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FROM SACRAMENT TO STATUTE: A CRITICAL STUDY OF DIVORCE UNDER THE HINDU MARRIAGE ACT, 1955

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ABSTRACT

Classical Hindu law treated marriage as an indissoluble sacrament disallowing the dissolution of marital ties unless otherwise the custom permits. Divorce was unknown to the laws of Dharamshastras as marriage was regarded as a sacramental union of husband and wife. Statutory divorce entered Hindu law only with the Hindu Marriage Act, 1955 (Hereinafter referred to as “HMA”), which was substantially reshaped by the Marriage Laws (Amendment) Act, 1976. This article traces the movement from the sacramental conception of marriage to the statutory regime of dissolution; examines the fault, mutual-consent and breakdown theories of divorce; and analyses the grounds available under the Act, including the grounds open only to the wife and divorce by mutual consent. It then considers the procedural safeguards that accompany the remedy, namely the one-year bar under Section 14, the cooling-off period under Section 13B(2) and the restriction on remarriage under Section 15, and reflects on the consequences of divorce for children and society. Landmark court rulings, along with recent developments in *Amardeep Singh v. Harveen Kaur* and *Shilpa Sailesh v. Varun Sreenivasan* are discussed throughout the article and the debate continues over irretrievable breakdown as an independent ground.

Keywords: Divorce; Hindu Marriage Act, 1955; sacramental marriage; matrimonial fault; mutual consent; irretrievable breakdown of marriage.

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I. INTRODUCTION

Traditionally, Hindu Law regarded marriage as a sacramental union rather than a contractual obligation. It was a religious and indissoluble union of husband and wife and considered to be pre-ordained and to endure beyond death. Manu declared that a wife is released from her husband neither by sale nor by repudiation,² and the marital tie was accordingly thought incapable of being severed under any circumstances. Divorce was therefore unknown to the Dharmashastras and survived only as a matter of custom among the Shudras and certain tribes.³ Prior to 1955, a few regional enactments conferred a limited statutory right of divorce on Hindus, say for instance, the Bombay Hindu Divorce Act, 1947, the Madras Hindu (Bigamy Prevention and Divorce) Act, 1949 and the Saurashtra Hindu Divorce Act, 1952.⁴

The ancient sources are, however, not wholly uniform. Narada enumerated five conditions in which a wife could repudiate her marriage and permitted to enter into another marital union:⁵

- where the husband is missing or has not been heard of;
- where the husband has died;
- where the husband has renounced the world;
- where the husband is impotent; and
- where the husband has been ex-communicated or has become an outcaste.

Kautilya's *Arthashastra*, for its part, contemplated the dissolution of a marriage by reason of mutual animosity, principally in respect of marriages solemnised in the non-approved forms, a provision that later writers have often read as an early recognition of divorce by mutual consent.⁶ These texts illustrate the fact that although the dominant tradition remained inseparable, but the classical position itself was never entirely monolithic.

Statutory recognition of divorce as a general remedy came with the HMA, which for the first time made divorce available to Hindus and thereby effected a radical change in the legal conception of Hindu marriage. The Act has since been amended in certain respects, most

²Manu, *Manusmriti*, ch. IX, v. 46.

³The Hindu Marriage Act, 1955 (Act 25 of 1955) ("HMA"), s. 29(2), preserves any right to dissolve a Hindu marriage that is recognised by custom or conferred by a special enactment.

⁴The Bombay Hindu Divorce Act, 1947 (Bom. Act XXII of 1947); the Madras Hindu (Bigamy Prevention and Divorce) Act, 1949; the Saurashtra Hindu Divorce Act, 1952.

⁵*Nārada Smṛiti*, ch. XII, v. 97.

⁶Kautilya, *Arthaśāstra*, Book III, ch. 3.

notably by the Marriage Laws (Amendment) Act, 1976,⁷ which shortened statutory periods, introduced divorce by mutual consent and widened the grounds, and by the Personal Laws (Amendment) Act, 2019, which removed leprosy as a ground.⁸

II. HISTORICAL EVOLUTION OF DIVORCE IN HINDU LAW

The word “divorce” is derived from the Latin word ‘*divortium*’, meaning to turn aside or to separate. Although the HMA does not define the term, it denotes in legal usage the judicial termination of a valid marriage during the lifetime of both spouses, as distinct from a declaration that the marriage was void or voidable from the start.⁹ It is considered as a breakdown of a marriage that happens between not just two individuals but between two families, and, where there are children, the next generation as well. The treatment of the subject has experienced a paradigm shift through three different phases.

A. The Classical Position

Under ancient Hindu law, the concept of divorce was neither codified, nor recognised. Marriage was a *samskara*, an eternal union of such sanctity that it was believed to have a divine origin and to be pre-destined. Its object was the procreation of children and the proper performance of religious rites. Manu’s rule that the wife could not be separated from her husband by sale or abandonment emphasised that the marital bond was unbreakable and indissoluble. The notion of divorce was, accordingly, out of the question in the orthodox tradition, even though customary divorce was accepted in some communities and tribes.

B. The Colonial Period

Legislative enactment regarding Hindu marriage commenced under the East India Company with the abolition of *sati* by the Bengal Sati Regulation, 1829, enacted during the Governor-General Lord William Bentinck and supported by Raja Ram Mohan Roy.¹⁰ The Hindu Widows’ Remarriage Act, 1856 legalised the remarriage of Hindu widows,¹¹ and the Indian Penal Code, 1860 made bigamy punishable.¹² Yet these reforms did not extend to divorce. The Special Marriage Act, 1872, which provided for civil marriage, was in its original form

⁷The Marriage Laws (Amendment) Act, 1976 (Act 68 of 1976).

⁸The Personal Laws (Amendment) Act, 2019 (Act 6 of 2019), s. 5, omitting HMA, s. 13(1)(iv).

⁹ On nullity of marriage, see HMA, ss. 11 and 12.

¹⁰The Bengal Sati Regulation, 1829 (Regulation XVII of 1829).

¹¹The Hindu Widows’ Remarriage Act, 1856 (Act XV of 1856).

¹²The Indian Penal Code, 1860, s. 494, now the Bharatiya Nyaya Sanhita, 2023, s. 82.

available only to persons who declared that they did not profess, among others, the Hindu religion,¹³ and the Indian Divorce Act, 1869 applied only where one of the parties was a Christian.¹⁴ Wary of public opposition, the colonial administration refrained from interfering with Hindu personal law on this subject, and no general law of divorce for Hindus emerged despite the considerable body of legislation relating to Hindu marriage.

C. Codification after Independence

The post-colonial Hindu elite was deeply concerned to maintain an aura of evolution, development and modernity. The elite eventually gave the new divorce law to all Hindus. The HMA received the assent of the President on 18 May 1955 and applies to Hindus in the wide sense defined in the Act, including Buddhists, Jains and Sikhs.¹⁵ Section 13 for the first time made divorce available as a statutory remedy and set out the grounds on which it may be granted. Section 14 provides the provision of divorce a bit difficult as it provides that no petition for divorce can be presented within one year of marriage unless it causes exceptional hardship to the petitioner. The object of this Section is to prevent party recourse to legal proceedings before they have real efforts to save their marriage from disaster. Section 15 provides limitations on the right of divorced persons to marry again. Taken together, these provisions reflect a legislative policy that divorce must not be resorted to lightly. The Special Marriage Act, 1954 simultaneously created a secular divorce regime for civil marriages. In the decades since, the concept of divorce has become firmly established and has been refined by successive amendments from time to time and a substantial body of case law.

III. THEORIES OF DIVORCE

Three doctrinal approaches underlie modern divorce legislation, namely the fault theory, the mutual-consent theory and the theory of irretrievable breakdown. Indian law draws on all these foundational theories, and an acknowledgement of each is necessary to understand the structure of the HMA.

¹³The Special Marriage Act, 1872 (Act III of 1872).

¹⁴The Indian Divorce Act, 1869 (Act IV of 1869).

¹⁵HMA, s. 2.

A. Fault or Guilt Theory

Under the fault theory, a marriage may be dissolved only where one spouse has committed a matrimonial offence, such as adultery, cruelty or desertion, and the other spouse is innocent.¹⁶ The theory pervades most of Section 13(1) and is reinforced by Section 23(1)(a), under which relief is granted only if the petitioner is not taking advantage of his or her own wrong or disability.¹⁷ Its primary flaw is that it forces the parties to litigate culpability, and consequently offers no remedy where both spouses are at fault or if the marriage plainly failed without a single act of misconduct.

B. Divorce by Mutual Consent

The consent theory rests on the autonomy of the parties: if both wish to end the marriage, the law should not compel them to remain married. Divorce by mutual consent is recognised under various legislative enactments including the HMA, the Special Marriage Act, 1954, the Parsi Marriage and Divorce Act, 1936 and the Indian Divorce Act, 1869,¹⁸ and Muslim personal law similarly provides for dissolution of marriage by *khula* and *mubarat*. Notably, Indian law does not permit divorce on bare consent. The parties must adhere to the statutory conditions, including a separation period and a mandatory waiting period, which are discussed in Part IV.D below.

C. Irretrievable Breakdown of Marriage

As discussed earlier, Hindu marriage is considered to be an inseparable and indissoluble union between two persons based on love, affection, and respect for each other. However, it can become irreparable when the two spouses can't live together peacefully and have no choice but to dissolve the marriage. Therefore, this is regarded as the most controversial theory in legal jurisprudence. The HMA does not recognise irretrievable breakdown as an independent ground. It does so only indirectly, through Section 13(1A), under which either spouse may seek divorce where there has been no resumption of cohabitation for a year after a decree of judicial separation or no restitution of conjugal rights after a decree for that relief.¹⁹ The Law

¹⁶HMA, s. 13(1).

¹⁷HMA, s. 23(1)(a).

¹⁸HMA, s. 13B; the Special Marriage Act, 1954, s. 28; the Parsi Marriage and Divorce Act, 1936, s. 32B (inserted in 1988); the Indian Divorce Act, 1869, s. 10A (inserted in 2001).

¹⁹HMA, s. 13(1A).

Commission of India has twice recommended that breakdown be made a ground of divorce,²⁰ and a Bill to that end, the Marriage Laws (Amendment) Bill, 2010, was introduced in Parliament but has lapsed. The Supreme Court, in *Naveen Kohli v. Neelu Kohli*, urged the Union to consider the amendment,²¹ and in *Shilpa Sailesh v. Varun Sreenivasan* a Constitution Bench held that the Supreme Court may, in the exercise of its powers under Article 142 of the Constitution, dissolve a marriage that has irretrievably broken down, subject to the guidelines it laid down, while cautioning that parties cannot claim this relief as of right.²² Whether irretrievable breakdown should become a statutory ground available to every court remains the matter of debate in this area of law, giving rise to concern that it may be misused to the detriment of the spouse who wishes to preserve the marriage.

IV. GROUNDS FOR DIVORCE UNDER THE HINDU MARRIAGE ACT, 1955

A decree of divorce cannot be granted merely because the other party does not object to it; rather a statutory ground must be established.²³ Matrimonial proceedings are civil proceedings, and the petitioner is required to prove the ground on a preponderance of probabilities and not, as in a criminal trial, beyond reasonable doubt.²⁴

A. Grounds Available to Either Spouse: Section 13(1)

1. Adultery: Section 13(1)(i)

Adultery is a ground of divorce under all the personal laws. Under the HMA, the petitioner must show that the respondent has had voluntary sexual intercourse with a person other than his or her spouse after the solemnisation of the marriage.²⁵ The burden of proving adultery lies on the petitioner. Because adultery is seldom committed openly, direct evidence is rarely available, and courts accept circumstantial evidence from which the inference of guilt can properly be drawn.²⁶ The bare, uncorroborated statement of the petitioning spouse, however,

²⁰Law Commission of India, *71st Report on the Hindu Marriage Act, 1955 (Irretrievable Breakdown of Marriage as a Ground of Divorce)* (1978); Law Commission of India, *217th Report* (2009), on irretrievable breakdown of marriage as a further ground for divorce.

²¹*Naveen Kohli v. Neelu Kohli*, (2006) 4 SCC 558.

²²*Shilpa Sailesh v. Varun Sreenivasan*, 2023 SCC OnLine SC 544 (Constitution Bench, decided 1 May 2023).

²³*Edwardraj v. Sillakathi*, AIR 1994 Mad. 82; see also *Miliacy v. Rose*, AIR 1995 Gau. 47 (consent alone does not entitle a party to a decree of divorce under the Indian Divorce Act, 1869).

²⁴*Dr. N.G. Dastane v. Mrs. S. Dastane*, (1975) 2 SCC 326 : AIR 1975 SC 1534.

²⁵HMA, s. 13(1)(i), as amended in 1976 (Act 68 of 1976). Before the amendment, the respondent had to be “living in adultery”; a single act now suffices.

²⁶*Pattayee v. Manichami*, AIR 1967 Mad. 254.

is not enough.²⁷ Although the Supreme Court has struck down the criminal offence of adultery, it still remains a civil wrong and a valid ground for divorce.²⁸

2. Cruelty: Section 13(1)(ia)

Cruelty is among the most frequently invoked grounds of divorce. The Act does not expressly define the term cruelty, however, Section 13(1)(ia) states that the other party “has, after the solemnization of the marriage, treated the petitioner with cruelty”.²⁹ In defining its content, Indian courts have relied on the English formulation in *Russell v. Russell*, that conduct of such a character as to cause danger to life, limb or health, bodily or mental, or to give rise to a reasonable apprehension of such danger, amounts to cruelty.³⁰

Cruelty, therefore, involves:

- an act or course of conduct on the part of the respondent;
- causing physical or mental harm or a reasonable apprehension of such harm to the petitioner;
- which may be expressed through words, gestures or even silence; and
- irrespective of whether the respondent intended to be cruel.³¹

English courts have also recognised that where a marriage has in truth broken down, no public interest is served by holding the parties together; Sachs J. made observations to this effect in *Masarati v. Masarati*.³² Conduct such as habitual excessive drinking, refusal to have children without reasonable cause, threats of suicide and persistent demands for dowry may, depending on the facts, amount to cruelty. The Supreme Court has cautioned that no uniform standard can be laid down and that each case must be assessed on its own facts.³³

Cruelty may be physical or mental. *Physical cruelty* consists of acts of violence by one spouse against the other that result in injury to body, limb or health, or cause a reasonable apprehension of it. In *Kaushalya v. Wisakhiram*, where the husband ill-treated and beat the wife so severely that she had to approach the police to lodge a complaint, the conduct was held to be cruelty.³⁴

²⁷*Sulekha v. Kamlakant*, AIR 1980 Cal. 370.

²⁸*Joseph Shine v. Union of India*, (2019) 3 SCC 39.

²⁹HMA, s. 13(1)(ia); see also the Special Marriage Act, 1954, s. 27(1)(d).

³⁰*Russell v. Russell*, [1897] AC 395 (HL); applied in *Dastane*, supra note 23.

³¹*Shobha Rani v. Madhukar Reddi*, (1988) 1 SCC 105.

³²*Masarati v. Masarati*, [1969] 1 WLR 393.

³³*Samar Ghosh v. Jaya Ghosh*, (2007) 4 SCC 511.

³⁴*Kaushalya v. Wisakhiram*, AIR 1961 Punj. 520.

Mental cruelty is conduct that causes such mental pain and suffering that it becomes impossible for the other spouse to live with the offender. In ***Praveen Mehta v. Inderjeet Mehta***, the Supreme Court observed that mental cruelty is a state of mind and feeling, so that its existence must be inferred from the facts and circumstances of the case taken cumulatively.³⁵

3. Desertion: Section 13(1)(ib)

The Explanation to Section 13(1) provides that 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 the petitioner, and includes the wilful neglect of the petitioner. The desertion must have continued for a period of not less than two years immediately preceding the presentation of the petition.³⁶ The Supreme Court has held that desertion requires two main elements to be fulfilled on the part of the deserting spouse, namely the *factum* of separation (the intention to bring cohabitation permanently to an end) and the *animus deserendi* (the absence of consent and the absence of conduct giving reasonable cause for leaving). The burden of proving desertion throughout the statutory period rests on the petitioner.³⁷

Desertion may be:

- *actual*, where there is separation in fact accompanied by the intention to desert;
- *constructive*, where a spouse, by his or her conduct, forces the other to leave the matrimonial home; or
- a case of *wilful neglect* of the petitioner by the respondent.

In ***Savitri Pandey v. Prem Chand Pandey***, the Supreme Court held that a spouse who compels the other to leave the matrimonial home is the party in desertion, and not the spouse who leaves.³⁸ Desertion may come to an end by the resumption of cohabitation, by a *bona fide* offer of reconciliation, or where the separation becomes consensual.

4. Conversion: Section 13(1)(ii)

Where the respondent has ceased to be a Hindu by conversion to another religion, the other spouse may seek divorce.³⁹ The petitioner must prove that the respondent has in fact ceased to

³⁵*Praveen Mehta v. Inderjeet Mehta*, (2002) 5 SCC 706 : AIR 2002 SC 2582.

³⁶HMA, s. 13(1)(ib) and Explanation to s. 13(1); see also the Special Marriage Act, 1954, s. 27(1)(b).

³⁷*Bipinchandra Jaisinghbhai Shah v. Prabhawati*, AIR 1957 SC 176; *Lachhman Utamchand Kirpalani v. Meena*, AIR 1964 SC 40; *Rohini Kumari v. Narendra Singh*, AIR 1972 SC 459.

³⁸*Savitri Pandey v. Prem Chand Pandey*, (2002) 2 SCC 73 : AIR 2002 SC 591.

³⁹HMA, s. 13(1)(ii).

be a Hindu and embraced another faith. A mere renunciation of, or professed indifference to, religion does not suffice; there must be an actual conversion, ordinarily attended by the formalities of the new faith.

5. *Unsoundness of Mind and Mental Disorder: Section 13(1)(iii)*

Divorce may be sought where the respondent is 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.⁴⁰ The test is not the mere existence of a mental abnormality but its kind and degree, to destroy the possibility of normal cohabitation.⁴¹

6. *Leprosy: Section 13(1)(iv) (Omitted)*

Section 13(1)(iv) originally allowed divorce where the respondent had been suffering from a virulent and incurable form of leprosy. The clause was omitted by the Personal Laws (Amendment) Act, 2019, which removed leprosy as a ground of divorce from the HMA and from the other matrimonial statutes, in recognition of the stigma attached to the disease.⁴²

7. *Venereal Disease: Section 13(1)(v)*

A spouse may seek divorce where the respondent is suffering from venereal disease in a communicable form.⁴³ The decision in *Mr. X v. Hospital Z*, which is sometimes cited in this context, concerned a different question. The Supreme Court therein considered whether a hospital breached medical confidentiality by disclosing a person's HIV-positive status to his prospective spouse, and held that it did not.⁴⁴ It is not authority on divorce, and the Act contains no express mention of HIV.

8. *Renunciation of the World: Section 13(1)(vi)*

The respondent must have renounced the world by entering a religious order, such as by becoming a *sanyasi*.⁴⁵ Renunciation must be final and absolute, a complete withdrawal from

⁴⁰HMA, s. 13(1)(iii), as substituted in 1976. The Explanation defines "mental disorder" to include mental illness, arrested or incomplete development of mind, psychopathic disorder and any other disorder or disability of mind, including schizophrenia.

⁴¹*Ram Narain Gupta v. Rameshwari Gupta*, (1988) 4 SCC 247 : AIR 1988 SC 2260.

⁴²Personal Laws (Amendment) Act, 2019, s. 5. The Act also made corresponding omissions in the Indian Divorce Act, 1869, the Dissolution of Muslim Marriages Act, 1939, the Special Marriage Act, 1954 and the Hindu Adoptions and Maintenance Act, 1956.

⁴³HMA, s. 13(1)(v).

⁴⁴*Mr. X v. Hospital Z*, (1998) 8 SCC 296 : AIR 1999 SC 495.

⁴⁵HMA, s. 13(1)(vi).

worldly life, and the formal entry into the religious order is indispensable. The clause does not apply to persons such as a *pujari*, *granthi*, *mahant* or *sant* who continue to lead a family life.

9. Presumption of Death: Section 13(1)(vii)

Divorce may be sought where the respondent 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 him or her had the respondent been alive.⁴⁶ The presumption derives from the law of evidence.⁴⁷

B. Grounds Based on Failure to Resume Cohabitation: Section 13(1A)

Section 13(1A) gives either spouse a right to seek divorce in two conditions. The first is where there has been no resumption of cohabitation as between the parties for a period of one year or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties. The second is where there has been no restitution of conjugal rights as between the parties for a period of one year or upwards after the passing of a decree for restitution of conjugal rights in such a proceeding.⁴⁸ These provisions are the statutory acknowledgements in the Act that a marriage may be dissolved because it has ceased to function, without proof of any matrimonial offence.

C. Grounds Available to the Wife Alone: Section 13(2)

The HMA, like the Special Marriage Act, 1954 and the Indian Divorce Act, 1869, provides certain additional grounds on which only the wife may seek divorce.⁴⁹

Polygamous marriage. Where the husband had more than one wife before the commencement of the Act, any of the wives may seek divorce, provided the other wife is alive at the time of presentation of the petition.⁵⁰ The ground is of diminishing practical importance, since a Hindu marriage solemnised while a spouse is living is void and bigamy is punishable.⁵¹

Rape, sodomy or bestiality. The wife may seek divorce if the husband has, since the solemnisation of the marriage, been guilty of rape, sodomy or bestiality.⁵² A proof of the

⁴⁶HMA, s. 13(1)(vii).

⁴⁷The Indian Evidence Act, 1872, s. 108, now the Bharatiya Sakshya Adhiniyam, 2023, s. 111.

⁴⁸HMA, s. 13(1A)(i)–(ii). The period, originally two years, was reduced to one year by the Marriage Laws (Amendment) Act, 1976.

⁴⁹HMA, s. 13(2); the Special Marriage Act, 1954, s. 27(1A); the Indian Divorce Act, 1869, s. 10.

⁵⁰HMA, s. 13(2)(i).

⁵¹HMA, ss. 5(i), 11 and 17.

⁵²HMA, s. 13(2)(ii); the Special Marriage Act, 1954, s. 27(1A)(i); the Indian Divorce Act, 1869, s. 10.

misconduct is sufficient. The ground is available to the wife alone, and where the wife is guilty of similar conduct, the husband must proceed on the ground of cruelty rather than this provision. In *Bampton v. Bampton*, an English decision followed in India, it was held that where a husband commits sodomy upon his wife without her consent, the wife may obtain a decree of divorce; however, the ground fails if she was a consenting party.⁵³

Non-resumption of cohabitation after a maintenance order. Where a decree or order awarding maintenance to the wife has been passed against the husband, either in a suit under Section 18 of the Hindu Adoptions and Maintenance Act, 1956 or in a proceeding under Section 125 of the Code of Criminal Procedure, 1973, and cohabitation has not been resumed for one year or upwards since the decree or order, the wife may seek divorce.⁵⁴

Repudiation of marriage. A wife whose marriage, whether consummated or not, was solemnised before she attained the age of fifteen years may seek divorce if she repudiates the marriage after attaining that age but before attaining the age of eighteen years.⁵⁵

D. Divorce by Mutual Consent: Section 13B

Section 13B allows both parties to present a joint petition to the district court for dissolution of the marriage 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.⁵⁶ After the petition is presented, the parties must wait for at least six months and may move to the court for the second motion within eighteen months from the date of presentation. If the petition is not withdrawn in the meantime, the court, after hearing the parties and making such inquiry as it thinks fit, and on being satisfied that the marriage has been solemnised, that the averments are true and that the consent was not obtained by force, fraud or undue influence, passes a decree of divorce.⁵⁷

Two points of law are of particular importance. First, the consent of both parties must continue until the decree is passed, and either party may withdraw consent before that stage.⁵⁸ Second, the six-month interval is not a mandatory bar in every case. In *Amardeep Singh v. Harveen*

⁵³*Bampton v. Bampton*, [1959] 2 All ER 766.

⁵⁴HMA, s. 13(2)(iii); the Hindu Adoptions and Maintenance Act, 1956, s. 18; the Code of Criminal Procedure, 1973, s. 125, now the Bharatiya Nagarik Suraksha Sanhita, 2023, s. 144.

⁵⁵HMA, s. 13(2)(iv), added by the Marriage Laws (Amendment) Act, 1976.

⁵⁶HMA, s. 13B(1), inserted by the Marriage Laws (Amendment) Act, 1976; the Special Marriage Act, 1954, s. 28.

⁵⁷HMA, s. 13B(2).

⁵⁸*Sureshta Devi v. Om Prakash*, (1991) 2 SCC 25 : AIR 1992 SC 1904.

Kaur, the Supreme Court held that the period under Section 13B(2) is directory and that the court may waive it where the statutory separation period has already run, efforts at mediation and reconciliation have failed, the parties have genuinely settled their differences including alimony and custody, and waiting would only prolong their agony.⁵⁹ The earlier view that only the Supreme Court may dispense with the period, under Article 142 of the Constitution, must now be read in the light of that decision, although the broader power to dissolve a marriage on the ground of irretrievable breakdown remains with the Supreme Court alone.⁶⁰

V. PROCEDURAL SAFEGUARDS AND CONSEQUENTIAL RELIEFS

A. Bar on Petitions within One Year of Marriage: Section 14

Section 14 provides that no court shall entertain a petition for divorce unless one year has elapsed since the date of the marriage, computed from the date on which the marriage was solemnised. The court may, however, permit an earlier petition on an application showing that the case is one of exceptional hardship to the petitioner or of exceptional depravity on the part of the respondent.⁶¹ The provision is intended to discourage hasty litigation and to give the parties a reasonable period in which to resolve their differences. A petitioner who obtains leave must not misrepresent or conceal the nature of the case from the court; if leave was obtained by misrepresentation or concealment, the court may dismiss the petition or make the decree conditional on the expiry of the one-year period.⁶²

B. Reconciliation, Alternative Relief and Ancillary Orders

The Act imposes on the court a duty, wherever possible, to make every endeavour to bring about a reconciliation before granting relief.⁶³ Except where the petition rests on conversion, renunciation of the world or presumption of death, the court may also, in an appropriate case, pass a decree of judicial separation instead of a decree of divorce.⁶⁴ A decree of divorce is typically accompanied by consequential orders: maintenance *pendente lite* and expenses of the

⁵⁹*Amardeep Singh v. Harveen Kaur*, (2017) 8 SCC 746.

⁶⁰*Shilpa Sailesh*, supra note 22.

⁶¹HMA, s. 14(1) and proviso.

⁶²HMA, s. 14(1), second proviso. Section 14(2) further requires the court, in deciding such an application, to have regard to the interests of any children of the marriage and to whether there is a reasonable probability of reconciliation before the expiry of one year.

⁶³HMA, s. 23(2).

⁶⁴HMA, s. 13A.

proceedings, permanent alimony and maintenance, custody, maintenance and education of minor children, and the disposal of property presented at or about the time of marriage.⁶⁵

C. Remarriage after Divorce: Section 15

Where a marriage has been dissolved by a decree of divorce, either party may marry again if there is no right of appeal against the decree, or, where there is such a right, the time for appealing has expired without an appeal having been presented, or an appeal has been presented but has been dismissed.⁶⁶ A marriage solemnised in contravention of this restriction has been treated as void.⁶⁷

VI. SOCIAL CONSEQUENCES OF DIVORCE

Divorce marks the loss of an established family life and consequently, it has significant repercussions for the individuals concerned, their families and the community. Divorce is a notable change in the status and position for everyone involved in the process inclusive of children and, more broadly society. This transition is a tragedy in their lives.⁶⁸

A. Impact on Children

Child-welfare literature reports that children of divorced parents may experience a diverse array of challenges and difficulties, including:⁶⁹

- *academic and social effects*, such as poor performance in academics, loss of interest in social activity and difficulty in adapting to change;
- *emotional effects*, including feelings of loss, anger, confusion, anxiety and guilt, which may in turn contribute to depression and stress;
- *behavioural effects*, including irritability, exposure to destructive behaviour and, in some cases, risk-taking conduct such as the use of alcohol or drugs; and
- *attitudinal effects*, notably a diminished faith in marriage and the family unit.

⁶⁵HMA, ss. 24 to 27.

⁶⁶HMA, s. 15.

⁶⁷*Chandra v. Manoram*, AIR 1969 Mad. 405.

⁶⁸S. Chadha, "A Critical Analysis on Divorce under Hindu Marriage Act, 1955", *The Legal Quorum* (9 September 2024), Available at <https://thelegalquorum.com/a-critical-analysis-on-divorce-under-hindu-marriage-act-1955>.

⁶⁹"Effects of Divorce on Children", Family Means, <https://www.familymeans.org/effects-of-divorce-on-children.html>.

The law acknowledges the interests of children as primary considerations, rather than being treated as incidental. The Act directs the court to consider them at the stage of Section 14 and to make appropriate orders for their custody, maintenance and education under Section 26,⁷⁰ and the Supreme Court has consistently held that in matters of custody the welfare of the child is the paramount consideration.⁷¹

B. Impact on Society

Commentators contend that divorce weakens society because the family is its basic unit, providing the educational, emotional and financial support on which continued social growth depends. When a marriage ends, the argument runs, these functions are diminished, and the mental and physical health of the parties may suffer.⁷² Research also shows that persons and children who have experienced divorce are more likely to enter high-risk marriages, or to be reluctant to marry at all. These claims rely largely on secondary and popular sources which require a cautious interpretation. Empirical findings vary, and the costs of divorce must be weighed against the harm of continuing in a marriage that has failed or become abusive.

VII. CONCLUSION

Society has an undeniable interest in safeguarding the marital relationship in order to protect and promote social stability, the integrity of the family and the proper growth and happiness of children. Legislation that permits the dissolution of marriage departs, to that extent, from this central idea, and the Indian legislature has accordingly been cautious in defining the grounds on which a marriage may be ended. Ideally, spouses are expected to support and accept one another through the vicissitudes of married life. That ideal is not realised in every marriage, and where it fails, the law must provide a remedy that is fair, accessible and humane.

The framework of the HMA reflects this balance. It retains the fault grounds, introduces consensual divorce and gives limited recognition to breakdown, while surrounding the remedy with safeguards: the one-year bar, the statutory duty of reconciliation, the cooling-off period and the restriction on remarriage. Judicial developments such as *Amardeep Singh* and *Shilpa Sailesh* show the courts moving towards a more flexible and less adversarial approach, and the continuing recommendations for an independent ground of irretrievable breakdown suggest

⁷⁰HMA, ss. 14(2) and 26.

⁷¹*Gaurav Nagpal v. Sumedha Nagpal*, (2009) 1 SCC 42 : AIR 2009 SC 557.

⁷²“The Impact of Divorce on Society, Parents and Children”, VWelfare, https://vwelfare.com/our_blogs/the-impact-of-divorce-on-society-parents-and-children/.

that the law is still in transition. Whatever the direction of reform, every effort must be made to preserve the sanctity of the marital bond before a decree of dissolution is granted, for its significance extends beyond the spouses to their children and to society at large.