(*vi*) Sustained unjustifiable conduct and behaviour of one spouse actually affecting the physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty;

(*vii*) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness, causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty;

(*viii*) The conduct must be much more than jealousy, selfishness, possessiveness which cause unhappiness and dissatisfaction and emotional upset, but may not be a ground for grant of divorce on the ground of mental cruelty;

(*ix*) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day-to-day life would not be adequate for grant of divorce on the ground of mental cruelty;

(*x*) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty;

(*xi*) If a husband submits himself for an operation of sterilisation without medical reasons and without the consent or knowledge of his wife and similarly, if the wife undergoes vasectomy

of abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty;

(*xii*) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty;

(*xiii*) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty;

(*xiv*) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie the law in such cases does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty, *Samar Ghosh* v. *Jaya Ghosh*, (2007) 4 SCC 511.

Spouses are undoubtedly supposed and expected to conduct their joint venture as best as they might but it is no function of a court inquiring into a charge of cruelty to philosophise on the modalities of married life. Someone may want to keep late hours to finish the day's work and someone may want to get up early for a morning round of golf. The Court cannot apply to the habits or hobbies of these the test whether a reasonable man situated similarly will behave in a similar fashion, *Narayan Ganesh Dastane* v. *Sucheta Narayan Dastane*, (1975) 2 SCC 326.

"Cruelty" has an inseparable nexus with human conduct and is always dependent on social strata or milieu to which parties belong, their ways of life, relationship, temperaments and emotions that are conditioned by their social status, *Vishwanath Agrawal* v. *Sarla Vishwanath Agrawal*, (2012) 7 SCC 288 : (2012) 3 SCC (Cri) 347 : (2012) 4 SCC (Civ) 224.

Cruelty is evident where one spouse so treats other and manifests such feelings in other, as to cause reasonable apprehension in mind of other that it would be harmful or injurious to reside with other spouse. Cruelty may be physical or mental, *K. Srinivas Rao* v. *D.A. Deepa*, (2013) 5 SCC 226.

Staying together under the same roof is not a precondition for mental cruelty. Spouse can cause mental cruelty by his or her conduct even while he or she is not staying under the same roof, *K. Srinivas Rao* v. *D.A. Deepa*, (2013) 5 SCC 226.

Even refusing to sever tie can constitute mental cruelty after long period of separation between husband and wife, *K. Srinivas Rao* v. *D.A. Deepa*, (2013) 5 SCC 226.

Criminal proceedings/appeal/revision pursued in higher forums despite acquittal singly, and cumulatively amount to mental cruelty warranting grant of divorce. Making unfounded indecent/defamatory allegations against spouse or his/her relatives in pleadings, filing repeated false complaints or cases in court, issuing notices or news items which may have adverse impact on business prospects or job of spouse, etc., held, are all illustrative cases of mental cruelty which would warrant grant of divorce, *K. Srinivas Rao* v. *D.A. Deepa*, (2013) 5 SCC 226.

Mental cruelty in Section 13(1)(ia) is the conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. It must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already

living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case, *V. Bhagat* v. *D. Bhagat*, 1994 (1) SCC 337

What is cruelty in one case may not amount to cruelty in other case. The concept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and their value system. Apart from this, the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system, etc., etc. What may be mental cruelty now may not remain a mental cruelty after a passage of time or *vice versa*. There can never be any strait-jacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances while taking aforementioned factors in consideration, *Vimla Mehra* v. *K.S. Mehra*, (2009) 158 DLT 136.

Section 13(1)(iii) does not make the mere existence of a mental disorder of any degree sufficient in law to justify the dissolution of a marriage. The context in which the ideas of unsoundness of 'mind' and 'mental disorder' occur in the section as grounds for dissolution of a marriage, require the assessment of the degree of the 'mental disorder'. Its degree must be such that the spouse seeking relief cannot reasonably be expected to live with the other. All mental abnormalities are not recognised as grounds for grant of decree. The medical concern against too readily reducing a human being into a functional non-entity and as a negative unit in family or society is law's concern also and is reflected, at least partially, in the requirements of Section 13(1)(iii). The personality disintegration that characterises schizophrenia may be of varying degrees. Not all schizophrenics are characterised by the same intensity of the disease. The burden of proof of the existence of the requisite degree of mental disorder is on the spouse basing the claim on that state of facts, *Ram Narain Gupta* v. *Rameshwari Gupta*, (1988) 4 SCC 247.

Mental cruelty has to be considered in the light of the social status of parties, their education, physical and mental conditions, customs and traditions. Court to draw inference and decide on the basis of the probabilities of the case having regard to the effect on the mind of the complainant spouse because of the acts or omissions of the other spouse. However, where the conduct complained of itself is bad enough and per se unlawful or illegal, the impact or injurious effect on the other spouse need not be considered. In such cases, cruelty will be established if the conduct itself is proved of admitted. To constitute cruelty, the conduct complained of should be "grave and weighty" whereupon it can be concluded that the petitioner spouse cannot be reasonably expected to live with the other spouse, It must be something more serious than "ordinary wear and tear of married life", *A. Jayachandra* v. *Aneel Kaur*, (2005) 2 SCC 22.

Lodging of false complaint against the husband before the police and his employer amounts to mental cruelty, *Pranati Chatterjee* v. *Goutam Chatterjee*, (2006) 3 ICC 176 (Cal DB).

A single instance in isolation is not sufficient for dissolution of marriage on ground of cruelty, *Neelam Kumar* v. *Dayarani*, (2010) 13 SCC 298.

In matrimonial relationship cruelty mean absence of mutual respect and understanding between spouses which embitters relationship. Sometimes it may take form of violence, or at times may just be an attitude or approach. Silence in some situations may also amount to cruelty, *Ravi Kumar* v. *Julmidevi*, (2010) 4 SCC 476 : (2010) 2 SCC (Civ) 185.

To constitute 'cruelty', it is enough that conduct of one of parties is so abnormal and below accepted norm that other spouse could not reasonable be expected to put up with it. Conduct is no longer required to be so atrociously abominable which would cause reasonable apprehension that it would be harmful of injurious to continue cohabitation with other spouse. Hence, it is not necessary to establish physical violence. Continued ill-treatment, cessation of marital intercourse, studied neglect, indifference may lead to inference of cruelty, *Manish Tyagi* v. *Deepak Kumar*, (2010) 4 SCC 339 : (2010) 2 SCC (Civ) 123.

Filing of false criminal complaint against husband and his family members under Section 498-A r/w Section 307 IPC constitutes matrimonial cruelty, *K. Srinivas* v. *K. Sunita*, (2014) 16 SCC 34 : (2015) 3 SCC (Cri) 400 : (2015) 3 SCC (Civ) 415.

Expression "cruelty" has not been defined in Hindu Marriage Act. In cases of Section 13(1)(i-a) "cruelty" is to be taken as such physical or mental behaviour by one spouse towards another which causes a reasonable apprehension that it is not safe for him or her to continue matrimonial relationship. Mental cruelty is necessarily a matter of inference to be drawn from the facts and circumstances of the case. It is settled law that instances of cruelty are not to be taken in isolation but cumulative effect of facts and circumstances emerging from evidence on record and then drawing a fair inference whether plaintiff has been subjected to mental cruelty due to conduct of the other spouse. Instances of "mental cruelty" as set out in *Samar Ghosh*, (2007) 4 SCC 511 are only illustrative and not exhaustive, *Ramchander* v. *Ananta*, (2015) 11 SCC 539 : (2015) 4 SCC (Civ) 791.

Where wife: (i) abusing her husband stating that he was born to a prostitute, (ii) summoning police making false complaints against husband, and (iii) making it impossible for relatives of husband to visit or reside in matrimonial home, held, such acts of wife could not be termed as ordinary wear and tear of marital life as observed by High Court but amounted to cruelty to husband, *Vinod Kumar Subbiah* v. *Saraswathi Palaniappan*, (2015) 8 SCC 336 : (2015) 4 SCC (Civ) 105.

►**Grant of divorce on ground of mental cruelty**—For considering dissolution of marriage at instance of a spouse who alleges mental cruelty, result of such mental cruelty must be such that it is not possible to continue with matrimonial relationship. In other words, wronged party cannot be expected to condone such conduct and continue to live with his/her spouse. Degree of tolerance will vary from one couple to another and court will have to bear in mind background, level of education and also status of parties, in order to determine whether cruelty alleged is sufficient to justify dissolution of marriage, at instance of wronged party, *Joydeep Majumdar* v. *Bharti Jaiswal Majumdar*, (2021) 3 SCC 742.

► ***Impotency***

A normal and healthy sexual relationship is one of the basic ingredients of a happy and harmonious marriage. This may or may not amount to mental cruelty, if it is not possible on account of ill health of one of the spouses depending on the circumstances of the case. But a wilful denial of sexual relationship by a spouse when the other spouse is anxious for it, would amount to mental cruelty, especially when the parties are young and newly married. Refusal to see a specialist and continue treatment for frigidity would be a wilful act depriving the husband of a harmonious sexual relationship and thus cruelty, *Shakuntla Kumari* v. *Om Prakash Ghai*, ILR (1980) 2 Del 1609.

A marriage will be avoided or dissolved on the ground of impotence on the petition of either party if it is proved that at the time of the marriage one of the parties is and continues to be incapable of effecting or permitting its consummation either of some structural defect in the organs of generation which is incurable

and renders complete sexual intercourse impracticable, *Shewanti Bhaurao Dongre* v. *Bhaurao Daulatrao Dongre*, AIR 1971 MP 168.

In construing the provisions of Section 13, it is to be noted that divorce is not generally favoured or encouraged by Courts and is permitted only for very serious and grave reasons. This will become obvious if the provisions of Section 13 are compared with the corresponding provisions for judicial separation. The conditions under which divorce is to be allowed are far more stringent than the conditions under which judicial separation may be granted, *Swarajya Lakshmi* v. *G.G. Padma Rao*, (1974) 1 SCC 58.

Court's satisfaction about permanent breakdown of the marriage may serve as an additional justification for granting divorce, *Saroj Rani* v. *Sudarshan Kumar Chadha*, (1984) 4 SCC 90.

When marriage is dead, emotionally and practically, and there is no chance of its being retrieved, continuance of it would be cruelty within the meaning of Section 13(1)(i-a), *Romesh Chander* v. *Savitri*, (1995) 2 SCC 7.

Reasonable wear and tear between husband and wife constitute only disharmony and not cruelty, *Lakshmi Shanmugham* v. *P.R. Shanmugham*, (1996) 1 ICC 183 (Mad).

Filing of a false complaint under Section 498-A of the Penal Code coupled with threats to the husband of committing suicide and attempting suicide constitutes mental cruelty to him, *Ramratan* v. *Maya*, (2010) 4 Mah LJ 154.

▸ ***Desertion***

Previous cohabitation is essential for pleading desertion, except in cases of mental or physical incapacity or other special circumstances, *Savitri Pandey* v. *Prem Chandra Pandey*, (2002) 2 SCC 73.

Desertion, for the purpose of seeking divorce under the Act, means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent and without reasonable cause. In other words it is a total repudiation of the obligations of marriage. Desertion is not the withdrawal from a place but from a state of things. Desertion means withdrawing from the matrimonial obligations i.e. not permitting or allowing and facilitating cohabitation between the parties. The proof of desertion has to be considered by taking into consideration the concept of marriage which in law legalises the sexual relationship between man and woman in the society for the perpetuation of race, permitting lawful indulgence in passion to prevent licentiousness and for procreation of children. Desertion is not a single Act complete in itself, it is a continuous course of conduct to be determined under the facts and circumstances of each case, *Savitri Pandey* v. *Prem Chandra Pandey*, (2002) 2 SCC 73.

Divorce is a termination of the matrimonial relationship and brings the status of spouses to an end, *Ruma Chakraborty* v. *Sudha Rani Banerjee*, (2005) 8 SCC 140.

Where there is no pleading or prayer made for divorce on ground of desertion but conclusion as to desertion arrived at by courts below in case of it considered to be erroneous, *U. Sree* v. *U. Srinivas*, (2013) 2 SCC 114.

Mere physical separation between spouses for a continuous period of not less than two years immediately proceeding the presentation of the petition would not constitute desertion. The factum of desertion and the intention of party to bring cohabitation permanently to an end are the essential ingredients of legal desertion, *Arundhati Deepak Patil* v. *Deepak Baburao Patil*, (2008) 6 Mah LJ 554.

Desertion means intentional abandonment of one spouse by other without consent of other and without a reasonable cause. There should be animus deserendi on part of deserting spouse. Whether a case of desertion is established or not will depend on peculiar facts of each case. It is a matter of drawing an inference based on facts brought on record by way of evidence. Wife staying for one night in her matrimonial home at time of death of her mother-in-law cannot be said to be resumption of cohabitation, *Debananda Tamuli* v. *Kakumoni Kataky*, (2022) 5 SCC 459.

▸ ***Incurable Disease/Mental Disorder***

Lepromatus leprosy is a virulent and incurable form of leprosy and thus a ground for divorce, *Swarajya Laxmi* v. *G.G. Padma Rao*, (1974) 1 SCC 58.

Infection of HIV virus leading to AIDS is covered by ground of divorce at Section 13(1)(v), *Sunil Lakhotia* v. *Pratima Lakhotia*, (2009) 2 Mah LJ 231.

Recurrence of epilepsy alone will be a ground for annulment of marriage, *V. Balakrishna* v. *V. Lalitha*, (1983) 2 APLJ 42 (SN).

▸ ***Conversion***

Religion is a matter of faith stemming from the depth of the heart and mind. Religion, faith or devotion are not easily interchangeable. If the person feigns to have adopted another religion just for some worldly gain or benefit, it would be religious bigotry. Looked at from this angle, a person who mockingly adopts another religion where plurality of marriage is permitted so as to renounce the previous marriage and desert the wife, he cannot be permitted to take advantage of his exploitation as religion is not a commodity to be exploited. The institution of marriage under every personal law is a sacred institution. Under Hindu law, marriage is a sacrament. Both have to be preserved, *Lily Thomas* v. *Union of India*, (2000) 6 SCC 224 : 2000 SCC (Cri) 1056.

▸ ***Bigamy***

Second marriage is considered void if the previous spouse is living at the time of marriage and the marriage is in subsistence. Woman does not get the status of wife nor does the man get the status of husband, even though they have gone through necessary ceremonies of marriage, *Bajirao Raghoba Tambare* v. *Tolanbai Bhagwan Tonge*, 1979 Mah LJ 693.

The admission of accused cannot in law be treated as evidence of the second marriage having taken place, in an adultery or bigamy case. In such cases it must be proved by the prosecution that the second marriage as a fact has taken place after the performance of the essential ceremonies, *Priya Bala Ghosh* v. *Suresh Chandra Ghosh*, (1971) 1 SCC 864.

Allegations regarding soleminsation of second Marriage by fulfillment of customary rites must be based on cogent evidence. Oral evidence and letters to the effect is not sufficient to draw inference as to performance of ceremonies essential for valid marriage, *Santi Deb Berma* v. *Kanchan Prava Devi*, 1991 Supp (2) SCC 616.

▸ **Dowry.**—The demand for dowry is prohibited under law and amounts to cruelty entitling the wife to get a decree for dissolution of marriage. The evidence of harassment to the wife to meet any unlawful demand for money is necessary to constitute cruelty in criminal law but not under Section 13(1)(i-a), *Shobha Rani* v. *Madhukar Reddi*, (1988) 1 SCC 105 : 1988 SCC (Cri) 60.

Demand by husband of some money from wife having money and assets purely for personal expenses for himself would not constitute a demand for dowry amounting to 'cruelty', *Shobha Rani* v. *Madhukar Reddi*, (1988) 1 SCC 105, 113 : 1988 SCC (Cri) 60.

▸ **Matrimonial Dispute.**—In cases where there is a dispute between husband and wife it is very difficult to unravel the true reason for the dispute. After separation when the relationship turns sour, all sorts of allegations and counter-allegations are made against each other. Evidence of contemporaneous nature therefore plays an important role in such cases as it may reveal the thinking and attitude of the parties towards each other at the relevant time. Such evidence is usually found in the form of letters written by the parties to each other or to their friends and relatives or recorded in any other document of contemporaneous nature, *Deb Narayan Halder* v. *Anushree Halder*, (2003) 11 SCC 303.

▸ **Customary Divorce.**—Customary dissolution of marriage through Panchayat cannot be a basis for divorce under Section 13, *Mahindra Nath Yadav* v. *Sheela Devi*, (2010) 9 SCC 484 : (2010) 3 SCC (Civ) 840.

▸ **Rights after Dissolution of Marriage.**—Wife cannot use the name of husband after their marriage has been dissolved, *Neelam Dadasaheb Shewale* v. *Dadasaheb Bandu Shewale*, (2010) 2 Mah LJ 952.

▸ **"Irretrievable breakdown of marriage".**—"Irretrievable breakdown of marriage" though not a statutory ground of divorce as yet, but Supreme Court in exercise of its plenary powers under Article 142 of Constitution has powers "to pass such decree or make such order as is necessary for doing complete justice in any case or order pending before it", *K. Srinivas* v. *K. Sunita*, (2014) 16 SCC 34 : (2015) 3 SCC (Cri) 400 : (2015) 3 SCC (Civ) 415.

Irretrievable breakdown of marriage is not law for granting divorce, *Manju Kumari Singh* v. *Avinash Kumar Singh*, (2018) 17 SCC 383.

▸ **Mental Cruelty.**—False and vexatious criminal proceedings under Sections 498-A/506/34 IPC against husband and his family, by wife after filing of divorce petition, held, can be considered, *Malathi Ravi* v. *B.V. Ravi*, (2014) 7 SCC 640 : (2014) 3 SCC (Civ) 774.

Denial of sexual intercourse by wife for long time without sufficient reason amounts to "mental cruelty", *Vidhya Vishwanathan* v. *Kartik Balakrishnan*, (2014) 15 SCC 21 : (2015) 4 SCC (Civ) 148.

Mere allegations of illegitimate relationship, even if due to misunderstandings, does not amount to inflicting mental cruelty. Wife initiated legal proceedings as shield against assault to protect herself and her own property, which cannot be termed as cruelty leading to inference of irretrievable breakdown of marriage. The order of the High Court dissolving marriage on pre-conceived notion of irretrievable breakdown of marriage was not proper. Hence, Divorce decree, reversed, *Ravinder Kaur* v. *Manjeet Singh*, (2019) 8 SCC 308.

Mere lodging of complaint or FIR cannot ipso facto be treated as cruelty, but, when a person undergoes a trial in which he is acquitted of allegation of offence under Section 498-A IPC, levelled by wife against husband, it cannot be accepted that no cruelty has been meted out on husband, particularly when serious allegations were made, *Narasimha Sastry* v. *Suneela Rani*, (2020) 18 SCC 247.

▸ **Exercise of power by Supreme Court under Article 142.**—There is no necessity of consent by both parties, for exercise of powers under Article 142 of the Constitution to dissolve marriage on ground of irretrievable breakdown of marriage. Where neither grounds specified under Section 13 for divorce established nor mutual consent between parties as per Section 13-B exists and all efforts to save marriage failed, Supreme Court, considering facts and circumstances of the case on being satisfied that marriage has

irretrievably broken down, can dissolve such marital relationship which is already dead, with a view to do complete justice between parties in exercise of power under Article 142 of the Constitution, *R. Srinivas Kumar* v. *R. Shametha*, (2019) 9 SCC 409.

▸ **Facts arising subsequent to filing of divorce petition.**—Framing of substantial question of law on basis of criminal complaint filed by wife alleging harassment for dowry, said complaint having been filed subsequent to filing of divorce petition by husband on ground of mental cruelty, not proper, *Mangayakarasi* v. *M. Yuvaraj*, (2020) 3 SCC 786.

[35][**13-A. Alternate relief in divorce proceedings.**—In any proceeding under this Act, on a petition for dissolution of marriage by a decree of divorce, except in so far as the petition is founded on the grounds mentioned in clauses (*ii*), (*vi*) and (*vii*) of sub-section (1) of Section 13, the court may, if it considers it just so to do having regard to the circumstances of the case, pass instead a decree for judicial separation.]

[36][**13-B. Divorce by mutual consent.**—(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, on the ground that they have been living separately for a period of 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 not 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.]

CASE LAW ▸ **Ingredients.**—For granting divorce under Section 13 B, three ingredients have to be satisfied i.e. (i) the parties had been living separately for a period of more than a year, (ii) they had not been able to live together and (iii) that they have mutually agreed to dissolve the marriage, *Miten* v. *Union of India*, (2008) 5 Mah LJ 27.

▸ **Interpretation/Construction.**—The expression 'living separately' in Section 13-B (1), means not having conjugal relationship even if living under the same roof, *Sureshta Devi (Smt)* v. *Om Prakash*, (1991) 2 SCC 25 : 1991 SCC (Cri) 292.

▸ **Jurisdiction.**—No court can assume jurisdiction to dissolve a Hindu marriage simply on basis of consent of the parties dehors grounds enumerated under Section 13, unless consenting parties proceed under Section 13-B, *Sanjeeta Das* v. *Tapan Kumar Mohanty*, (2010) 10 SCC 222 : (2010) 4 KLT 101 : (2010) 83 ALR 231.

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35. *Ins.* by Act 68 of 1976 (w.e.f. 27-5-1976).
36. *Ins.* by Act 68 of 1976 (w.e.f. 27-5-1976).

The expression 'have not been able to live together' in Section 13-B (1) indicates a broken down marriage with no possibility of reconciliation, *Sureshta Devi (Smt)* v. *Om Prakash*, (1991) 2 SCC 25 : 1991 SCC (Cri) 292.

▸ **Divorce by Mutual Consent.**—In exercise of its extraordinary power, Supreme Court can convert proceedings under Section 13 into one under Section 13-B and grant decree for mutual divorce without waiting for statutory period of six months by applying doctrine of irretrievable breakdown of marriage, *Anil Kumar Jain* v. *Maya Jain*, (2009) 10 SCC 415.

Cooling-off period of six months directory. For determining whether provision is mandatory or directory, language alone is not decisive and court must have regard to context, subject-matter and object of provision. Court can waive off statutory period under Section 13-B(2) in its discretion after considering following factors: (i) statutory period of six months specified in Section 13-B(2) in addition to statutory period of one year separation under Section 13-B(1) is already over before first motion itself; (ii) no likelihood of reconciliation between parties; (iii) parties have genuinely settled all their differences including alimony, custody of child or any other pending issue; and (iv) whether waiting period would only prolong agony. Thus, cooling-off period being directory, it is open to court to exercise its discretion in facts and circumstances of each case where there is no possibility of parties resuming cohabitation and there are chances of alternative rehabilitation. Moreover, in conducting such proceedings the court can also use the medium of videoconferencing and also permit genuine representation of the parties through close relations such as parents or siblings where the parties are unable to appear in person for any just and valid reason as may satisfy the court, to advance the interest of justice, *Amardeep Singh* v. *Harveen Kaur*, (2017) 8 SCC 746.

▸ **Withdrawl of consent.**—A party to the petition for divorce by mutual consent can unilaterally withdraw his consent at any time till passing of the divorce decree. If subsequent motion seeking divorce decree under Section 13-B (2) is not 'of both the parties' because of withdrawal of consent by one of the parties, court gets no jurisdiction to pass the decree. Mutual consent should continue till passing of the decree, *Sureshta Devi* v. *Om Prakash*, (1991) 2 SCC 25 : 1991 SCC (Cri) 292.

Consent can be withdrawn at any before decree of divorce is passed. Important requirement for grant of a divorce by mutual consent is free consent of both the parties. Unless there is complete agreement between parties for dissolution of marriage and unless court is completely satisfied in respect thereof, it cannot grant a decree for divorce by mutual consent, *Hitesh Bhatnagar* v. *Deepa Bhatnagar*, (2011) 5 SCC 234.

▸ **Waiver of statutory period.**—It is obligatory for courts to make last minute efforts to save marriage but where there is no possibility of re-union and when process of divorce by mutual consent has been adopted, it is also open to court to waive 6 months' period. Section 13 B & 13 B (2) is only directory and not mandatory and if held to be mandatory it would frustrate much liberalised concept of divorce by mutual consent, *K. Thiruvengadam* v. *Nil*, (2007) 5 CTC 870.

Waiver of statutory period of six months can only be granted by Supreme Court in exercise of its jurisdiction under Article 142 of the Constitution. The said statutory period has been prescribed for giving opportunity to parties to reconcile and withdraw petition for dissolution of marriage, *Manish Goel* v. *Rohini Goel*, (2010) 4 SCC 393 : (2010) 2 SCC (Civ) 162.

▸ **Waiver.**—Term "waiver" means abandonment of a right which is express or implied form conduct. A waiver is relinquishment of a known right, *Principal Judge, Family Court* v. *Nil*, (2008) 5 Mah LJ 222.

▸ **Duty of Court.**—It is the duty of Court to identify whether the consent for divorce is obtained by force, fraud or undue influence on the very first date of proceeding, *Sushama* v. *Pramod*, (2009) 81 AIC 599 (Bom).

▸ **Appeal.**—Appeal against the decree of divorce on mutual consent would be maintainable, *Sushama* v. *Pramod*, (2009) 81 AIC 599 (Bom).

▸ **Second motion.**—If the second motion is not made within period of 18 months, then court is not bound to pass a decree of divorce by mutual consent, *Hitesh Bhatnagar* v. *Deepa Bhatnagar*, (2011) 5 SCC 234.

14. No petition for divorce to be presented within one year of marriage.—(1) Notwithstanding anything contained in this Act, it shall not be competent for any court to entertain any petition for dissolution of a marriage by a decree of divorce, [37][unless at the date of the presentation of the petition one year has elapsed] since the date of the marriage:

Provided that the Court may, upon application made to it in accordance with such rules as may be made by the High Court in that behalf, allow a petition to be presented [38][before one year has elapsed] since the date of the marriage on the ground that the case is one of exceptional hardship to the petitioner or of exceptional depravity on the part of the respondent, but if it appears to the Court at the hearing of the petition that the petitioner obtained leave to present the petition by any misrepresentation or concealment of the nature of the case, the court may, if it pronounces a decree, do so subject to the condition that the decree shall not have effect until after the [39][expiry of one year] from the date of the marriage or may dismiss the petition without prejudice to any petition which may be brought after the [40][expiration of the said one year] upon the same or substantially the same facts as those alleged in support of the petition so dismissed.

(2) In disposing of any application under this section for leave to present a petition for divorce the [41][expiration of one year] from the date of the marriage, the Court shall have regard to the interests of any children of the marriage and to the question whether there is a reasonable probability of a reconciliation between the parties before the expiration of the [42][said one year].

CASE LAW ▸ **Limitation.**—Petition for annulment of marriage filed after 19 months on the ground that wife was at the time of marriage pregnant by some person other than the husband is barred by limitation. The period of limitation of one year has to be computed from the date of marriage and not from the date of discovery of the fact of her pregnancy, *Vijay Jaiswal* v. *Nisha Jaiswal*, (2009) 73 AIC 911 (MP).

Act did not contain any provision for consequences of non-compliance of time-limit prescribed under the Act. Provision fixing time-limit cannot be construed as mandatory and it is directory in nature, *G. Ganesh Babu* v. *A.P. Arthi*, (2013) 2 CTC 320 (Mad).

15. Divorced persons when may marry again.—When a marriage has been dissolved by a decree of divorce and either there is no right of appeal against the decree or, if there is such a right of appeal the time for appealing has expired without

37. *Subs.* by Act 68 of 1976 (w.e.f. 27-5-1976).
38. *Subs.* by Act 68 of 1976 (w.e.f. 27-5-1976).
39. *Subs.* by Act 68 of 1976 (w.e.f. 27-5-1976).
40. *Subs.* by Act 68 of 1976 (w.e.f. 27-5-1976).
41. *Subs.* by Act 68 of 1976 (w.e.f. 27-5-1976).
42. *Subs.* by Act 68 of 1976 (w.e.f. 27-5-1976).

an appeal having been presented or an appeal has been presented but has been dismissed, it shall be lawful for either party to the marriage to marry again.

[43][* * *]

CASE LAW ▸ Applicability.—If provision of law prescribes incapacity to marry and yet the person marries while under that incapacity, marriage cannot be declared void in absence of express provision that declares nullity, *Anurag Mittal* v. *Shaily Mishra Mittal*, (2018) 9 SCC 691.

▸**Applicability of bar.**— Bar under Section 15 applies only when appeal is filed within period of limitation. It does not apply thereafter, even upon condonation of delay, unless divorce decree is stayed or there is interim order of court restraining parties or any of them from remarriage during pendency of appeal. When the appeal against divorce decree has been filed after expiry of period of limitation therefore, in such a situation, first marriage does not subsist or cannot be presumed to be subsisting. Thus, a subsequent marriage contracted during pendency of such appeal is certainly not ab initio void, *Krishnaveni Rai* v. *Pankaj Rai*, (2020) 11 SCC 253.

▸ **Interpretation of.**—Restriction placed on second marriage under Section 15 till dismissal of appeal, held, would not apply to such cases, where the facts establish, that the parties have decided not to pursue appeal, *Anurag Mittal* v. *Shaily Mishra Mittal*, (2018) 9 SCC 691.

▸ **Remarriage.**—The phrase "marriage has been dissolved by decree of divorce" in Section 15 means where the relationship of marriage has been brought to an end by intervention of court by a decree. This decree will include a decree under Sections 11, 12 or 13. The legislature so far as decrees under Section 13 are concerned wanted the right of appeal to survive but in decrees under Sections 11 or 12 the legislature wanted the right of appeal to be subject to the will of the other party, *Lata Kamat* v. *Vilas*, (1989) 2 SCC 613.

Remarriage is permissible only after the lapse of the Limitation period for filing SLP i.e. after 90 days from the date of decree of dissolution of marriage awarded by the High Court as prescribed under Article 133(c) of the Limitation Act and after ascertaining the fate of the appeal in the case such an appeal is filed. Hence, the fact that the successful party had remarried before the completion of the said limitation period would not render the appeal by the other party to the Supreme Court infructuous, *Tejinder Kaur* v. *Gurmit Singh*, (1988) 2 SCC 90 : 1988 SCC (Cri) 313.

Where a marriage has been dissolved, either party to the marriage can lawfully marry only when there is no right of appeal against the decree dissolving the marriage or, if there is such a right of appeal, the time for filing appeal has expired without an appeal having been presented, or if an appeal has been presented it has been dismissed. It is true that Section 15 does not in terms apply to a case of an application for special leave to Supreme Court. Even so, the party who has won in the High Court and got a decree of dissolution of marriage cannot by marrying immediately after the High Court's decree and thus take away from the losing party the chance of presenting an application for special leave, *Chandra Mohini Srivastava* v. *Avinash Prasad Srivastava*, AIR 1967 SC 581.

▸ **Pendency of appeal.**—Section 15 prohibits from contracting second marriage during the pendency of appeal even after expiry of period of limitation, *Kajal Chowdhury* v. *Dilip Chowdhury*, (2004) 2 CHN 191.

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43. Proviso *omitted* by Act 68 of 1976 (w.e.f. 27-5-1976). Prior to omission it read as:
"Provided that it shall not be lawful for the respective parties to marry again unless at the date of such marriage at least one year has elapsed from the date of the decree in the court of the first instance."

[44][**16. Legitimacy of children of void and voidable marriages.**—(1) Notwithstanding that a marriage is null and void under Section 11, any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate, whether such child is born before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976), and whether or not a decree of nullity is granted in respect of that marriage under this Act and whether or not the marriage is held to be void otherwise than on a petition under this Act.

(2) Where a decree of nullity is granted in respect of a voidable marriage under Section 12, any child begotten or conceived before the decree is made, who would have been the legitimate child of the parties to the marriage if at the date of the decree it had been dissolved instead of being annulled, shall be deemed to be their legitimate child notwithstanding the decree of nullity.

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

CASE LAW ▸ Legitimacy of Child.—Continuously living together under same roof and cohabiting for a number of years would raise presumption of living as husband and wife and the children born out of the relationship are legitimate and are entitled to share in the properties devolving on their father by virtue of settlement thereof made by the father in their favour, *S.P.S. Balasubramanyam* v. *Suruttayan*, 1992 Supp (2) SCC 304.

Children born out of void or voidable marriages will be illegitimate but such status would entitle them to succeed to the estate of the parents but not the properties of other relatives of the family, *G. Srinivas* v. *G. Ramalingam*, (2002) 2 APLJ 495 (HC).

▸ **Relative scope and operation of Sections 16(1) and (3).**—Section 16(3), held, does not in any manner affect the principle declared in Section 16(1) in regard to the legitimacy of the child, *Union of India* v. *V.R. Tripathi*, (2019) 14 SCC 646.

▸ **Maintenance/Alimony.**—A woman who is not legally wedded wife is not entitled for maintenance from her husband under the provisions of the Criminal Procedure Code, 1973, *Yogesh Chandra Sheel (Rai)* v. *Sandhya Rani Sheel*, (2006) 39 AIC 833 (Chhatt).

▸ **Marital Status, Determination/Proof of.**—Clear proof of subsistence of an earlier marriage at the time of solemnizing the second marriage and not mere living as husband and wife is essential to declare the marriage void, *Vimala (K.)* v. *Veeraswamy (K.)*, (1991) 2 SCC 375 : 1991 SCC (Cri) 442.

▸ **Rights of illegitimate children.**—Children of void marriage are considered legitimate. A Hindu died intestate and the children of the deceased born out of void marriage were entitled to a share in the family pension, death-cum-retiral benefits and gratuity, *Rameshwari Devi* v. *State of Bihar*, (2000) 2 SCC 431.

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44. *Subs.* by Act 68 of 1976 (w.e.f. 27-5-1976).

A child born of void or voidable marriage is not entitled to claim inheritance in ancestral coparcenary property but is entitled only to claim a share in self-acquired properties, *Bharatha Matha* v. *R. Vijaya Renganathan*, (2010) 11 SCC 483, *Neelamma* v. *Sarojamma*, (2006) 9 SCC 612.

Legitimacy is a matter of status. The social status of children is determined by the act of their parents. If they have entered in to a valid marriage then the children are legitimate but if they commit a folly, out of which children are born then those children, are considered illegitimate. Parliament enacted Section 16 to protect the legitimacy of those children who are born out of void or voidable marriages, *Parayankandiyal Eravath Kanapravan* v. *Kalliani Amma*, (1996) 4 SCC 76.

By virtue of Section 16(1), if the marriage of child's mother with her previous husband was not legally dissolved, it would not render the child born to her second marriage illegitimate and such child has a right to succeed to the property of his father, *Gurnam Kaur* v. *Puran Singh*, (1996) 2 SCC 567.

Children of a void or voidable marriage are always legitimate, even if born before the marriage not contracted bona fide, *Shalini Ballikar* v. *Aidem Naique*, (2005) 36 AIC 850 (Bom).

Children born out of null and void (second) marriage are entitled to inherit property of father with other heirs, *Bhogadi Kannababu* v. *Vuggina Pydamma*, (2006) 5 SCC 532, *Maruti Rau Mane* v. *Shrikant Maruti Mane*, (2007) 3 Mah LJ 813.

Illegitimate children of a coparcener in joint Hindu family will not have any right by birth in the ancestral joint family property. Such children would, for a limited purpose of inheritance from the natural father, be entitled to inherit personal interest of the father, and that too after father's death, *Maruti Rau Mane* v. *Shrikant Maruti Mane*, (2007) 57 AIC 297 (Bom).

Section 16 of the Act intends to bring about social reforms, conferment of social status of legitimacy on a group of children, otherwise treated as illegitimate, as its prime object, *Bharatha Matha* v. *R. Vijaya Renganathan*, (2010) 11 SCC 483.

▸ **Presumption of legitimacy.**—It is also well settled that the presumption of legitimacy is a presumption of law. When a child is born from a wedlock, there is a presumption in favour of his legitimacy and presumption of legitimacy largely depends on the presumed fact than the parties to a marriage have necessary access to each other when a divorce petition is filed and specially, when the husband did not assert that the son of the wife was a consequence of illicit relationship with some third person, *Ramkanya Bai* v. *Bharatram*, (2010) 1 SCC 85.

17. Punishment of bigamy.—Any marriage between two Hindus solemnized after the commencement of this Act is void if at the date of such marriage either party had a husband or wife living; and the provisions of Sections 494 and 495 of the Indian Penal Code (45 of 1860) shall apply accordingly.

STATE AMENDMENTS

[45][JAMMU AND KASHMIR.—Its application to the State of Jammu & Kashmir, in Section 17 for the words "Indian Penal Code, 1860" *substitute* the words "Ranbir Penal Code, 1889 (Act 12 of 1889)".

CASE LAW ▸ Bigamy.—Mere conversion does not bring to an end the marital ties unless a decree for divorce on that ground is obtained from the court. Till a decree is passed, the marriage subsists. Any other

45. J&K Act 8 of 1955, S. 3 and Sch. (w.e.f. 10-11-1955).

marriage, during the subsistence of the first marriage would constitute an offence under Section 494 read with Section 17 of the Hindu Marriage Act, 1955 and the person, in spite of his conversion to some other religion, would be liable to be prosecuted for the offence of bigamy. It also follows that if the first marriage was solemnised under the Hindu Marriage Act, the 'husband' or the 'wife', by mere conversion to another religion, cannot bring to an end the marital ties already established on account of a valid marriage having been performed between them. So long as that marriage subsists, another marriage cannot be performed, not even under any other personal law, and on such marriage being performed, the person would be liable to be prosecuted for the offence under Section 494 IPC, *Lily Thomas* v. *Union of India*, (2000) 6 SCC 224

18. Punishment for contravention of certain other conditions for a Hindu marriage.—Every person who procures a marriage of himself or herself to be solemnized under this Act in contravention of the conditions specified in clauses (*iii*), (*iv*) [46][and (*v*)] of Section 5 shall be punishable—

[47][(*a*) in the case of a contravention of the condition specified in clause (*iii*) of Section 5, with rigorous imprisonment which may extend to two years, or with fine which may extend to one lakh rupees, or with both;]

(*b*) in the case of a contravention of the condition specified in clause (*iv*) or clause (*v*) of Section 5, with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both [48][* * *];

(*c*) [49][* * *]

CASE LAW ▸ Child Marriages.—Marriage in contravention of age-limits prescribed under the Act neither void nor voidable though punishable under Section 18 of the Act, *Jiten Bouri* v. *State of W.B.*, (2003) 11 AIC 437 (Cal) : (2003) 2 Cal LT 457.

JURISDICTION AND PROCEDURE

[50]**[19. Court to which petition shall be presented.**—(1) Every petition under this Act shall be presented to the district court within the local limits of whose ordinary original civil jurisdiction—

(*i*) the marriage was solemnized, or

(*ii*) the respondent, at the time of the presentation of the petition resides, or

(*iii*) the parties to the marriage last resided together, or

[51][(*iii-a*) in case the wife is the petitioner, where she is residing on the date of presentation of the petition, or]

(*iv*) the petitioner is residing at the time of the presentation of the petition, in a case where the respondent is, at that time, residing outside the territories to which this Act extends, or has not been heard of as being

46. *Subs.* by Act 2 of 1978, S. 6 and Sch., for the words "(*v*) and (*vi*)" (w.e.f. 1-10-1978).
47. *Subs.* by Act 6 of 2007, S. 20 (w.e.f. 1-1-2007).
48. The word "and" *omitted* by Act 2 of 1978, S. 6 and Sch. (w.e.f. 1-10-1978).
49. *Omitted* by Act 2 of 1978, S. 6 and Sch. (w.e.f. 1-10-1978). Prior to omission it read as:
"(*c*) in the case of a contravention of the condition specified in clause (*vi*) of Section 5, with fine which may extend to one thousand rupees."
50. *Subs.* by Act 68 of 1976 (w.e.f. 27-5-1976).
51. *Ins.* by Act 50 of 2003, S. 4 (w.e.f. 23-12-2003).

alive for a period of seven years or more by those persons who would naturally have heard of him if he were alive.]

CASE LAW ▸ Interpretation/Construction.—In its ordinary sense 'residence' is more or less of a permanent character. The expression "resides" means to make an abode for a considerable time; to dwell permanently or for a length of time; to have a settled abode for a time. It is the place where a person has a fixed home or abode. Where there is such fixed home or such abode at one place, his legal and actual place of residence is the same and he cannot be said to reside at any other place where he had gone on a casual or temporary visit. But if he has no established home, his actual and physical habitation is the place where he actually or personally resides. The word "resides" in the context of Section 19(ii) denotes the actual place of residence of the concerned party at the commencement of the proceedings and not the place of origin, *Jeewanti Pandey* v. *Kishan Chandra Pandey*, (1981) 4 SCC 517.

▸ **Jurisdiction.**—Party to proceedings filed in a court governed by the provisions of the Civil Procedure Code, regardless of his/her domicile, is bound to and must invoke the provisions of the same Code for appropriate relief or direction in those proceedings, *Shashi Leekha* v. *Sheila Shashi Leekha*, (2012) 6 Mah LJ 594 (Bom).

It is settled law that once the court holds that it has no jurisdiction in the matter, it should not consider the merits of the matter, *Jagraj Singh* v. *Birpal Kaur*, (2007) 2 SCC 564.

Section 19 permits petitioner to file petition in Court whose jurisdiction petitioner resides. Just because other party to proceedings resides outside territory to which Act applies, same cannot disentitle petitioner to move Court within whose jurisdiction she resides. Right of wife under section cannot be taken away by a technical plea that husband is neither a citizen nor a domicile in India, *R. Sridharan* v. *Presiding Officer, Principal Family Court, Chennai*, (2010) 4 CTC 822.

▸ **Decree passed by the foreign court.**—The decree dissolving the marriage passed by the foreign court is without jurisdiction according to Hindu Marriage Act, if neither the marriage is celebrated nor the party last resided together nor the respondent resided within the jurisdiction of that court. Residence does not mean a temporary residence for the purpose of obtaining divorce but habitual residence or residence which is intended to be permanent for future as well, *Narasimha Rao* v. *Venkata Lakshmi*, (1991) 3 SCC 451 : 1991 SCC (Cri) 626.

▸ **Family Court.**—After the establishment of the Family Courts, the words 'district court' in Section 19 of the Hindu Marriage Act, 1955 shall be deemed to have been substituted by the words "Family Court" as per Section 7 of the Family Courts Act, 1984 in respect of the area over which it has territorial jurisdiction. The notification issued under Section 3 of the Family Courts has to be read with the provision relating to conferral of the territorial jurisdiction under the Hindu Marriage Act, 1955 in respect of the cases arising under that Act, *Arjun Singhal* v. *Pushpa Karwal*, (2003) 3 MP LJ 80.

▸ **Transfer of proceedings.**—Inherent jurisdiction under this section is not only to stay proceedings at inconvenient forum but to transfer proceedings to alternative forum which is more convenient for interest of parties and which serves ends of justice. Directions issued to provide alternatives to seeking transfer of proceedings, *Krishna Veni Nagam* v. *Harish Nagam*, (2017) 4 SCC 150.

20. Contents and verification of petitions.—(1) Every petition presented under this Act shall state as distinctly as the nature of the case permits the facts on

which the claim to relief is founded, [52][and except in a petition under Section 11, shall also state] that there is no collusion between the petitioner and the other party to the marriage.

(2) The statements contained in every petition under this Act shall be verified by the petitioner or some other competent person in the manner required by law for the verification of plaints, and may, at the hearing, be referred to as evidence.

21. Application of Act 5 of 1908.—Subject to the other provisions contained in this Act and to such rules as the High Court may make in this behalf, all proceedings under this Act shall be regulated, as far as may be, by the Code of Civil Procedure, 1908.

STATE AMENDMENTS

JAMMU AND KASHMIR.—[53] In its application to Jammu & Kashmir, in Section 21, for the words "Code of Civil Procedure, 1908 (5 of 1908)", *substitute* the words "Code of Civil Procedure, 1977 (Act 10 of 1977)".

CASE LAW ▸ Exercise of Power.—Sections 21 and 21-A of the Act does not exclude the Supreme Court's jurisdiction under Section 25, CPC to entertain an application for transfer of suit filed under the Hindu Marriage Act, *Guda Vijayalakshmi* v. *Guda Ramchandra Sekhara Sastry*, (1981) 2 SCC 646 : 1981 SCC (Cri) 574.

In matrimonial disputes court has inherent power to grant temporary injunction under Section 151, Civil Procedure Code, 1908, *Pratiksha* v. *Dinkar Tapaswi*, (2002) 1 MP LJ 68.

[54]**[21-A. Power to transfer petitions in certain cases.**—(1) Where—

(*a*) a petition under this Act has been presented to a district court having jurisdiction by a party to a marriage praying for a decree for judicial separation under Section 10 or for a decree of divorce under Section 13, and

(*b*) another petition under this Act has been presented thereafter by the other party to the marriage praying for a decree for judicial separation under Section 10 or for a decree of divorce under Section 13 on any ground, whether in the same district court or in a different district court, in the same State or in a different State.

the petitions shall be dealt with as specified in sub-section (2).

(2) In a case where sub-section (1) applies,—

(*a*) if the petitions are presented to the same district court, both the petitions shall be tried and heard together by that district court;

(*b*) if the petitions are presented to different district courts, the petition presented later shall be transferred to the district court in which the earlier petition was presented and both the petitions shall be heard and disposed of together by the district court in which the earlier petition was presented.

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52. *Subs.* by Act 68 of 1976 (w.e.f. 27-5-1976).
53. *See* J&K Act 8 of 1955, S. 3 and Sch. (w.e.f. 10-11-1955).
54. *Ins.* by Act 68 of 1976 (w.e.f. 27-5-1976).

(3) In a case where clause (*b*) of sub-section (2) applies, the court or the Government, as the case may be, competent under the Code of Civil Procedure, 1908 (5 of 1908), to transfer any suit or proceeding from the district court in which the later petition has been presented to the district court in which the earlier petition is pending, shall exercise its powers to transfer such later petition as if it had been empowered so to do under the said Code.

CASE LAW ▸ Exercise of Power.—Section 24 CPC does not exclude the discretionary jurisdiction of the High Court to transfer a petition filed under the Hindu Marriage Act from one Court to another. Section 21-A of Hindu Marriage Act is not applicable when there is only one application for divorce or judicial separation. The nature of the power contained in Section 24 of CPC, 1908 is discretionary in character while the power contained in Section 21-A of the Hindu Marriage Act is absolute, *T. Ramadevi* v. *T.V. Subrahmanyam*, (1981) 2 AP LJ 22 (SN).

[55][**21-B. Special provision relating to trial and disposal of petitions under the Act.**—(1) The trial of a petition under this Act, shall, do as far as is practicable consistently with the interests of justice in respect of the trial, be continued from day to day until its conclusion unless the court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded.

(2) Every petition under this Act shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date of service of notice of the petition on the respondent.

(3) Every appeal under this Act shall be heard as expeditiously as possible and endeavour shall be made to conclude the hearing within three months from the date of service of notice of appeal on the respondent.]

[56][**21-C. Documentary evidence.**—Notwithstanding anything in any enactment to the contrary, no document shall be inadmissible in evidence in any proceeding at the trial of a petition under this Act on the ground that it is not duly stamped or registered.]

[57][**22. Proceedings to be in camera and may not be printed or published.**—(1) Every proceeding under this Act shall be conducted *in camera* and it shall not be lawful for any person to print or publish any matter in relation to any such proceeding except a judgment of the High Court or of the Supreme Court printed or published with the previous permission of the Court.

(2) If any person prints or publishes any matter in contravention of the provisions contained in sub-section (1), he shall be punishable with fine which may extend to one thousand rupees.]

23. Decree in proceedings.—(1) In any proceeding under this Act, whether defended or not, if the court is satisfied that—

55. *Ins.* by Act 68 of 1976 (w.e.f. 27-5-1976).
56. *Ins.* by Act 68 of 1976 (w.e.f. 27-5-1976).
57. *Subs.* by Act 68 of 1976 (w.e.f. 27-5-1976).

(*a*) any of the grounds for granting relief exists and the petitioner [58][except in cases where the relief is sought by him on the ground specified in sub-clause (*a*), sub-clause (*b*) or sub-clause (*c*) of clause (*ii*) of Section 5] is not in anyway taking advantage of his or her own wrong or disability for the purpose of such relief, and

(*b*) where the ground of the petition is the ground specified [59][* * *] in clause (*i*) of sub-section (1) of Section 13, the petitioner has not in any manner been accessory to or connived at or condoned the act or acts complained of, or where the ground of the petition is cruelty the petitioner has not in any manner condoned the cruelty, and

[60][(*bb*)when a divorce is sought on the ground of mutual consent, such consent has not been obtained by force, fraud or under influence: and]

(*c*) [61][the petition (not being a petition presented under Section 11)] is not presented or prosecuted in collusion with the respondent, and

(*d*) there has not been any unnecessary or improper delay in instituting the proceeding, and

(*e*) there is no other legal ground why relief should not be granted, then, and in such a case, but not otherwise, the court shall decree such relief accordingly.

(2) Before proceeding to grant any relief under this Act, it shall be the duty of the court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about a reconciliation between the parties:

[62][Provided that nothing contained in this sub-section shall apply to any proceeding wherein relief is sought on any of the grounds specified in clause (*ii*), clause (*iii*), clause (*iv*), clause (*v*), clause (*vi*) or clause (*vii*) of sub-section (1) of Section 13.

(3) For the purpose of aiding the court in bringing about such reconciliation, the court may, if the parties so desire or if the court thinks it just and proper so to do adjourn the proceedings for a reasonable period not exceeding fifteen days and refer the matter to any person named by the parties in this behalf or to any person nominated by the court if the parties fail to name any person, with directions to report to the court, as to whether reconciliation can be and has been, effected and the court shall in disposing of the proceeding have due regard to the report.

(4) In every case where a marriage is dissolved by a decree of divorce, the court passing the decree shall give a copy thereof free of cost to each of the parties.]

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58. *Ins.* by Act 68 of 1976 (w.e.f. 27-5-1976).
59. The words and figures "in clause (*f*) of sub-section (1) of Section 10, or" *Omitted* by Act 68 of 1976 (w.e.f. 27-5-1976).
60. *Ins.* by Act 68 of 1976 (w.e.f. 27-5-1976).
61. *Subs.* by Act 68 of 1976 (w.e.f. 27-5-1976).
62. *Ins.* by Act 68 of 1976 (w.e.f. 27-5-1976).

CASE LAW ▸ Interpretation.—The 'wrong' under Section 23(1)(a) has to be something more than mere disinclination to agree to an offer of reunion; it must be misconduct serious enough to justify denial of the relief to which the husband or the wife is otherwise entitled. A husband refusing to cohabit with his wife for a year or more despite a consensual, but non-collusive, decree of conjugal rights against him cannot be said to take advantage of his own wrong under Section 23(1)(a) if he seeks to base his petition for divorce under Section 13(1-A)(*ii*) of the Act on such non-cohabitation, *Saroj Rani* v. *Sudarshan Kumar Chadha*, (1984) 4 SCC 90.

"Wrong" within the meaning of Section 23(1)(a) has been held to imply something more than a mere disinclination to agree to an offer of reunion. Mere disinclination or silence upon receipt of letters inviting spouse for cohabitation has not been accepted to constitute a wrong under Section 23(1)(a), so as to disentitle such spouse, keeping only silence, to the benefit of statutory right flowing from Section 13(1-A), *Prabhakar* v. *Shantabai*, (2008) 2 Mah LJ 794, *Dharmendra Kumar* v. *Usha Kumar*, (1977) 4 SCC 12.

Condonation means forgiveness of the matrimonial offence and the restoration of offending spouse to the same position as he or she occupied before the offence was committed. To constitute condonation there must be, therefore, two things: forgiveness and restoration. But condonation is always subject to the implied condition that the offending spouse will not commit a fresh matrimonial offence either of the same variety as the one condoned or of any other variety. Condoned cruelty can therefor be revived, say by desertion or adultery. 'Condonation' under Section 23(1)(b) therefore means conditional forgiveness, the implied condition being that no further matrimonial offence shall be committed, *Narayan Ganesh Dastane* v. *Sucheta Narayan Dastane*, (1975) 2 SCC 326.

▸ **Re-conciliation.**—A petition for divorce is not like any other commercial suit. A divorce not only affects the parties, their children, if any, and their families but the society also feels its reverberations. Stress should always be on preserving the institution of marriage. That is the requirement of law. For the purpose of settlement of family disputes emphasis is 'laid on conciliation and achieving socially desirable results' and eliminating adherence to rigid rules of procedure and evidence. Rules of procedures are meant to subserve the cause of justice and not to frustrate it. Section 23 of the Hindu Marriage Act mandates the court before granting decree for divorce, whether defended or not to satisfy itself in respect of several factors mentioned in sub-section (1). Sub-sections (2) and (3) also cast duty on the court in respect of conciliation efforts, *Balwinder Kaur* v. *Hardeep Singh*, (1997) 11 SCC 701.

Duty cast on court of first instance to make every endeavour to bring about a reconciliation and decree passed without complying with the Section 23(2) is not sustainable, *Shiv Kumar Gupta* v. *Lakshmi Devi Gupta*, (2005) 25 AIC 901 (Cal).

Section 23(2) of the Act is a salutary provision exhibiting the intention of Parliament requiring the court 'in the first instance' to make every endeavour to bring about a reconciliation between the parties. Therefore, if an order is passed by a matrimonial court asking a party to the proceeding (husband or wife) to remain personally present, it cannot successfully be contended that the court has no such power and that in case a party to a proceeding does not remain present, at the most, the court can proceed to decide the case ex parte against him/her. Upholding of such argument would virtually make the benevolent provision nugatory, ineffective and unworkable, defeating the laudable object of reconciliation in matrimonial disputes, *Jagraj Singh* v. *Birpal Kaur*, (2007) 2 SCC 564.

▸ **Evidence/Proof.**—Section 23(1) of the Hindu Marriage Act, 1955 which deals with the powers of the Court in a proceeding under the Act provides that the Court shall decree the relief claimed by the petitioner, whether the petition is defended or not, if the Court is satisfied that any of the grounds for granting relief exists and certain other conditions are satisfied. Thus under the Divorce Act, 1869 as well as under Section 23(1) of the Hindu Marriage Act, the condition for the grant of a relief is the satisfaction of the Court as to the existence of the grounds for granting the particular relief. The satisfaction must necessarily be founded upon material which is relevant for the consideration of the Court, and this would include the evidence adduced in the case, *Mahendra Manilal Nanavati* v. *Sushila Mahendra Nanavati*, AIR 1965 SC 364.

▸ **Duty of Court.**—A legal duty is cast on the trial court under Section 23(1)(b) of the Act that before passing decree it has to keep the legal embargo in the form of delay etc. and if the requirements are attracted no decree can be passed even though ground may have been made out, *Sharda Loveleen Kumar Merck* v. *Loveleenkumar Chamanlal Merck*, (2000) 2 Mah LJ 410.

[63][**23-A. Relief for respondent in divorce and other proceedings.**—In any proceeding for divorce or judicial separation or restitution of conjugal rights, the respondent may not only oppose the relief sought on the ground of petitioner's adultery, cruelty or desertion, but also make a counter-claim for any relief under this Act on that ground; and if the petitioner's adultery, cruelty or desertion is proved, the court may give to the respondent any relief under this Act to which he or she would have been entitled if he or she had presented a petition seeking such relief on that ground.]

24. Maintenance pendente lite and expenses of proceedings.—Where in any proceedings under this Act it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and the necessary expenses of the proceeding, it may, on the application of the wife or the husband, order the respondent to pay to the petitioner the expenses of the proceeding, and monthly during the proceeding such sum as, having regard to the petitioner's own income and the income of the respondent, it may seem to the court to be reasonable:

[64][Provided that the application for the payment of the expenses of the proceeding and such monthly sum during the proceeding shall, as far as possible, be disposed of within sixty days from the date of service of notice on the wife or the husband, as the case may be.]

CASE LAW ▸ **Maintenance/Alimony.**—Section 24 conclusively deals with right of spouse to get monthly allowance till disposal of main case and also to get Litigation Expenses from other spouse. Order under provision finally determines rights of parties, without having any bearing on main case, *P.T. Lakshman Kumar* v. *Bhavani*, (2013) 3 MWN (Civil) 8 (Mad).

If the wife has no source of income it is the obligation of the husband to maintain her and also the children of the marriage on the basis of the provisions contained in the Hindu Adoptions and Maintenance Act, 1956. Her right to claim maintenance fructifies on the date of the filing of the petition for divorce under the Act. Having thus fixed the date as the filing of the petition for divorce it is not always that the court

63. *Ins.* by Act 68 of 1976 (w.e.f. 27-5-1976).
64. *Ins.* by Act 49 of 2001, S. 8 (w.e.f. 24-9-2001).

has to grant the maintenance from that date. The court has discretion in the matter as to from which date maintenance under Section 24 of the Act should be granted. The discretion of the court would depend upon multiple circumstances which are to be kept in view. These could be the time taken to serve the respondent in the petition; the date of filing of the application under Section 24 of the Act; conduct of the parties in the proceedings; averments made in the application and the reply thereto; the tendency of the wife to inflate the income out of all proportion and that of the husband to suppress the same; and the like. There has to be honesty of purpose in both the parties, *Jasbir Kaur Sehgal* v. *Distt. Judge, Dehradun*, (1997) 7 SCC 7.

▸ **Major son.**—Major son is not entitled to maintenance and Exception under Section 24(3) covers an unmarried daughter also, *Avnish Pawar* v. *Sunita Pawar*, (2001) 1 ICC 499 (MP).

▸ **Quantum of maintenance.**—Relevant consideration for grant of maintenance is that the spouse seeking maintenance should not have independent income sufficient for her/his support. Once court reaches its conclusion in that regard, it has to grant maintenance and only discretion left with the court is with regard to quantum of maintenance, *Amarjit Kaur* v. *Harbhajan Singh*, (2003) 10 SCC 228.

▸ **Interim Reliefs.**—Order passed under Section 24 is an interlocutory order against which no appeal lies under Section 19(1) of the Family Courts Act, 1984, *Pratima Sen Gupta* v. *Sajal Sen Gupta*, (1998) 32 ALR 207.

Court is duty-bound to dispose of pending application for enhancement of maintenance, before suit for divorce is decided, *Sipra Bhattacharyya* v. *Dr. Apares Bhattacharyya*, (2009) 4 SCC 366 : (2009) 2 SCC (Cri) 296.

In the matter of making an order for interim maintenance, the discretion of the court must be guided by the criterion provided in Section 24, namely, the means of the parties and also after taking into account incidental and other relevant factors like social status, the background from which both the parties come from and the economical dependence of the petitioner. Since an order for interim maintenance by its very nature is temporary, a detailed and elaborate exercise by the court may not be necessary, but, at the same time, the court has got to take all the relevant factors into account and arrive at a proper amount having regard to the factors which are mentioned in the statute, *Neeta Rakesh Jain* v. *Rakesh Jeetmal Jain*, (2010) 12 SCC 242.

The ambit for grant of interim maintenance is far narrower than the ambit under Section 25. The distinction between the two sections must be understood by the court to grant the maintenance amounts thereunder, *Ritula Singh* v. *Lt. Col. Rajeshwar Singh*, (2010) 4 Mah LJ 797.

▸ **Determining the income of a respective spouse.**—Socio-economic background of the parties is a relevant consideration while determining the income of a respective spouse and wife is entitled to same standard of living as she was used to when living with her husband, *Rishi Kumar* v. *Suman*, ILR (2008) 2 Del 279.

▸ **Allegation and counter-allegation.**—Allegation and counter-allegation made by husband and wife are considered by Court while disposing of petition under Section 24 but they should not become the subject matter of execution, even if they are mentioned in an order of Court, *Sujata Aggarwal* v. *Ravi Shankar Agarwal*, (2009) 76 AIC 310 (Del)(HC).

▸ **Interim maintenance.**—Maintenance granted by Family Court under Section 24, 1955 Act would supersede maintenance granted under Section 125 CrPC, *Sanjay Kumar Sinha* v. *Asha Kumari*, (2018) 5 SCC 333.

▸ **Maintenance pendente lite.**—Discretionary exercise of jurisdiction while granting alimony pendente lite should be judicious and can neither be arbitrary nor capricious but should be guided on sound principles of matrimonial law and to be exercised within statutory provisions having regard to object of the Act. Court would not be in position to judge merits of rival contentions when deciding application for interim alimony and should not allow its discretion to be fettered by nature of allegations made and should not examine merits of case. Further held, while determining quantum of interim maintenance, Court must have regard to income of parties, and is conditional on circumstance that wife or husband who makes claim for same has no independent income sufficient to support him/her or to meet necessary expenses of proceedings. Financial position of wife's parents as well as education of wife who could support herself, inconsequential. Maintenance dependant on factual situation and while determining same court must take into consideration status of parties and capacity of spouse to pay maintenance and independent income of applicant, *Manish Jain* v. *Akanksha Jain*, (2017) 15 SCC 801.

Word "support" can be interpreted to mean as Section 24 intended to provide for maintenance pendente lite, *Manish Jain* v. *Akanksha Jain*, (2017) 15 SCC 801.

25. Permanent alimony and maintenance.—(1) Any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall [* * *][65] pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant [66][, the conduct of the parties and other circumstances of the case], it may seem to the court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent.

(2) If the court is satisfied that there is, a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just.

(3) If the court is satisfied that the party in whose favour an order has been made under this section has remarried or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock, [67][it may at the instance of the other party vary, modify or rescind any such order in such manner as the court may deem just].

CASE LAW ▸ Nature and scope.—Section 25 is an enabling provision. It empowers the court in a matrimonial case to consider facts and circumstances of the spouse applying and decide whether or not to grant permanent alimony or maintenance. Permanent alimony or maintenance can be granted to a spouse whose marriage has been declared null and void under Section 11, *Rameshchandra Rampratapji Daga* v. *Rameshwari Rameshchandra Daga*, (2005) 2 SCC 33.

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65. The words "while the applicant remains unmarried" *omitted* by Act 68 of 1976, S. 18(*a*)(*i*) (w.e.f. 27-5-1976).
66. *Subs.* by Act 68 of 1976, S. 18(*a*)(*ii*) (w.e.f. 27-5-1976).
67. *Subs.* by Act 68 of 1976, S. 18(*b*) (w.e.f. 27-5-1976).

▸ **Maintenance/Financial Provision/Alimony.**—No arithmetic formula can be adopted for grant of permanent alimony to wife. However, status of parties, their respective social needs, financial capacity of husband and other obligations must be taken into account. It is the duty of court to see that wife lives with dignity and comfort and not in penury. Though living need not be luxurious, court has to act with pragmatic sensibility that wife does not meet any kind of man-made misfortune, *U. Sree* v. *U. Srinivas*, (2013) 2 SCC 114.

While determining the maintenance social status and strata of parties and concept of availing effective education, to be considered, *Malathi Ravi* v. *B.V. Ravi*, (2014) 7 SCC 640 : (2014) 3 SCC (Civ) 774.

After grant of permanent alimony under Section 25 of the HMA, 1955, held, proper forum for seeking modification thereof is under Section 25(2) or Section 25(3) of the HMA, 1955. Application cannot be made under Section 125 CrPC for maintenance, over and above what has been granted by court while exercising power under Section 25 of the HMA, 1955. Though an initial adjudication under Section 125 CrPC followed by a full adjudication under the relevant Act is permissible, the reverse is not, *Rakesh Malhotra* v. *Krishna Malhotra*, (2020) 14 SCC 150.

▸ **Death of the husband.**—Decree for alimony and maintenance is not extinguished on the death of the husband and is executable against the deceased husband's estate in the hands of his heirs, *Aruna Basu Mullick* v. *Dorothea Mitra*, (1983) 3 SCC 522 : 1983 SCC (Cri) 739.

▸ **Dismissal of the petition.**—In case of dismissal of the petition of the husband under any of the provisions of Sections 9 to 14, no alimony can be granted to the wife petitioning under Section 25. Without the martial status being affected or disrupted by the matrimonial court under the Hindu Marriage Act, the claim of permanent alimony or maintenance was not to be valid as ancillary or incidental to such affection or disruption. The wife's claim to maintenance in such cases has to be agitated under Hindu Adoptions and Maintenance Act, *Chand Dhawan* v. *Jawaharlal Dhawan*, (1993) 3 SCC 406 : 1993 SCC (Cri) 915;

▸ **Power to modify, vary or discharge permanent alimony.**—Section 25 of Hindu Marriage Act, confers power upon court to grant a permanent alimony to either spouse who claims same by making an application. Section 25(2) confers ample power on courts to vary, modify or discharge any order for permanent alimony or permanent maintenance that may have been made in any proceeding under provisions contained in Section 25(1). In exercising power under Section 25(2), court would have regard to change in circumstances of either party when an application is made under Section 25(2) for variation, modification or rescission of order as court may deem just, *Kalyan Dey Chowdhury* v. *Rita Dey Chowdhury Nee Nandy*, (2017) 14 SCC 200.

26. Custody of children.—In any proceeding under this Act, the court may, from time to time, pass such interim orders and, make such provisions in the decree as it may deem just and proper with respect to the custody, maintenance and education of minor children, consistently with their wishes, wherever possible, and may, alter the decree, upon application by petition for the purpose, make from time to time, all such orders and provisions with respect to the custody, maintenance and education of such children as might have been made by such decree or interim orders in case the proceeding for obtaining such decree were still pending, and the court may, also from time to time revoke, suspend or vary any such orders and provisions previously made:

[68][Provided that the application with respect to the maintenance and education of the minor children, pending the proceeding for obtaining such decree shall, as far as possible, be disposed of within sixty days from the date of service of notice on the respondent.]

CASE LAW ▸ Modifications in Decree/Order.—An order under Section 26 is never final and decree passed thereunder is always subject to modification, *Padmja Sharma* v. *Ratan Lal Sharma*, (2000) 4 SCC 266.

Custody of Children

▸ Generally

Maintenance can be granted to wife and also to minor children in her custody. Section 26 provides for the Court passing orders with *regard* to custody maintenance and education of minor children in proceedings under the Act. While deciding custody, wishes of minor children has to be taken into consideration. Once children attain majority, provisions of the Act would cease to apply, *Lanka Venkatapathi Rao* v. *Lanka Vijayasree*, (2009) 74 AIC 439 (AP).

Welfare and interest of the child are the paramount considerations, not the convenience or pleasure of the parents while granting the custody of children, *Kumar V. Jahgirdar* v. *Chetana K. Ramatheertha*, (2001) 4 SCC 682.

Child custody being a very sensitive issue, custody orders are always considered interlocutory orders capable of being modified keeping in mind needs of the child. Such orders even when based on consent can be varied if welfare of child so demands. Welfare of child is of paramount importance in matters relating to child custody and may have primacy even over statutory provisions, *Vikram Vir Vohra* v. *Shalini Bhalla*, (2010) 4 SCC 409 : (2010) 2 SCC (Civ) 171.

Before granting the custody of children the Court must (a) take into account the wishes of the children concerned, and (b) assess the psychological impact, if any, on the change in custody after obtaining the opinion of a child psychiatrist or a child welfare worker. All this must be done in addition to ascertaining the comparative material welfare that the child/children may enjoy with either parent, *Mamta* v. *Ashok Jagannath Bharuka*, (2005) 12 SCC 452.

Interim maintenance order can be passed by court relating to maintenance of minor children in proceeding under the Act, *Kalpana Das* v. *Sarat Kumar Das*, (2009) 81 AIC 842 (Ori).

▸ Custody of minor married girl

Husband is the natural guardian of Hindu minor married girl; therefore, custody of the minor married girl shall be with her husband, *Kokkula Suresh* v. *State of A.P.*, (2009) 76 AIC 947 (AP)(HC).

▸ Role of Mother

The role of mother is of greater importance than that of a father during the earlier years of a child. Therefore, it is for the mother to groom children. For this, mothers should be educated. Mother can meet, exchange views, analyse problems posed by children and help them. The basic education plays an important role in the formative age of the child. One must understand that education is not literacy alone, literacy is only a part of it. Education is much more. It is the physical or biological, psychological or mental and the spiritual or ethical growth of a child. Only when these three function smoothly, one can say there is education. When viewed from this stand point, one can reach to the conclusion that in the formative years first teacher

68. *Ins.* by Act 49 of 2001, S. 9 (w.e.f. 24-9-2001).

is the mother. Clean habits can easily be taught by the mother, to the extent it becomes a habit for the child. Interactions with the mother pays rich dividends, *Anita Krishnakumar Kachba* v. *Krishnakumar Ramchandra Kachba*, (2003) 1 Mah LJ 828.

▸ **Custody of child.**—If considerable time has elapsed between removal of child from native country by any parent and steps are taken for repatriation by writ petitioner parent, court would prefer an elaborate enquiry into all relevant aspects bearing on the child. Immediate restoration of child is called for only on an unmistakable discernment of the possibility of immediate and irremediable harm to it and not otherwise. Unless continuance of the child in the country to which it has been removed, is unquestionably harmful, when judged on the touchstone of overall perspectives, perceptions and practicabilities, it ought not to be dislodged and extricated from the environment and setting to which it has got adjusted for its well-being, *Prateek Gupta* v. *Shilpi Gupta*, (2018) 2 SCC 309.

27. Disposal of property.—In any proceeding under this Act, the court may make such provisions in the decree as it deems just and proper with respect to any property presented, at or about the time of marriage, which may belong jointly to both the husband and the wife.

CASE LAW ▸ Stridhan.—The view that by reason of Section 27 of the Hindu Marriage Act and Section 14 of the Hindu Succession Act, the concept of stridhan property of a woman was completely abolished or that a remedy under the criminal law for breach of trust is taken away, is legally unsustainable. These two sections only provide that if the husband refuses to return the stridhan property of his wife, it will be open to the wife to recover the same by a properly constituted suit. Thus Section 27 of the Hindu Marriage Act merely provides an alternate remedy to the wife and does not touch or affect in any way the criminal liability of the husband in case it is proved that he has dishonestly misappropriated the stridhan of his wife. It cannot also be spelt out from any textbook or the sastric law of the Hindus that the two Acts take away the stridhan right of a woman; at the most these Acts merely modify the concept of stridhan, *Pratibha Rani* v. *Suraj Kumar*, (1985) 2 SCC 370 : 1985 SCC (Cri) 180.

An application under Section 27 even if filed by the wife long after two years after the filing of the divorce petition and when the evidence of parties in the divorce petition was over and the case was due for final arguments can be maintainable, *Urmila Rani* v. *Raj Kishan Gupta*, 1995 Supp (4) SCC 602.

Wife is absolute owner of her stridhan property and can deal with it in any manner she likes, *Nita* v. *Hitendrakumar Kaluram Sakariya*, (2010) 3 Mah LJ 568.

▸ **Interpretation.**—The property which the husband and the wife may acquire during the subsistence of the marriage out of their own efforts and not presented to them at the time of marriage would not fall under Section 27 of the Act, *Kamalakar Ganesh Sambhus* v. *Tejas Kamalakar Sambhus*, (2004) 4 Mah LJ 754.

'At or about the time of marriage' contemplates not only property presented at the time of marriage but also that presented before or after the marriage provided it is relatable to the marriage but claim regarding presentation of such property has to be established on the basis of evidence. Where in a matrimonial proceeding, relief is claimed under Section 27, if presentation of such property is established by evidence, an order under Section 27 has to form part of the decree which is to be passed in the matrimonial proceeding, *Balkrishna Ramchandra Kadam* v. *Sangeeta Balkrishna Kadam*, (1997) 7 SCC 500.

► **Property presented at the time of marriage.**—Section 27 used the phrase 'property presented at the time of marriage, which may belong jointly to both the husband and the wife'. This section has one prerequisite; the property must be connected with the marriage. So far as the question of property being jointly owned by the parties is concerned, the section nowhere uses mandatory word "must"; it used the word "may". The phrase "which may belong jointly" because of the use of the word may includes within its penumbra the property which may not belong jointly to the parties. Thus, Section 27 of the Act does not confine or restrict the jurisdiction of Matrimonial Courts to deal only with the joint property of the parties, which is presented at or about the time of marriage but also permits disposal of exclusive property of the parties provided they were presented at or about the time of marriage, *Hemant Kumar Agrahari* v. *Lakshmi Devi*, (2004) 2 APLJ 14 (DNC)(All).

Gift given at "tilak" are also property given at or about the time of marriage and covered under the provisions of Section 27 of the Act. This section does not confine only to dealing with the joint property but also permits disposal of exclusive property of the parties provided they were presented at or about the time of marriage, *Hemant Kumar Agrahari* v. *Lakshmi Devi*, (2003) 52 ALR 166 (All).

All the properties given in connection with the marriage either at the time of marriage or before the marriage or after marriage can be dealt with under this section, *Arun Kumar* v. *Indra*, (2005) 61 ALR 357 (All).

[69]**[28. Appeal from decrees and orders.**—(1) All decrees made by the court in any proceeding under this Act shall, subject to the provisions of sub-section (3), be appealable as decrees of the court made in the exercise of its original civil jurisdiction, and every such appeal shall lie to the court to which appeals ordinarily lie from the decision of the court given in the exercise of its original civil jurisdiction.

(2) Orders made by the court in any proceeding under this Act, under Section 25 or Section 26 shall, subject to the provisions of sub-section (3), be appealable if they are not interim orders and every such appeal shall lie to the court to which appeals ordinarily lie from the decisions of the court given in exercise of its original civil jurisdiction.

(3) There shall be no appeal under this section on the subject of costs only.

(4) Every appeal under this section shall be preferred within a period of [70][ninety] days from the date of the decree or order.

CASE LAW ► Limitation.—Section 12(2) of the Limitation Act is applicable to an appeal under Section 28 of the Hindu Marriage Act. Therefore, the time required for obtaining copies of the judgment will have to be excluded for computing the period of limitation for appeal, *Lata Kamat* v. *Vilas*, (1989) 2 SCC 613.

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69. *Subs.* by Act 68 of 1976 (w.e.f. 27-5-1976).
70. *Subs.* for "thirty" by Act 50 of 2003, S. 5 (w.e.f. 23-12-2003). Section 6 of Act 50 of 2003 provides:
"6. *Transitory Provision.*—All decrees and orders made by the court in any proceedings under the Special Marriage Act or the Hindu Marriage Act shall be governed under the provisions contained in Section 3 or Section 5, as the case may be, as if this Act came into operation at the time of the institution of the suit:
Provided that nothing in this section shall apply to a decree or order in which the time for appealing has expired under the Special Marriage Act or the Hindu Marriage Act at the commencement of this Act."

Thirty day limitation for filing appeal from decree of divorce is insufficient and inadequate in view of the vast distances between District Courts and High Courts in many States, financial difficulties and complications of filing a regular appeal which litigants are faced with and minimum period of 90 days ought to be prescribed, *Savitri Pandey* v. *Prem Chandra Pandey*, (2002) 2 SCC 73.

▸ **Exercise of Power.**—While exercising power under Section 28, High Court as first court of appeal, is both a court of law as well as of facts. Hence, in exercise of its powers first appellate court can come to a finding different from that arrived at by trial court, especially where appreciation of evidence by trial court is not proper, *Ravi Kumar* v. *Julmidevi*, (2010) 4 SCC 476 : (2010) 2 SCC (Civ) 185.

28-A. Enforcement of decree and orders.—All decrees and orders made by the court in any proceeding under this Act shall be enforced in the like manner as the decrees and order of the court made in the exercise of its original civil jurisdiction for the time being are enforced.]

SAVINGS AND REPEALS

29. Savings.—(1) A marriage solemnized between Hindus before the commencement of this Act, which is otherwise valid, shall not be deemed to be invalid or ever to have been invalid by reason only of the fact that the parties thereto belonged to the same gotra or pravara or belonged to different religions, castes or sub-divisions of the same caste.

(2) Nothing contained in this Act shall be deemed to affect any right recognised by custom or conferred by any special enactment to obtain the dissolution of a Hindu marriage, whether solemnized before or after the commencement of this Act.

(3) Nothing contained in this Act shall affect any proceeding under any law for the time being in force for declaring any marriage to be null and void or for annulling or dissolving any marriage or for judicial separation pending at the commencement of this Act and any such proceeding may be continued and determined as if this Act had not been passed.

(4) Nothing contained in this Act shall be deemed to affect the provisions contained in the Special Marriage Act, 1954 (43 of 1954), with respect to marriages between Hindus solemnized under that Act whether before or after the commencement of this Act.

STATE AMENDMENTS

JAMMU AND KASHMIR.—*Omit* sub-section (4).[71]

CASE LAW ▸ Dissolution of Marriage.—Annulment of marriage can be by a decree of divorce or otherwise. There can be some other form or mode of annulment of marriage and that can be only under Section 29(2) of the Hindu Marriage Act, *Harinarayan* v. *State of M.P.*, (2005) 1 MP LJ 196.

▸ **Ceremonies, Performance of/Presumption of.**—The importance of the custom in relation to the applicability of the Act has been acknowledged by the legislature by incorporating Section 29 saving the validity of a marriage solemnised prior to the commencement of the Act which may otherwise be invalid after passing of the Act. Nothing in the Act can affect any right, recognised by custom or conferred by any said enactment to obtain the dissolution of a Hindu marriage whether solemnised before or after the

71. *See* J&K Act 8 of 1955, S. 3 and Sch. (w.e.f. 10-11-1955).

commencement of the Act even without the proof of the conditions precedent for declaring the marriage invalid as incorporated in Section 10 to 13 of the Act, *Surajmal Stella Kujur (Dr)* v. *Durga Charan Hansdah*, (2001) 3 SCC 13 : 2001 SCC (Cri) 1305.

Prevalence of customary right to divorce in a community must be specifically pleaded and established by the person propounding such custom, *Subramani* v. *M. Chandralekha*, (2005) 9 SCC 407.

30. Repeals.—[72][*Repealed*]

STATE AMENDMENTS

JAMMU AND KASHMIR.—*Omit* Section 30.[73]

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72. *Repealed* by Act 58 of 1960, S. 2 and First Sch. (w.e.f. 16-12-1960). Prior to repeal it read as:
"30. *Repeals*.—The Hindu Marriage Disabilities Removal Act, 1946 (28 of 1946), the Hindu Marriages Validity Act, 1949 (21 of 1949), the Bombay Prevention of Hindu Bigamous Marriages Act, 1946 (Bom. 25 of 1946), the Bombay Hindu Divorce Act, 1947 (Bom. 22 of 1947), the Madras Hindu (Bigamy Prevention and Divorce) Act, 1949 (Mad. 6 of 1949), the Saurashtra Prevention of Hindu Bigamous Marriages Act, 1950 (Sauras. 5 of 1950) and the Saurashtra Hindu Divorce Act, 1952 (Sauras. 30 of 1952) are hereby repealed."
73. *See* J&K Act 8 of 1955, S. 3 and Sch. (w.e.f. 10-11-1955).