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# THE LEGAL EVOLUTION OF DISSOLUTION: AN ANALYSIS OF DIVORCE UNDER THE HINDU MARRIAGE ACT, 1955

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## I. ABSTRACT

The Hindu Marriage Act of 1955 marks an important change in Hindu personal law. It shifts the view of marriage from a religious sacrament to a civil institution regulated by law. Before this law, Hindu legal practices mainly denied divorce, causing significant social and legal difficulties, especially for women. This paper examines the divorce laws outlined in the Hindu Marriage Act, looking at its historical context, legislative purpose, and underlying principles.

The study looks at the different grounds for divorce specified in the Act. These include fault-based reasons under Section 13(1), special protective grounds for women under Section 13(2), divorce based on failure to reconcile under Section 13(1A), and the introduction of mutual consent divorce under Section 13B. It also discusses the procedural protections included in the Act and the additional support related to maintenance, custody, and property, which show the Act's commitment to social justice.

Focus is on how judicial interpretation has influenced modern divorce law. By broadly interpreting ideas like mental cruelty and using extraordinary powers under Article 142 to allow divorce due to the irretrievable breakdown of marriage, the courts have updated the way the Act is applied. The paper ends by noting the lack of irretrievable breakdown as an official reason for divorce as a significant gap and argues for changes in law to include this concept. This would help ensure that the legal framework reflects constitutional values, judicial agreement, and current social realities.

This analysis shows that while the Hindu Marriage Act of 1955 has improved marriage justice, its ongoing relevance relies on its ability to adapt to changing social norms and uphold individual dignity as required by the constitution.

## II. Introduction: The Codification of Hindu Matrimonial Law

The institution of marriage in India, particularly under Hindu law, has undergone significant evolution, mirroring broader societal, cultural, and legal transformations. Historically, Hindu marriage was regarded as a sacramental, indissoluble union, rooted in religious beliefs and rituals. The concept of divorce, as understood in the contemporary legal framework, was virtually nonexistent in classical Hindu law. Marriage was considered not just a contractual arrangement but a sacred, lifelong bond that extended beyond death, symbolizing the union of families rather than merely individuals. This traditional view, however, came under scrutiny in the post-independence era, when the need to modernize personal laws and align them with the constitutional ideals of equality and individual freedom became evident.

The Hindu Marriage Act of 1955 was the first to recognize divorce among Hindus. According to Manu, only the death of one of the partners may bring a marriage to an end. Any divorce that was not merely frowned upon, but also labelled and biased was strongly discouraged. The sole divorce law in British India was the Divorce Act of 1869, which allowed Christians to divorce each other in India. Apart from that, there was no legal framework in place in India for divorce. The Hindu Marriage Act was passed in 1955, and it included provisions on divorce. The term "divorce" is not defined in the statute as it merely refers to the termination of a marriage. Section 13 of the Act of 1955 provides the various grounds of divorce that will be the subject matter of discussion in the present article.

### A. The Indissoluble Sacrament (Pre-1955 Shastric Law)

Under pre-1955 Shastric Hindu law, marriage was viewed not as a civil contract but as a sacred, unbreakable sacrament (samskara). This religious view influenced the Hindu position on divorce and ending marriages. The idea of divorce, as we understand it today, barely existed in classical Hindu law. Marriage was seen as a lasting and spiritual union that continued not just in this life but across many lifetimes.

### Philosophical and Religious Basis

Hindu marriage relied on Dharmashastric texts like the Manusmriti, Yajnavalkya Smriti, and Narada Smriti. These texts emphasized that marriage was a religious duty crucial for:

1. Performing religious rites and yajnas

2. Fulfilling dharma, artha, and moksha
3. Continuing the lineage through male heirs

Marriage was believed to unite husband and wife as one spiritual unit. This idea is reflected in the belief that the wife is ardhangini (half of the husband). The saying, “Once married, always married,” illustrated that the marital bond could not be broken by human actions.

### **Absence of Divorce as a Legal Concept**

In classical Hindu law:

1. Divorce was not accepted as a legal choice
2. A valid Hindu marriage could not end while both spouses were alive

Severe cruelty, incompatibility, or abandonment did not provide grounds for a spouse to seek divorce.

The only recognized way a marriage could end was through death, not separation or repudiation. This strict viewpoint distinguished Hindu law from Islamic law, which accepted divorce, and English law, which progressed to allow it.

### **Position of Women**

The sacramental theory had particularly harsh effects on women.

A Hindu wife was bound to her husband even if he was cruel, powerless, or immoral.

Traditionally, women were not permitted to remarry, especially in higher castes.

A woman abandoned by her husband had no legal right to end the marriage or remarry.

Some customs allowed remarriage among lower castes, tribal communities, or in certain areas, but these were exceptions based on tradition, not Shastric law.

### **Judicial Recognition of the Sacramental Nature**

Colonial courts consistently recognized the sacramental meaning of Hindu marriage. In *Moonshee Buzloor Ruheem v. Shumsoonissa Begum* (1867), though it focused on Muslim

law, the Privy Council compared it with Hindu law and highlighted that Hindu marriage was not a contract but a sacrament. Courts ruled that unless there was clear proof of a custom allowing divorce, divorce could not be granted under Hindu law.

### **Limited Scope of Separation**

While divorce was not an option, limited remedies were available:

- Judicial separation in rare cases under colonial law
- Maintenance claims for abandoned wives
- Custom-based divorce, but only if old, proven, and reasonable customs were clearly established

These remedies did not end the marriage; they merely regulated living arrangements.

### **Transition to Modern Law**

The strictness of pre-1955 Shastric law eventually changed with the introduction of the Hindu Marriage Act, 1955, which:

- Recognized divorce as a legal right
- Changed Hindu marriage from a purely sacramental institution to one that included contractual and civil elements
- Balanced religious tradition with constitutional values of equality and dignity

### **III. Purpose of the Hindu Marriage Act, 1955**

The Hindu Marriage Act, 1955 was created as part of the post-Independence Hindu Code reforms. Its main goal is to codify, reform, and modernize Hindu marriage law in India. The Act aims to provide uniformity, certainty, and legal clarity to marriage and divorce among Hindus. Previously, these issues were governed by various and often strict personal laws.

At its core, the Act seeks to change marriage from a purely sacramental and indissoluble institution into a legally regulated civil relationship, while still respecting its religious and

cultural significance. By recognizing divorce, judicial separation, restitution of conjugal rights, maintenance, and custody, the Act balances traditional Hindu values with modern ideas of individual dignity, equality, and justice.

Another important goal of the HMA is to protect women's rights within marriage. Rules about monogamy, maintenance (Sections 24 and 25), void and voidable marriages, and grounds for divorce aim to prevent exploitation and ensure economic and social security for spouses, especially women.

The Act also promotes gender equality and social reform by banning polygamy among Hindus, allowing mutual consent divorce, and giving equal access to marriage remedies. It connects personal law with constitutional values, especially Articles 14, 15, and 21, by ensuring fairness, non-discrimination, and the right to live with dignity.

In essence, the Hindu Marriage Act, 1955 serves the dual purpose of preserving the sanctity of marriage while also providing legal remedies when marital relationships break down irreparably.

This ensures that personal law evolves with changing social realities.

#### **IV. Statutory Framework: Theories and Grounds for Dissolution**

##### **• Fault Theory of Divorce (Section 13(1))**

When it was enacted, the HMA mainly focused on fault theory. Under this theory, one spouse could only seek a divorce by proving that the other spouse had committed some type of wrongdoing. This approach shows the belief that marriage should not end easily, and that blame needs to be shown.

###### **1. Adultery**

Adultery under Section 13(1)(i) means voluntary sexual intercourse between a married person and someone other than their spouse. The 1976 amendment made it easier to prove this by eliminating the need to show ongoing adulterous behavior.

Although adultery is no longer a crime, keeping it as a civil reason for divorce highlights the importance of marital fidelity as a key part of marriage.

**Landmark cases:****1. Subbaramma v. Saraswati (1966)<sup>1</sup>.**

The Court held that adultery must be **voluntary sexual intercourse** outside marriage. Direct proof is not mandatory; it may be established through **circumstantial evidence** showing opportunity and inclination.

**2. Revathi v. Union of India (1988)<sup>2</sup>.**

The Supreme Court upheld adultery as a matrimonial offence while striking down its criminal nature later. It reaffirmed that adultery remains a valid civil ground for divorce.

**1.a. Cruelty**

Cruelty under Section 13(1)(ia) is among the most litigated and judicially developed grounds. Courts have consistently held that cruelty is **not confined to physical violence** but extends to mental and emotional harm.

Judicial interpretation has recognized:

- Verbal abuse
- False criminal allegations
- Sustained neglect
- Denial of companionship
- Mental torture and humiliation

In the case of *Samar Ghosh v. Jaya Ghosh*<sup>3</sup>, the Supreme Court provided detailed guidelines on what constitutes “cruelty” as a ground for divorce. It broadened the definition of cruelty to include not just physical abuse but also emotional and psychological harm. The court laid down a comprehensive set of criteria to determine mental cruelty, emphasizing that cruelty need not

<sup>1</sup> *Subbaramma v. Saraswati* (1966) AIR 1967 Madras 85

<sup>2</sup> *Revathi v. Union of India* (1988) AIR 835, 1988 SCR (3) 73

<sup>3</sup> *Samar Ghosh v. Jaya Ghosh*, 2007 4 SCC 428

be physical and can manifest in actions that cause unbearable mental suffering. This judgment was pivotal in ensuring that cruelty as a ground for divorce was not narrowly interpreted but encompassed a wide range of abuses.

Dastane v. Dastane<sup>4</sup> is an important Supreme Court ruling on cruelty under Section 13(1)(ia) of the Hindu Marriage Act, 1955. In this case, the husband requested a divorce, claiming mental cruelty. He alleged that his wife made false accusations, threatened suicide, and created a hostile and humiliating environment in their marriage. The Supreme Court determined that cruelty does not only mean physical violence. Mental cruelty by itself can be enough if it leads to a reasonable fear that it is unsafe or wrong to remain in the marriage. The Court explained that cruelty should be judged based on the overall impact of the behavior. It also noted that marital disputes are resolved using the civil standard of proof, meaning the greater weight of evidence, rather than requiring proof beyond a reasonable doubt. This ruling greatly expanded the understanding of cruelty in Indian marriage law.

### **1.b. Deserter**

Deserter under Section 13(1)(ib) means one spouse permanently leaves the other without a good reason and without consent.

#### **The key elements are:**

Factum of separation

Animus deserendi

Continuity for a statutory period of two years

Judicial review makes sure that desertion is not mistaken for temporary separation because of work, illness, or marital issues.

### **2. Conversion**

Conversion is a valid reason for divorce under Section 13(1)(ii) of the Hindu Marriage Act, 1955. This section reflects the view that marriage under Hindu law relies on a shared religious

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<sup>4</sup> Dastane v. Dastane AIR 1975 SC 1534

and cultural basis. When one spouse leaves that framework, it can significantly impact the marital relationship.

According to Section 13(1)(ii), a Hindu marriage can end through a divorce decree if one spouse has stopped being a Hindu by converting to another religion, like Islam, Christianity, or any other non-Hindu faith. The key is that the conversion must be voluntary, genuine, and complete. Any pretence or superficial change in faith does not meet the requirements of this section.

The Act does not require the conversion itself to cause cruelty or desertion; the fact of conversion alone is enough to be a valid reason for divorce. This sets conversion apart from other grounds under Section 13, which often demand proof of marital faults or breakdowns.

However, it's crucial to understand that conversion does not automatically end the marriage. The marriage remains in effect until the non-converting spouse goes to court and gets a divorce decree. The Supreme Court clarified this in *Sarla Mudgal v. Union of India* (1995), stating that if a Hindu husband converts to Islam, it does not end the first marriage and cannot be used to justify a second marriage without a divorce.

Judicial interpretation has consistently highlighted that this provision aims to protect the religious freedom of the non-converting spouse while also maintaining the integrity of marriage. It ensures that a spouse is not forced to remain in a marital relationship that has fundamentally changed due to a shift in religious identity.

In conclusion, conversion under Section 13(1)(ii) acts as a balanced legal tool that respects individual freedom of religion while offering a clear and fair solution to the affected spouse under Hindu law.

### **Landmark Cases:**

#### **1. Bipin Chandra Jaisinghbhai Shah v. Prabhavati AIR 1957 SC 176<sup>5</sup>**

##### **Key Legal Problem**

What does "desertion" mean under the Hindu Marriage Act? Is physical separation enough?

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<sup>5</sup> Bipin Chandra Jaisinghbhai Shah v. Prabhavati AIR 1957 SC 176

## Judgment

The Supreme Court provided a clear definition of desertion. Desertion consists of:

1. Factum of separation, and
2. Animus deserendi (intention to permanently end cohabitation)

Both elements must be present continuously for at least two years before filing the petition. Simply withdrawing from cohabitation without intention does not count as desertion.

## 3. Mental Disorder

A petitioner may obtain a divorce or judicial separation under Section 13(iii) of the Hindu Marriage Act Be Before if the respondent has been experiencing such severe mental suffering that the petitioner cannot reasonably be made to live with the respondent. There are two conditions for using insanity as a basis for divorce:

1. The respondent suffered from mental illness for an unspecified amount of time.
2. The petitioner cannot reasonably continue to live with the respondent due to the respondent's severe mental illness.

## 4. Leprosy

In its findings, the Law Commission of India recommended repealing any laws that discriminated against leprosy patients. India is also a signatory to a United Nations resolution that supports ending discrimination against these patients. On 13th February 2019, the Indian Parliament removed Section 13(iv), which included leprosy as a reason for divorce, by passing the Personal Law Amendment bill.

## 5. Venereal disease

Section 13(v) of the Hindu Marriage Act of 1995 outlines a valid reason for divorce in cases involving infectious venereal disease. If one spouse has a sexually transmitted disease that is both incurable and can be spread to others, this can serve as grounds for divorce. The term “venereal illness” includes conditions like AIDS.

## 6. Renunciation

If one spouse chooses to join a holy order and renounces worldly life, the other spouse has the right to file for divorce under Section 13(1)(vi) of the Hindu Marriage Act, 1955. This renouncement must be complete. It equates to civil death, which stops a person from inheriting or dividing property. In the case of *Sital Das v. Sant Ram* (1954) [15], the Supreme Court of India ruled that a person is seen as having entered a religious order if they take part in some of that faith's ceremonies and rites. For instance, if someone joins a religious order but returns home the same day and lives with their spouse, this cannot be used as grounds for divorce because they have not truly renounced the world.

### Case:

- **N. Jayalakshmi v. R. Gopala Pathar (1995)<sup>6</sup>**

Divorce may be granted if the spouse has not been heard of for **seven continuous years**.

## 7. Presumption of death

According to Section 13(1)(vii) of the Hindu Marriage Act, 1955, if people who should know about someone have not heard from that person for at least seven years, that person is considered to be dead. The Indian Evidence Act of 1872 supports this claim, stating that if a person has not been heard from in seven years, he or she is presumed dead. Based on this, the petitioner can request a divorce. However, under ancient Indian Hindu law, the rules are different; twelve years must pass before someone is considered dead. The presumption of death under the 1955 Act can be challenged if a person has been missing for seven years due to unusual situations, like fleeing from a murder accusation.

### Section 13(1A) of Hindu Marriage Act

A spouse can file for divorce if they have not lived together for a year after the court issued the judicial separation decision. The phrase "living together" means two people maintaining a harmonious relationship. If there are no restrictions outlined in Section 23 of the Hindu Marriage Act, 1955, the court will grant a divorce under Section 13(1A). Restoring conjugal

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<sup>6</sup> *N. Jayalakshmi v. R. Gopala Pathar (1995) AIR 1995 SC 995*

rights means fulfilling marital duties. If these rights have not been restored for one year after the court issued a decree under Section 9 of the Act, either spouse can file for divorce. Before granting a divorce, the court must ensure that the petitioner is not prevented from doing so under Section 23 of the Act.

### **Landmark Cases:**

#### **Dharmendra Kumar v. Usha Kumar (1977)<sup>7</sup>.**

Failure to resume cohabitation after a decree for restitution or judicial separation constitutes a valid ground for divorce, unless the petitioner is taking advantage of their own wrong.

#### **Savitri Pandey v. Prem Chandra Pandey (2002)<sup>8</sup>.**

The Court emphasized that Section 13(1A) reflects a **shift toward breakdown theory**.

### **Special grounds of divorce Section 13(2) of the Hindu Marriage Act, 1955**

It provides four reasons for a wife to seek a divorce from her husband. These reasons are explained below.

**Bigamy** (Section 13(2)(i)) If a husband already has a wife before the Act of 1955 becomes effective and then marries another woman afterward, either wife can file for divorce. The only condition is that the divorce petition will be granted if the other wife is still alive when the petition is filed.

**Rape, sodomy, or bestiality** (Section 13(2)(ii)) A wife can divorce her husband if he has committed rape, sodomy, or bestiality since their marriage. Section 375 of the Indian Penal Code, 1860 defines rape as a criminal offense. Sodomy involves sexual acts with someone of the same sex or an animal, or certain sexual acts with someone of the opposite sex. Bestiality refers to a human having sexual relations with an animal.

**Decree or order of maintenance** (Section 13(2)(ii)) When a decree for the wife's support has been issued under Section 18 of the Hindu Adoptions and Maintenance Act, 1956, or when an order of maintenance has been issued against the husband under Section 125 of the Code of

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<sup>7</sup> Dharmendra Kumar v. Usha Kumar (1977). AIR 2218, 1978 SCR 1 315

<sup>8</sup> Savitri Pandey v. Prem Chandra Pandey (2002) SCC 73

Criminal Procedure, 1973, the wife can file a divorce petition against her husband if two conditions are met:

- a. She has been living separately,
- b. She and her husband have not lived together for at least one year after the decree was issued.

### **Marriage before attainment of the age of fifteen years (Section 13(2) (IV))**

The woman may file for divorce if the marriage was consummated before she turned 15. When a child bride reaches puberty, she has the option of opting out of the marriage and requesting a court repudiation of the marriage after becoming 15 but before turning 18. Courts allow minor brides to use this privilege to protect individuals who might have been coerced into marriage.

### **Section 13A of HMA,1955**

Section 13A of the Hindu Marriage Act, 1955 is an important yet often overlooked provision. It gives the court discretionary power when handling a divorce petition. This means the court can grant a lesser relief, such as judicial separation, instead of ending the marriage outright, even if someone has filed for divorce under Section 13.

### **Text and Scope of Section 13A**

Section 13A states,

In any proceeding under this Act, on a petition for dissolution of marriage by a decree of divorce, except when the petition is based on the ground mentioned in clause (ii) of sub-section (1) of Section 13, the court may, if it believes it is fair to do so considering the case's circumstances, issue a decree for judicial separation instead.

This provision allows the court to change a divorce petition into one for judicial separation, even if there is no specific request for that relief.

### **Landmark Cases:**

- **Smt. Chand Dhawan v. Jawaharlal Dhawan (1993)<sup>9</sup>**

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<sup>9</sup> Smt. Chand Dhawan v. Jawaharlal Dhawan (1993) SCC 3 406

The Supreme Court held that Section 13A empowers courts to grant **judicial separation even without a specific prayer**, if justice demands preservation of marriage.

• **Gurbux Singh v. Harminder Kaur (2010)<sup>10</sup>**

The discretionary power under Section 13A must be exercised **judicially and cautiously**, keeping reconciliation in mind.

### **Section 13B of the Hindu Marriage Act, 1955**

Section 13B of the Hindu Marriage Act, 1955 allows couples to divorce by mutual consent. Spouses can file a petition to dissolve their marriage under Section 13B (1) if they have lived apart for a year or more and have agreed that their marriage should end. Both parties can file a motion not earlier than six months from when they submit the petition in subsection (1) of Section 13B, and no later than 18 months after that date. The court will then issue a divorce decree, which officially ends the marriage from the date of the decree, after making necessary inquiries. Section 13B (1) in conjunction with Section 13B (2) outlines a total waiting period of 1.5 years from the date of separation before the motion for divorce can be filed. Justice Indira Banerjee, in the recent case of *Amit Kumar v. Suman Beniwal (2021)*, made several observations about Section 13B of the Hindu Marriage Act, 1955.

1. Section 13B of the Hindu Marriage Act, 1955, which provides for divorce by mutual consent and took effect on 27.5.1976, is not designed to damage the institution of marriage. Section 13B puts an end to collusive divorce processes between spouses, which are frequently undefended yet time-consuming due to the rigmarole of procedures. Where a marriage has irretrievably broken down and both spouses have amicably chosen to separate, Section 13B allows the parties to avoid and/or abbreviate needless confrontational litigation.

2. In its wisdom, the legislature devised Section 13B (2) of the Hindu Marriage Act, 1955, which provides for a six-month cooling period from the date of filing the divorce petition under Section 13B (1) if the parties change their minds and reconcile their issues. If the parties still want to divorce after six months and file a request, the Court must award a divorce decree pronouncing the marriage dissolved with effect from the date of the decree, after conducting

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<sup>10</sup> *Gurbux Singh v. Harminder Kaur (2010) 14 SCC 301*

any investigations, if deemed necessary.

The ruling of *Sureshta Devi v. Om Prakash*<sup>11</sup> clarified the interpretation of Section 13-B23, which deals with divorce by mutual consent. The court ruled that either spouse can withdraw consent at any point before the final decree of divorce is passed. This provision reflects the principle that mutual consent is foundational in consensual divorces, and forcing a divorce where consent is withdrawn would defeat the purpose of the legislation.

### **Landmark Cases:**

- **Amardeep Singh v. Harveen Kaur (2017)<sup>12</sup>**

The Supreme Court held that the six-month cooling-off period is **directory, not mandatory**, and may be waived where:

1. Parties have lived separately for long
2. No chance of reconciliation exists

- **Anita Kushwaha v. Pushap Sudan (2016)<sup>13</sup>**

Emphasized access to justice and avoidance of unnecessary procedural delays in mutual consent divorce.

### **Irretrievable Breakdown of Marriage**

The idea of **Irretrievable Breakdown of Marriage (IBM)** describes a situation where the relationship between spouses has completely collapsed, and there is no real chance for reconciliation. In such cases, the marriage exists only legally and not in reality, serving no significant social or personal purpose. This principle rests on the belief that when a marriage has broken down irreparably, forcing its continuation only prolongs emotional pain and injustice.

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<sup>11</sup> Sureshta Devi v. Om Prakash 1991 SCC 25

<sup>12</sup> Amardeep Singh v. Harveen Kaur (2017) 8 SCC 746

<sup>13</sup> Anita Kushwaha v. Pushap Sudan (2016) 8 SCC 509

## Concept and Rationale

The irretrievable breakdown doctrine takes a **no-fault approach** to divorce. Unlike fault-based grounds, it does not ask for evidence of wrongdoing, such as cruelty or adultery. Instead, it looks at the **current state of the marriage**. The reasoning behind it focuses on:

- **Human dignity and personal choice**
- **Mental and emotional health**
- **Realistic view of marital failure**

When parties have lived apart for an extended time, lost emotional connection, and tried all reconciliation options, the law must accept the **actual end of the marriage**.

## Position under the Hindu Marriage Act, 1955

Interestingly, **Irretrievable Breakdown of Marriage is not an official ground for divorce under the Hindu Marriage Act, 1955**. The Act mainly depends on fault-based and consent-based grounds. This gap in the law has led to lengthy legal battles, where people feel forced to falsely claim cruelty or other faults just to obtain a divorce.

Despite the **Law Commission of India's** repeated suggestions (71st Report, 1978 and 217th Report, 2009), the lawmakers have not yet added this doctrine to the Act.

## Judicial Recognition in India

Even though it is not officially recognized, the Supreme Court of India has **developed this doctrine through its extraordinary powers under Article 142 of the Constitution**, which allows it to ensure complete justice.

The Supreme Court has consistently stated that when a marriage is unsalvageable, the law should not require the parties to maintain a legal fiction.

## Landmark Judicial Pronouncements

- **Naveen Kohli v. Neelu Kohli (2006)<sup>14</sup>**

The Court strongly suggested adding irretrievable breakdown as a divorce ground, noting that

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<sup>14</sup> Naveen Kohli v. Neelu Kohli 2006 4 SCC 558

prolonged legal disputes deepen bitterness and emotional trauma.

- **Samar Ghosh v. Jaya Ghosh (2007)<sup>15</sup>**

While focusing mainly on cruelty, the Court pointed out that long separation and a total loss of marital connection indicate a de facto breakdown of marriage.

- **Satish Sitole v. Ganga (2008)<sup>16</sup>**

The Court granted divorce due to complete emotional and physical separation, stressing that continuing the marriage served no purpose.

- **Shilpa Sailesh v. Varun Sreenivasan (2023)<sup>17</sup>**

A Constitution Bench confirmed that the Supreme Court can dissolve a marriage due to an irretrievable breakdown under Article 142, even without official recognition or one party's consent, if complete justice requires it.

## **V. Ancillary Reliefs Under HMA,1955 and its Judicial Interpretation**

### **A. Maintenance and Alimony**

The HMA provides two forms of financial support: interim and permanent.

#### **1. Maintenance *Pendente Lite* (Section 24)**

Section 24 gives the court the power to order temporary maintenance (during the proceedings) and cover litigation costs if either spouse does not have enough independent income for their support. This rule applies equally to both husbands and wives, letting either one ask for support. The goal is to make sure that a dependent spouse is not put at a disadvantage during the legal process. Courts must use their judgment, looking at the income of both parties, and they usually need to resolve these requests within sixty days of receiving notice. Importantly, a spouse's right to temporary maintenance is not denied just because the marriage might later be declared invalid.

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<sup>15</sup> Saar Ghosh v. Jaya Ghosh 2007 4 SCC 511

<sup>16</sup> Satish sitole v. Ganga,2008 7 SCC 734

<sup>17</sup> Shilpa Sailesh v. Varun Sreenivasan (2023) SCC. SC 544

- **Manish Jain v. Akanksha Jain (2017)<sup>18</sup>**

The Supreme Court emphasized that maintenance under Section 24 must be **reasonable, fair, and consistent with the lifestyle** enjoyed during the marriage.

- **Bhagwan Dutt v. Kamla Devi (1975)<sup>19</sup>**

The Court clarified that the **capacity of the respondent to pay** and the **needs of the applicant** must be balanced while fixing interim maintenance.

## 2. Permanent Alimony and Maintenance (Section 25)

Section 25 allows the court to order the respondent to pay a lump sum or monthly maintenance permanently, depending on the details of the case. A key ruling in 2025 confirmed that a spouse in a marriage declared void under the HMA can still seek alimony and maintenance under Section 25. This strengthened financial protections for women in irregular marriages. However, the court can change, modify, or cancel the permanent maintenance order if the recipient spouse remarries or, if the recipient is the wife, does not remain in chaste.

- **Chand Dhawan v. Jawaharlal Dhawan (1993)<sup>20</sup>**

The Supreme Court held that permanent alimony under Section 25 is **not automatic** and must be based on the facts and circumstances of each case.

- **Krishan Lal v. Sudarshan Kumari (1977)<sup>21</sup>**

The Court emphasized that the object of Section 25 is to prevent **economic hardship after dissolution of marriage**.

- **Rajnesh v. Neha (2020)<sup>22</sup>**

The Supreme Court laid down comprehensive guidelines for determining maintenance, emphasizing **uniformity, transparency, and disclosure of income**.

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<sup>18</sup> Manish Jain v. Akansha Jain 2017 15 scc 801

<sup>19</sup> Bhagwan Dutt v. Kamla Devi (1975) AIR. 83

<sup>20</sup> Chand Dhawan v. Jawaharlal Dhawan (1993) SCC 3 406

<sup>21</sup> Krishan Lal v. Sudarshan Kumari (1977) Civil revision no. 1545 of 1974

<sup>22</sup> Rajnesh v. Neha (2020) 2SCC. 324

## **B. Custody and Welfare of Children**

Section 26 of the HMA allows courts to issue both temporary and permanent orders regarding the custody, support, and education of minor children during any proceedings under the Act.

In child custody cases, the main legal principle is the best interest of the child. Court decisions support this principle, which takes priority over the legal assumption in the Hindu Minority and Guardianship Act, 1956, that the father is the natural guardian of a minor child. The court must find out and consider the wishes of minor children, if they can express a clear preference. This ensures that the final decision on custody, financial support, and visitation rights focuses entirely on the child.

## **VI. Conclusion:**

The Hindu Marriage Act, 1955 is an important change in the history of Indian personal law. It represents a movement away from the traditional view of Hindu marriage as a sacred bond towards a more modern, legally regulated system. By officially recognizing divorce, the Act acknowledges an important truth: not all marriages endure. Forcing individuals to remain in broken relationships undermines their dignity, equality, and justice.

The HMA's legal framework balances the value of marriage with the protection of individual rights. It does this with clearly defined fault-based grounds in Section 13(1), gender-sensitive measures in Section 13(2), a mechanism focused on breakdown in Section 13(1A), and the introduction of divorce by mutual consent in Section 13B. These features create clear and fair paths for ending a marriage. Section 23 includes procedural safeguards that ensure divorce is granted thoughtfully. This helps prevent misuse and encourages reconciliation when possible.

The enduring significance of the HMA depends greatly on how courts interpret it. Indian courts have broadened the meaning of concepts like mental cruelty. They emphasize individual welfare and dignity and have used Article 142 of the Constitution to grant divorce based on the idea of Irretrievable Breakdown of Marriage. This legal shift indicates a growing recognition that the law should address real-life situations instead of adhering to strict rules.

However, the absence of a clearly defined ground for irretrievable breakdown in the HMA is a significant drawback. Relying on the Supreme Court's special authority creates uneven access to justice and points to a need for legislative change. Including this ground in the Act would

bring the law in line with constitutional principles, judicial consensus, and contemporary social needs.

In summary, the Hindu Marriage Act, 1955 is a flexible legal framework that has successfully mixed tradition with reform. To fully fulfil its purpose of promoting justice, dignity, and equality in marriage, the law must continue to evolve. It should uphold that while marriage is a respected institution, individual well-being and human dignity take precedence.