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WHEN MARRIAGE NEEDS A BREAK: EXPLORING THE GROUNDS FOR JUDICIAL SEPARATION IN INDIA

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ABSTRACT

The concept of judicial separation serves as a crucial provision within the Hindu Marriage Act of 1955. While traditional Hindu law considers marriage as an indissoluble sacrament, the realities of modern life need legal mechanisms to address marital discord. Here comes the concept of judicial separation, as defined under Section 10 of the Hindu Marriage Act, 1955, which allows a court to order a married couple to live apart without dissolving the marriage. This provision serves as a vital stepping stone, offering couples a structured period to reflect on their relationship and potentially reconcile before going for the ultimate decision. The paper outlines the historical context and legal grounds for seeking judicial separation, including adultery, cruelty, desertion, conversion, and mental disorders. It also references landmark Indian court cases that have shaped the interpretation and application of these grounds.

INTRODUCTION:

According to Hindu law, marriage is not merely a contract; rather, it is a sacrament that creates a sacred bond between two individuals, believed to last beyond a single lifetime. But, beyond the texts, the realities of human relationships can often lead to the loosening of these sacred bonds. Here, the role of law comes into play. The Hindu Marriage Act (HMA) was enacted in 1955 to govern Hindu marriages in India. Where marriage does not work for that situation, the Hindu Marriage Act, 1955, provides for “Divorce¹” which is a complete dissolution of marriage.

¹ Hindu Marriage Act, 1955, Sec 13, No. 25, 1955

However, the story behind the loosening of the sacred bond can sometimes be different, and this is where provisions for judicial separation come into play. As human beings occasionally seek a break from their daily monotonous life, the legal concept of judicial separation works in the same manner. HMA, 1955, under Section 10, provided for judicial separation. Judicial separation is an essential provision of the HMA, as it deals with the practicality of a troubled marriage, while preserving the legality of the marriage.²

WHAT IS JUDICIAL SEPARATION?

Judicial separation is a court-ordered arrangement where married couples are ordered to live separately and cease their marital relationship, but without dissolving the marriage itself. Referred to as "divorce *mensa et thoro*," or separation from "bed and board," it officially removes the obligation for spouses to cohabit or maintain marital duties. Essentially, it's a consensual separation, gives couples space to reflect on their relationship. This period often serves as a stepping stone towards either reconciliation or divorce.³

As stated before, judicial separation is a primary stage or stepping stone towards divorce, but the legality of the marriage remains as it is; that is why property or maintenance is not an element of discussion in the case of judicial separation (unless and until there is no separation agreement mentioning such grounds).

HISTORICAL BACKGROUND:

In the ancient Hindu religion, marriage is traditionally considered to be a holy sacrament. While ancient scholars like Manu viewed marriage as eternal and indissoluble even after death, the modern era portrays a different picture. With time, various aspects of Hindu law changed along with marriage. Nowadays, marriage is no longer indissoluble or eternal, and that is why contemporary Hindu law provides various mechanisms for relief.

The Hindu Marriage Act, 1955, in section 10² and the Special Marriage Act, 1954, section 23⁴, stated the matrimonial relief of judicial separation. The grounds for seeking judicial

² Samridhi Mittal, *Navigating Marital Disputes: The Role of Judicial Separation in Modern Hindu Marriages*, Vol. 6 Iss 4; 23 IJLSI 23, 23-24 (2024)

³ Pragya Agrahari, *Judicial separation*, ipleaders (July 19, 2025, 6:40 PM)

<https://blog.ipleaders.in/judicial-separation/>

⁴ Special Marriage Act, 1954, Sec 23, No. 43, 1954

separation and divorce are mostly the same under both the legislation, allowing either spouse to file a petition for it in cases of dispute.

GROUND FOR JUDICIAL SEPARATION:

In the case of judicial separation, either spouse can file a petition on the grounds that are similar to divorce. These specifically include the grounds mentioned below.

- **ADULTERY**

Under Section 13(1)(i) of the HMA, 1955⁵ Adultery is recognized as a ground for seeking divorce, which is also a ground for judicial separation. Within Hindu law, adultery is defined as one spouse voluntarily engaging in sexual relations with someone other than their marriage partner. Here, the sufferer is entitled to file a petition, seeking either a divorce (under Section 13¹) or a judicial separation (under Section 10²) of the HMA, 1955.⁶

In the case of *V. Revathi V. Union of India* (1988)⁷ The Supreme Court upheld the validity of section 497 of the IPC (Indian Penal Code), which defined adultery and specified that only men could be prosecuted for this. The SC stated that it did not discriminate against women.

But in *Joseph Shine V. Union of India* (2019)⁸ case, the Hon'ble Supreme Court has struck down section 497 of the IPC and held it as unconstitutional.

- **CRUELTY**

The HMA, 1955, in Section 13(1) (ia)⁹, outlines "cruelty" as a basis for legal action. Broadly, it refers to any marital act that causes a spouse significant suffering or distress, whether physical, emotional, or financial. The interpretation of cruelty is not rigid; it's a subjective assessment always determined by the unique facts of the case.

⁵ Hindu Marriage Act, 1955, Sec 13 (1) (i), No. 25, 1955

⁶ Samridhi Mittal, *Navigating Marital Disputes: The Role of Judicial Separation in Modern Hindu Marriages*, Vol. 6, Iss 4; 23 IJLSI 23, 25 (2024)

⁷ *V. Revathi V. Union of India*, AIR 1988 SC 835

⁸ *Joseph Shine V. Union of India*, AIR 2018 SC 4898

⁹ Hindu Marriage Act, 1955, Sec 13 (1) (ia), No. 25, 1955

In the landmark case of *Narayan Ganesh Dastane V. Sucheta Narayan Dastane* (1975)¹⁰, the Supreme Court recognized cruelty as a valid ground for judicial separation and divorce in India. After a specific amendment, there was no difference between grounds for judicial separation and divorce based on cruelty, except for the insertion of "persistently or repeatedly."¹¹

- **DESERTION**

Under Section 13(1) (ib) of the HMA, 1955¹², provides a basis for seeking matrimonial relief. This occurs when one spouse has, without reasonable cause and the consent or without the knowledge of the other, abandoned their partner for a continuous period of not less than two years, then the aggrieved party can claim for judicial separation, which can further lead to divorce.

- **CONVERSION**

It is defined in section 13(1) (ii)¹³If either husband or wife is converted into any other religion other than Hinduism, the aggrieved party may file a suit for judicial separation.

- **UN SOUNDNESS OF MIND OR MENTAL DISORDER**

Under Section 13(1)(iii)¹⁴ of the HMA, 1955, either spouse can seek matrimonial relief if the other party is suffering from a mental disorder of such a kind and to such an extent that it is unreasonable to expect the petitioner to live with them. In such cases, the aggrieved party may request for the judicial separation.

In the case of *Anima Roy V. Prabodh Mohan Roy*¹⁵ the husband sought the nullity of the marriage on the ground that his wife had schizophrenia.

- **BIGAMY**

¹⁰ *Narayan Ganesh Dastane V. Sucheta Narayan Dastane*, 1975 AIR 1534, 1975 SCR (3) 967

¹¹ Samridhi Mittal, *Navigating Marital Disputes: The Role of Judicial Separation in Modern Hindu Marriages*, Vol. 6, Iss 4; 23 IJLSI 23, 26 (2024)

¹² Hindu Marriage Act, 1955, Sec 13 (1) (ib), No. 25, 1955

¹³ Hindu Marriage Act, 1955, Sec 13 (1) (ii), No. 25, 1955

¹⁴ Hindu Marriage Act, 1955, Sec 13 (1) (iii), No. 25, 1955

¹⁵ *Anima Roy V. Prabodh Mohan Roy*, AIR 1969

Under Section 13(2)(i)¹⁶ of the Hindu Marriage Act, 1955, the law provides a specific ground for judicial separation that addresses bigamy. This provision empowers a woman to seek judicial separation if her husband has remarried while their marriage is still in effect. Essentially, if a man enters into a second marriage when his first wife is still alive, both the first and the second wives have the legal right to file a petition for judicial separation against him.⁷

- **RAPE OR SODOMY**

This provision under Section 13(2)(ii)¹⁷ of the Hindu Marriage Act, 1955, grants a specific right to a woman in a marriage. It states that if her husband has been convicted of certain heinous crimes—namely, rape, sodomy, or bestiality—after their marriage, she is legally entitled to file a petition for judicial separation.⁷

- **OTHER RELEVANT GROUNDS**

Venereal diseases, not heard for 7 years, etc.

Where judicial separation acts as a remedy for marital disputes and the last hope for reconciliation, the Supreme Court of India delivered a very significant judgment in the case of *Hirachand Srinivas Managaonkar v. Sunanda* (2001)¹⁸, in this regard. A very important ruling was made by the apex Court of India, concerning the scope and purpose of divorce petitions filed under Section 13 of the Hindu Marriage Act, 1955. This decision addressed the specific ground of non-resumption of cohabitation following a decree of judicial separation. In this case, the Court also stated that before dissolving the marriage and permanently severing the relationship, a concerted effort must be made to uphold the sanctity of the institution of marriage, because this principle is vital not only for the individuals directly involved but also for the broader societal good.¹⁹

CONCLUSION:

¹⁶ Hindu Marriage Act, 1955, Sec 13 (2) (i), No. 25, 1955

¹⁷ Hindu Marriage Act, 1955, Sec 13 (2) (ii), No. 25, 1955

¹⁸ *Hirachand Srinivas Managaonkar v. Sunanda*, AIR 2001 SC 1285

¹⁹ Hindu Marriage Act, 1955, Sec 10 (Comment), No. 25, 1955

Judicial separation, as provided by the Hindu Marriage Act, 1955, offers a vital legal avenue for couples facing marital disputes. By allowing spouses to live apart without dissolving the marriage, it serves as a crucial framework for reflection and reconciliation. Ultimately, judicial separation safeguards individual interests and provides a structured opportunity to navigate complex marital problems, ensuring the possibility of a restoration while offering legal protection.