

WOMENS RIGHT IN HINDU REGARDING MARRIAGE AND DIVORCE*By*

—Dr. MUDDU VIJAI, Advocate
High Court of Telangana and Andhra Pradesh

Marriage is one of the most important institutions in the Indian society. In the institution of marriage we have the relationship between a man and a woman. Such relationship being culturally defined and socially approved is established through some religious or social rules. The institution of Hindu marriage is one of the noteworthy contributions of ancient Hindu sociologists in the realm of Hindu Social organisation. Marriage is regarded as sacred. The very Gods are married. When the Hindu descends from the adoration of the absolute and takes to the worship of a personal God, his God has always a consort. He does not worship bachelor or a virgin. Siva is Ardha-Narishwar, and his image signifies the co-operative but jointly complete masculine and feminine functions of the supreme being. The orthodox Hindu marriage is a sanskara, the last of ten enjoined by the sacred scriptures of Hindus.

Hindu marriage literally means the ceremony of 'carrying away' the bride to the house of the groom. Hindu Marriage is different from the institution of marriage in other societies. Hindu marriage joins two individuals for life, so that they can pursue dharmā (duty), artha (possessions), and kama (physical desires). It is a union of two individuals as spouses, and is recognized by law. In Hinduism, marriage is followed by traditional rituals for consummation. In fact, marriage is not considered complete or valid until consummation. According to Prabhu," Hindu Vivaha (marriage) is, in essence, a ritual and a formality; of course, very important through which an individual has to go, to be able to start his other life in Grihasthasrama. The meaning of vivaha refers mainly to the ceremony of 'carrying

away' the bride to the house of the bridegroom. But since long it has come to refer to the whole of ceremony or wedlock. It also joins two families together.

The Hindu Marriage Act of 1955 has reformed the marriage according to Hindu law. It is considered as a landmark in the history of social legislation. Also, this law has not only codified Hindu marriage law. It has also introduced many important changes in many aspects.

According to Hinduism there are eight different types of marriages. Not all have religious sanction.

Eight Different Types:

1. Brahma marriage - The Brahma marriage is the marriage of one's daughter, after decking her with costly garments and with presents of jewels, to a man of good conduct learned in the Vedas, and invited by oneself. A Brahma marriage is where a boy is able to get married once he has completed his student hood, or Brahmacharya. Brahma marriage has the most supreme position of the eight types of Hindu matrimony. When the parents of the boy seek for a female, they would consider her family background, but the girl's father would make sure that the boy that wishes to wed his daughter had the knowledge of Vedas. It is these things that make the basis for Brahma marriage, not a system of dowry.

2. Daiva marriage - The type of marriage that is considered inferior because it is degrading to womanhood. This is where the woman's family will wait for a specific time to get her wed. If she doesn't get a suitable groom, then she would be married

off to places where family choose by matchmaking through priest who duly officiates at a religious ceremony, during the course of its performance. This used to be the practice followed by many Royals in ancient times to forge diplomatic ties with allies and enemies alike.

3. Arsha marriage - An Arsha marriage is where the girl is given in marriage to a sage. The bride used to be given in exchange for some cows. *Agasthya* married *Lopamudra* accordingly. Kings often could not refuse the sages who had such power and standing in society and hence the numerous stories in Mahabharata that portray this practice.

4. Prajapatya marriage - Prajapatya is when a girl's father gives her in marriage to the bridegroom, treating him with respect, and addresses them: 'May both of you perform together your duties'. Unlike in Brahma marriage, Prajapatya matrimony is where the bride's father goes in search of a groom, although this isn't considered as good as the grooms parents searching for the perfect bride. Also, unlike Arsha marriage, monetary transactions are not a part of the Prajapatya marriage.

5. Gandharva marriage - The voluntary union of a maiden and her lover on own is called Gandharva marriage. When it comes to 'love' marriage, it is Gandharva marriage that is the most similar. This is where a groom and his bride could wed without their parents knowledge or sanction. This is how *Dushyanta* married *Shakuntala*. Note that this is not same as Dating. Here the bride and the groom exchange vows in the presence of some person, creature, tree, plant or deity before any further action.

6. Asura marriage - Asura marriage is when the bridegroom receives a maiden, after having given of his own free will as much wealth as he can afford, to the bride and her kinsmen. It is Asura marriage that sets

itself apart from the other types of marriage. This is a matrimony where the groom may not often be compatible with the bride and may even possess some abnormality but either greed or compulsion on the part of the bride's father coupled with the groom's desire and wealth may render it. At all times this type of marriage was considered lowly. In modern times this is unacceptable because it is much like buying a product off the shelf and against common Indian law.

7. Rakshasa marriage - Rakshasa marriage is the marriage of a maiden involving her forcible abduction from her home after her kinsmen have been slain or wounded much like its practice in Kazakh and Uzbek cultures where it is still practised as a ritual. The groom will force battles with the bride's family, overcome them and carry the bride away to convince her to marry him. Because of its use of force this marriage is essentially rape in modern parlance, and it was never considered right - hence the pejorative name rakshasa attached to it. This is condemned in the Manusmriti as a base and sinful act. In modern times it is a crime. *Arjuna's* marriage to *Subhadra* was made to look like this but in reality it was a Gandharva Marriage because both of them were in love a priori and they had the consent of *Subhadra's* brother Sri Krishna who actually suggested this subterfuge to preempt *Balarama* from dissent.

8. Paishacha marriage - When a man by stealth seduces a girl who is sleeping, intoxicated, or mentally challenged, it is called Paishacha marriage. This is condemned in the Manusmriti as a base and sinful act. In modern times this is called Date Rape and is a crime in most civilized lands. (*Manusmriti* 3.27-34)

9. Out of the eight forms of Hindu marriage, the first four, *i.e.*, 'Brahma', 'Daiva', 'Arsha' and 'Prajapatya' were the approved forms of marriage and the last four, such as, 'Asura', 'Gandharva', 'Rakshasa' and

'Paisacha' were unapproved forms of marriage. In the first four forms of marriage, the dominion of the father or guardian over the maiden is fully recognised. The dominion of the father is completely undermined in the 'Gandharva', 'Paishacha' and 'Rakshasa' forms of marriage.

In the present Indian scenario, considering from the socio-legal point of view, three forms of Hindu marriage appear to be existent. These are the Brahma, Asura and Gandharva forms of marriage. The higher caste Hindus solemnize the Brahma form of marriage in the most cultured form. The Asura form of marriage is commonly practised among the lower castes and the Gandharva marriage is gaining momentum among the modern youths in the form of love marriage.

Registration of Hindu Marriages

For the purpose of facilitating the proof of Hindu marriages, (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, and person contravening any rule made in this behalf shall be punishable with fine which 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 there from 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. 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, the aggrieved party may apply, by petition to the district Court, for restitution of conjugal rights and the Court, on being satisfied of the truth of the statements made in such petition and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly. *Explanation* - Where a question arises whether there has been reasonable excuse for withdrawal from the society, the burden of proving reasonable excuse shall be on the person who has withdrawn from the society.

Types of Divorce

A couple can get a divorce with mutual consent, or either spouse may file for divorce without the consent of the other.

Divorce with Mutual Consent:

Divorce by Mutual Consent has emerged as one of the most sought after modes of obtaining divorce in the recent times. Section 13-B of the Hindu Marriage Act, 1955 enumerates the law pertaining to divorce by mutual consent. One of the basic essential ingredient to obtain divorce through mutual consent is that both the parties i.e., husband and wife mutually agree to obtain divorce.

Essential Ingredients of Section 13-B of the Act :—

- * A divorce petition is presented by both the parties before the District Court.
- * The provision applies to marriages solemnised before or after the commencement of the Marriage Laws (Amendment) Act, 1976.
- * The parties to the marriage should have been living separately for a period of one year or more.
- * The parties should satisfy the Court that they have not been able to live

together and that they have mutually agreed that the marriage should be dissolved.

* *Period of Interregnum*- The petition should not have been withdrawn within six months after the date of the presentation of the petition and not later than eighteen months after the said date.

As per Section 13-B of Hindu Marriage Act, 1955 and Section 28 of the Special Marriage Act, 1954, the couple should be living separately for at least one year before divorce proceedings can begin. Section 10-A of Divorce Act, 1869, however, requires the couple to be separated for at least two years. Do note that living separately does not necessarily mean living in different locations; the couple only needs to provide that they have not been living as husband and wife during this time period.

Divorce without Mutual Consent :

Section 13(1) of Hindu Marriage Act, 1955. The reasons for divorce are as follows, though some are not applicable to all religions.

1. *Cruelty* : Cruelty may be physical or mental cruelty. According to the Hindu Divorce Laws in India, if one spouse has a reasonable apprehension in the mind that the other spouse's conduct is likely to be injurious or harmful, then there is sufficient ground for obtaining divorce due to cruelty by the spouse.

2. *Adultery*: In India, a man that commits adultery (*i.e.*, has consensual sexual intercourse outside of marriage) can be charged with a criminal offence. The wife may, of course, file for divorce as a civil remedy. If, on the other hand, a wife commits adultery, she cannot be charged with a criminal offence, though the husband can seek prosecution of the adulterer male for adultery.

3. *Desertion*: One spouse deserting the other without reasonable cause (cruelty, for example) is reason for divorce. However, the spouse who abandons the other should intend to desert and there should be proof of it. As per Hindu laws, the desertion should have lasted at least two continuous years. Christians, however, will not be able to file a divorce petition solely for this reason.

4. *Conversion*: Divorce can be sought by a spouse if the other spouse converts to another religion. This reason does not require any time to have passed before divorce can be filed.

5. *Mental Disorder*: If the spouse is incapable of performing the normal duties required in a marriage on account of mental illness, divorce can be sought. If the mental illness is to such an extent that the normal duties of married life cannot be performed.

6. *Communicable Disease*: If the spouse suffers from a communicable disease, such as HIV/AIDS, syphilis, gonorrhoea or a virulent and incurable form of leprosy, the Hindu Divorce Laws in India say that the other party can obtain a divorce.

7. *Renunciation of the World*: If the spouse renounces his/her married life and opts for sanyasa, the aggrieved spouse may obtain a divorce.

8. *Presumption of Death*: If the spouse has not been heard of as being alive for a period of at least seven years, by such individuals who would have heard about such spouse, if he or she were alive, then the spouse who is alive can obtain a judicial decree of divorce.

Annulment of Marriage

Marriages in India can also be dissolved by means of annulment. The procedure for annulment is same as that of divorce, except

that the grounds for annulment are different from that of divorce. Reasons for annulment are fraud, the pregnancy of wife by a person other than the husband, impotence before the marriage and subsisting even at the time of filing the case. Once annulment is granted by an Indian Court, the status of the parties remains as it was prior to the marriage.

Void Marriage

A marriage is automatically void and is automatically annulled when law prohibits it. Section 11 of Hindu Marriage Act, 1955 deals with:

Any marriage solemnized after the commencement of this Act shall be *null* and *void* and may, on a petition presented by either party thereto, 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), Section 5 of the Act.

Bigamy: If either spouse was still legally married to another person at the time of the marriage then the marriage is void, and no formal annulment is necessary.

Interfamily marriage: A marriage between an ancestor and a descendant, or between a brother and a sister, whether the relationship is by the half or the whole blood or by adoption.

Marriage between close relatives: A marriage between an uncle and a niece, between an aunt and a nephew, or between first cousins, whether the relationship is by the half or the whole blood, except as to marriages permitted by the established customs.

Voidable Marriage

A voidable marriage is one where an annulment is not automatic and must be sought by one of the parties. Generally, an annulment may be sought by one of the

parties to a marriage if the intent to enter into the civil contract of marriage was not present at the time of the marriage, either due to mental illness, intoxication, duress or fraud.

The duration for obtaining divorce varies from case to case and place to place. Generally speaking, contested divorce proceedings take 18 to 24 months. Mutual consent divorce varies from 6 months to 18 months.

Alimony (Maintenance)

One of the most important rights under divorce and matrimonial laws is the right to receive and claim alimony (maintenance). The term 'alimony' has its origin in the Latin word 'Alimonia', meaning sustenance. Generally speaking alimony means an allowance or amount which a Court orders the husband to pay to the wife for her sustenance. Under the Hindu Marriage Act, 1955, both the husband and wife are legally entitled to claim permanent alimony and maintenance. However, if the couple marries under the Special Marriage Act, 1954, only the wife is entitled to claim permanent alimony and maintenance.

When a couple gets divorced by mutual consent, the decision on whether any alimony/ maintenance is to be paid by either party is a matter of agreement between them. In such cases, alimony/maintenance could be paid by either the husband to the wife or by the wife to the husband subject to the mutual understanding between the couple. The Court passes the decree of divorce on terms agreed between the couple. The decree binds the couple and is capable of being enforced by the Court.

Types of Alimony and Maintenance

Alimony and maintenance are classified into:

- * Interim Alimony and Maintenance.

* Permanent Alimony and Maintenance.

Interim maintenance

Interim maintenance is a provision wherein a husband is obligated to meet the maintenance costs of the wife in the course of the Court proceedings. In addition to it, the husband is also required to compensate the cost of Court proceedings incurred by the wife.

Permanent maintenance

This provision takes effect upon the dissolution of marriage or judicial separation, whereby the husband would be required to remit any amount fixed by the Court. The time-frame of payment can either be made periodically or on a lump-sum basis.

In most cases, the Court would require the respondent to make a periodical payment. Lump-sum payments are awarded in cases of mutual party-divorces or when the plaintiff explicitly makes a plea for it. These payments would cease upon the death of either of the spouses or on a date determined by the Judge.

Restitution of Conjugal Rights

The provisions for restitution of conjugal rights are identical in Section 22 the Special Marriage Act, 1954 and Section 9 of the Hindu Marriage Act, 1955.

These provisions provide the statutory scheme for the restitution of conjugal rights, which involves restoration of all the “rights and privileges arising from marriage including the mutual relationship of companionship, support and sexual relations”. When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply, by petition to the district Court, for restitution of conjugal rights and the Court, on being satisfied of the truth of the statements made in such petition and that

there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.

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

The restitution of conjugal rights is often regarded as a matrimonial remedy. The remedy of restitution of conjugal rights is a positive remedy that requires both parties to the marriage to live together and cohabit.

Both wife and Husband can apply for restitution of conjugal rights. But the Court can refuse to grant order of restitution of conjugal rights for following reasons: Cruelty by husband or in-laws or on the failure by the husband to perform marital obligations.

Judicial Interpretations

Mutual Consent

In *Sareshta Devi v. Om Prakash*, in SCC P.31, it was held that what is significant in this provision is that there should also be mutual consent when they move the Court with a request to pass a decree of divorce, Secondly, the Court shall be satisfied about the *bona fide* and the consent of the parties. If there is no mutual consent of the time of the enquiry, the Court gets no jurisdiction to make a decree for divorce. If the view is otherwise, the Court could make an enquiry and pass a divorce decree even at the instance of use of the parties and against the consent of the other. Such a decree cannot be regarded as decree by mutual consent”

In the case of *Smruti Pahariya v. Sanjay Pahariya*, (2009) 13 SCC 338, it was held that : Modern trend of movement away from fault as basis of divorce to breakdown of marriage as basis of divorce. Only on the continued mutual consent of the parties

that a decree for divorce under Section 13-B of the said Act can be passed by the Court. If petition for divorce is not formally withdrawn and is kept pending then on the date when the Court grants the decree, the Court has a statutory obligation to bear the parties to ascertain their consent. Under Section 13-B, mutual consent of the parties is a jurisdiction fact. The Court has to be satisfied about the existence of mutual consent between the parties on some tangible materials which demonstrably disclose such consent.

In *Hitesh Bhatnagar v. Deepa Bhatnagar*, (2011) 5 SCC 234, it was held that: Unilateral withdrawal of consent. Either one of the parties may withdraw their consent at any time before passing of divorce decree. 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, or else the expression “divorce by mutual consent” would be rendered otiose. Further held 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.

In *Anuradha Samir Vennangot v. Mobandas Samir Vennan*, (2015) 16 SCC 596, it was held that: According to Pre-existing duty doctrine, performance of what one is already bound to do, either by general law or by a specific obligation to other party, is not a good consideration for a promise, because such performance is no legal burden to promisor, but rather relieves him of a duty. Neither is promise of such performance a consideration, since it adds nothing to obligation already existing.

Cruelty

In *Dr. N.G. Dastane v. Mrs. S. Dastanethe*,

(1975) 2 SCC 326, held that whether a spouse has suffered cruelty or not is a subjective matter that Courts should decide in a case-specific manner. This ground was made almost similar to the ground of cruelty under Section 10(1)(b) for judicial separation but one distinction was made and that was that the words “persistently or repeatedly” were added. By this addition establishing cruelty as a ground for divorce was made more stringent as compared to establishing the same for judicial separation.

In *Neelam Kumar v. Daya Rani*, reported judgment in (2010) 13 SCC 298, Held: If a party to marriage, by his/her own conduct brings the relationship to a point of irretrievable breakdown, he/she cannot be allowed to seek divorce on ground of breakdown of marriage. Burden lies on person alleging cruelty. No decree of divorce can be granted unless person seeking divorce proves cruelty on the basis of pleadings and evidence.

In *Darshan Gupta v. Radhika Gupta*, (2013) 9 SCC 1, it was held that : Petitioner must approach Court with clean hands. 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. If petitioner himself/herself is guilty or at fault, he/she would be disentitled to seek divorce. The petitioner husband was disentitled to seek divorce on alleged grounds as he himself was responsible there for.

In *Vinod Kumar Subbiah v. Saraswathi Palaniappan*, (2015) 8 SCC 336, it was held that : 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 borne, 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.

In *Narendra v. K. Mena*, (2016) 9 SCC 455, it was held that : Divorce can be granted on Mental cruelty (1) Threats and attempt to commit suicide by respondent wife (ii) Merely for monetary consideration respondent wife wanting her husband to get separated from his family since appellant husband's family was virtually maintained from his income; and (iii) Un substantiated extramarital affair allegations levelled by respondent against her husband, further the Court held that constitute mental cruelty justifying decree of divorce. Only one event of attempt to commit suicide was sufficient for appellant husband to get decree of divorce on ground of cruelty considering serious repercussions it could entail. Furthermore, in Hindu Society, it is pious obligation of son to maintain his parents and persistent efforts of respondent wife to constrain appellant to be separated from his family without any justifiable reasons, merely for some monetary consideration would be tortuous to husband constituting act of "cruelty".

Cruelty which is a ground for dissolution of marriage may be defined as wilful and unjustifiable conduct of such character as to cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger. The question of mental cruelty has to be considered in the light of the norms of marital ties of the particular society to which the parties belong, their social values, status, environment in which they live. Cruelty, as noted above, includes mental cruelty, which falls within the purview of a matrimonial wrong.

In *Raj Talreja v. Kavita Talreja*, (2017) 14 SCC 194 = MANU/SCOR/19688/2017, it was held that cruelty in matrimonial behaviour defies any definition and its categories can never be closed. Whether the husband is cruel to his wife or the wife is cruel to her husband has to be ascertained and judged by taking into account the entire

facts and circumstances of the given case and not by any predetermined rigid formula. Cruelty in matrimonial cases can be of infinite variety it may be subtle or even brutal and may be by gestures and words. That categories of cruelty in matrimonial cases are never closed.

Adultery

In *Joseph Shine v. Union of India*, (2019) 3 SCC 39, it was held that in 1860, when the Penal Code was enacted, the vast majority of the population in this country, namely, Hindus, had no law of divorce as marriage was considered to be a sacrament. Equally, a Hindu man could marry any number of women until 1955. It is, therefore, not far to see as to why a married man having sexual intercourse with an unmarried woman was not the subject-matter of the offence. Since adultery did not exist as a ground in divorce law, there being no divorce law, and since a man could marry any number of wives among Hindus, it was clear that there was no sense in punishing a married man in having sex with an unmarried woman as he could easily marry her at a subsequent point in 35 time. Two of the fundamental props or bases of this archaic law have since gone. Post 1955-1956, with the advent of the Hindu Code, so to speak, a Hindu man can marry only one wife; and adultery has been made a ground for divorce in Hindu Law.

The act of a married man engaging in sexual intercourse with an unmarried or divorced woman, does not constitute "adultery" under Section 497. If the adulterous relationship between a man and a married woman, takes place with the consent and connivance of her husband, it would not constitute the offence of adultery. Only a man who has consensual sexual intercourse with the wife of another man without his consent can be punished under this offence in India. If someone "lives in adultery", the partner can file for divorce.

Mental disorder

In *Kollam Chandra Sekhar v. Kollam Padma Latha*, (2014) 1 SCC 225 = MANU/SC/0959/2013, it was held that any person may have bad health this is not their fault and most times it is not within their control as in the present case, the respondent (wife) was unwell and was taking treatment for the same. The illness had its fair share of problems. Can this be a reason for the appellant (husband) to abandon her and seek dissolution of marriage after the child is born out of their union? Since the child is now a grown up girl, her welfare must be the prime consideration for both the parties. The two parties in this case must reconcile and if the appellant so feels that the respondent is still suffering, then she must be given the right treatment. The respondent-wife must stick to her treatment plan and make the best attempts to get better. It is not in the best interest of either the respondent or her daughter who is said to be of adolescent age for grant of a decree of dissolution of marriage as prayed for by the appellant-husband. "Mental disorder" or "unsound mind" as ground available to party to get dissolution of marriage. Inability to manage his or her affairs is essential attribute of "incurably unsound mind"-Section 13(1)(iii) does not make mere existence of mental disorder of any degree sufficient in law to justify dissolution of marriage. "Decree for dissolution of marriage shall not be granted on basis of one spouse's illness unless same is proved by positive and substantive evidence."

Long period

In *Sukbendu Das v. Rita Mukherjee*, reported judgment in (2017) 9 SCC 632, it was held that : Held: Long period of continuous separation and refusal to participate in divorce proceeding and forcing partners to stay in a dead marriage.

In *Manju Kumari Singh alias Manju Singh v. Avinash Kumar Singh*, (2018) 17 SCC 378, it

was held: parties have been living separately for more than decade. All attempts of reconciliation through mediation failed. It is clear that there is no chance of both living together. Matrimonial bond between parties is beyond repair. Marriage has been wrecked beyond hope of salvage. Public interest and interest of all concerned lies in recognition of this fact and to declare defunct *de jure* marriage what is already defunct *de facto*. To keep sham is obviously conducive to immorality and potentially more prejudicial to public interest than dissolution of marriage bond.

6 months cooling period is Directory.

In *Amardeep Singh v. Harveen Kaur*, reported judgment in (2017) 8 SCC 746, held that for determining whether 6 months cooling is mandatory or directory, language alone is not decisive and Court must have record to context, subject-matter and object of provision. Court can waive of statutory period under Section 13-B(2) in its discretion after considering following factors (1) 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 the differences including alimony, custody of child or any other pending issues; 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 alternation rehabilitation. Moreover, in conducting such proceedings the Court can also use the medium of video conferencing 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.

In the case of *Rameshchandra Ramprataji Daga v. Rameshwari Rameshchandra Daga*, reported judgment in (2005) 2 SCC 33 held that : First marriage of respondent, having not been dissolved in any decree of Court, subsisted when she went through the second marriage, hence here second marriage liable to be declared *null* and *void*. Permanent alimony and maintenance, can be granted for a spouse whose marriage has been declared *null* and *void* under Section 11 – Words “any decree” in sub-section (1) of Section 25 includes all kinds of decrees such as those contemplated under Sections 9, 10, 11, 12 and 13 – Section 25 is an enabling provision where under Court can grant relief to the spouse concerned having regard to the facts and circumstances.

In *Sanghamitra Ghosh v. Kajal Kumar Ghosh*, (2007) 2 SCC 220, it was held: It is indeed the obligation of the Court and all concerned that the marriage status should, as far as possible, as long as possible and whenever possible, be maintained. But when the marriage is totally dead, in that event, nothing is gained by trying to keep the parties tied forever to a marriage which in fact as ceased to exist.

In *Mahendra Nath Yadav v. Sheela Devi*, reported judgment in (2010) 9 SCC 484 Held: that dissolution of marriage through Panchayat cannot be a ground for granting divorce under Section 13 of 1955 Act.

In the case of *Bhagwati Alias Reena v. Anil Choubey*, reported judgment in (2017) 13 SCC 582 held that : Held, in terms of Section 12(1)(C), HM Act, 1955, only minor spouse has right to see annulment of marriage.

Foreign Judgment

In the case of *Y. Narasimha Rao and others v. Y. Venkata Lakshmi and another*, (1991) 3 SCC 451 held that : Divorce decree by a

foreign (USA) Court – Parties married in India and governed by Hindu Marriage Act. The decree dissolving the marriage passed by the foreign Court is jurisdiction acceding to the Hindu Marriage Act as neither the marriage was celebrated nor the parties last resided together nor the respondent resided within the jurisdiction of that Court. Residence does not mean a temporary resident for the purpose of obtaining a divorce but habitual residence or residence which is intended to be permanent for future as well. Today the need for definitive rules for recognition of foreign judgments in personal and family matters, and particularly in matrimonial disputes has surged to the surface. Though the rules of guidance may prove inadequate or miss some aspects but a beginning has to be made as best as one can, the lacunae and the errors being left to be filled in and corrected by future judgments.

On an interpretation of Section 13 CPC the following rule can be deduced for recognising a foreign matrimonial judgment in this country. The jurisdiction assumed by a foreign Court as well as the grounds on which the relief is granted must be in accordance with the matrimonial law under which the parties are married. The exceptions to this may be as follows: (i) where the matrimonial action is filed in the forum where the respondent is domiciled or habitually and permanently resides and the relief is granted on a ground available in the matrimonial law under which the parties are married; (ii) where the respondent is voluntarily and effectively submit to the jurisdiction of the forum as discussed above and contests the claim which is based on a ground available under the matrimonial law under which the parties are married, (iii) where the respondent consents to the grant of the relief although the jurisdiction of the forum is not in accordance with the provisions of the matrimonial law of the parties.

Conclusion

Marriage for Hindus is a union of bond to bone and flesh to flesh where women takes a new birth in her husband's home where her husband and is her God and her life becomes one of selfless service and profound dedication to her husband sharing life and love, joys and sorrows, troubles and tribulation of her husband. Status of a wife as half body of her husband, equally sharing fruit of pure and impure sets and referring

to Mahabharata which states where females are honoured, deities are pleased; but where they are unhonoured there all religious acts become fruitless. High position bestowed on Hindu, women by Shastric law illustrated how after marriage law enjoins corresponding duty on husband to look after comforts of a wife and not only to provide her food and clothes but to protect her from all calamities and to take care of her health and safety. When the matter comes to Court the Court shall make every effort to sustain the marriage.

ANALYSIS

Order 9(13) of CPC Rule 55 of Civil Rules of Practice read with Section 5 of Limitation Act - Whether Single application for condonation of delay and also to set aside ex parte decree is maintainable?

By

—P. SAMBASIVARAO, Advocate
Narsipatnam

The article is confined to whether single application is enough for condonation of delay and also to set-aside the *ex parte* decree, as it appears two separate petitions are being filed one to condone the delay and the other to set aside the *ex parte* decree, despite the bedrock of Law of the age old Division Bench Decision reported in 1988 (1) ALT 783

A short but important question law of general importance which arises for consideration whether single application for condonation of delay and for setting aside expert decree or order is enough out of apparent conflict in views

What test, guidelines and principles that should be apply for determination of the smoot question self for consideration in a

certain of out of which 1988 (1) ALT 783 (DB) is the landmark decision to the effect single application is enough and the golden thread of ruled that passing through this decision, is subsequently followed in several other certain of decisions such as 2005 (1) ALD 672 = 2005 (1) ALT 805 and other decisions. Latest being, 2017 (3) ALD 583.

Despite the authority 2 petitions are filed may be due to inadvertence

Before Considering the legal aspect of the matter, it may be useful as a sort of prefatory caveat, Rule 55 of Civil Rules of Practice and Circular Order, provides the separate applications must be filed for each distinct relief prayed or but goes on to state that the same would not be necessary if the reliefs sought are consequential.