



LEGAL POSITION OF DIVORCE IN DIFFERENT COMMUNITIES: INDIAN PERSPECTIVE

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Divorce under Hindu Law

The Hindu Marriage Act, 1955 came into existence, eight years after the independence of the country. Sub-sections (1) and (1 A) of section 13 of the Hindu Marriage Act, 1955 prescribes the grounds on which either of the parties can seek a decree of divorce from a court of law having jurisdiction to entertain such petition.

Grounds for Divorce

Following are the grounds under which either of the parties are' entitled to seek a decree of divorce under section 13 of the Hindu Marriage Act, 1955:

(a) Adultery : "Adultery" means the offence of incontinence by married persons (Stroud's dictionary)

What amounts to adultery : In *Mahalingam Pillai v. Amsavalli*¹, and *Douglas v. Douglas*², it has been observed that one general intercourse after the solemnisation of marriage is sufficient to make a case. An attempt at general intercourse is not enough. Some penetration, however brief, must be proved. In *Rxford v. Rxford*³ it was held that a wife allowing herself to be artificially inseminated with semen of a person other than her husband, cannot be said to have committed adultery.

Burden of Proof : It is very difficult to produce direct evidence to prove an act of adultery. The act of adultery, therefore, has to be inferred by the tending circumstances, i.e., the inclination of the spouse and the opportunities available. Adultery is a matrimonial offence as well as criminal offence. The requirement of proof in a criminal case more strict than in a matrimonial case. In the former case the act to be proved beyond reasonable doubt, whereas in the latter the evidence is based on the inferences and probabilities.

(b) Cruelty : Under clause (ia) of sub-section (1) of section 13 and under sub-section (1) of section 10 of the Hindu Marriage Act 1955, cruelty is a ground for divorce and judicial separation respectively. Whether the act or conduct complained of is covered under the grounds of cruelty or not, will always be decided on facts and circumstances in each case.

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¹1956 (2) MLT 289, 1956 Mad LI 259.

²(1950) 2 All ER 748 (753)

³(1921) 58 CLR 259



What amounts to cruelty : Under the English Law, legal concept of cruelty is conduct of such a character as to cause danger to life, limb or health (physical or mental) or as to give rise to a reasonable apprehension of such danger. Before the amendment of the Hindu Marriage Act, which was brought in the year 1976, the rigid meaning and interpretation was given to the ground of cruelty. The court held that as cruelty has not been defined under the Act.

Persistence in inordinate sexual demands or malpractices by either spouse can be cruelty if it injures the other spouse.

Classification of Cruelty :

Physical Cruelty: It is a settled law that physical violence is not a necessary ingredient of cruelty. Unending accusations and imputations can cause more pain and misery than a physical beating. Therefore, it goes without saying that the act of cruelty consists of mental torture or physical violence. If it is a physical violence, there will be no problem for a court to arrive at a decision while determining a case presented before it but in case of mental torture or harassment, the courts find it comparatively more difficult to conclude.

Mental Cruelty : An act of mental cruelty is far more severe and dangerous than an act of physical violence. Mental cruelty can be inflicted by many ways. A false criminal case to harass the husband would be an act of cruelty. Refusal to have marital intercourse, false complaints to the employees by the wife, an act of nagging, false, scandalous, malicious and baseless charges, etc., come within the purview of mental cruelty.

(c) Desertion : Clause (b) of sub-section (1) of section 13 of the Hindu Marriage Act, 1955, provides desertion as a ground for obtaining a decree of divorce from the court. This ground is available to both the spouses under the Act. Under this provision a decree of divorce can be obtained from the court on the ground that the other party has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition. "in this sub-section the expression 'desertion' means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the willful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expression shall be construed accordingly".

(d) Conversion or Change of Religion : Under section 13(1)(ii) of the Hindu Marriage Act, 1955, if one of the spouses adopts another religion, he or she ceases to be a Hindu. But by embracing another religion the marriage does not stand dissolved. Under this provision, only the spouse who has not changed his/her religion is entitled to file a petition for a decree of divorce on the ground that the other spouse has ceased to be a Hindu and has embraced another religion.



(e) Insanity : Section 13(1)(iii) of the Hindu Marriage Act, provides for a decree of divorce if it is established that dotted spouse has been incurably of unsound mind or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with him. Under section 13(1)(iii) of Hindu Marriage Act, unsoundness of mind or mental disorder is a ground for divorce. The Act goes on to specify as to what is meant by "mental disorder" under an explanation to the section, which appears as under :

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

(b) The expression "psychopathic disorder" means persistent disorder or disability of mind (whether or not including sub-normality, aggressive or seriously irresponsible conduct on the part of the either party and whether or not it requires or is susceptible to medical treatment.

Proof of Insanity—The onus of proving that the respondent is of incurably unsound mind or that he is suffering from mental disorder is on the petitioner.

(f) Leprosy : Under clause (iv) of sub-section (1) of section 13, H the other spouse, has been suffering from a 'virulent and incurable form of leprosy', it is a ground for divorce. Thus in order to be entitled to a decree of divorce under this clause, the petitioner party has to prove that his/her spouse has been suffering from leprosy, and that it is such a form of leprosy which is not only virulent but also incurable.

(g) Venereal Disease : Venereal disease, if in a communicable form, is also a ground for obtaining a decree of divorce under section 13(1)(v) of the Hindu Marriage Act.

Thus, not only the respondent must be suffering from a venereal disease, like syphilis, gonorrhoea, or soft chancre, but the disease should also be such as to infect others who come in contact with the injected.

(h) Renunciation of World : Section 13(1)(vi) makes the. "renouncement of world by entering any religious order", a ground for divorce. However, this ground cannot be availed by the spouse renouncing the world but only by the other spouse. According to the Supreme Court in Sital Das v. Sant Ram⁴ the renunciation must be complete and final and must be effected with the ceremonies and rites prescribed by the order which he enters. Thus, a mere declaration by a person that he is a sanyasi is not sufficient.

(i) Presumption of Death : If a person "has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of it, had

⁴ AIR 1954 SC 606



that party been alive”, the other spouse, may, seek divorce under section 13(1)(vii) of the Act. In view of section 108, Evidence Act, 1872, the burden to prove, that a person who has not been heard of for more than seven years, is still alive is on the person who affirms it, as section 108 of that Act raises a presumption of death where the person concerned has not been heard of for the said period.

The 'persons who would naturally have heard' are, the petitioner and other near relatives or his close friends.

(j) Unviolated Judicial Separation : Section 13(1A)(i) provides that either of the parties to a marriage may seek dissolution of marriage on the ground that "there has been no resumption of cohabitation between the parties to the marriage for a period of one year or upwards after the passing of a decree for judicial separation in a proceeding to which they were the parties".

(k) Non-resumption of cohabitation after passing of a decree for restitution of conjugal rights : Like section 13(1), (1A), non-restitution of conjugal rights between the parties for a period of one year or upwards after the passing of a decree for restitution of conjugal rights, is also a ground for divorce under section 13(1A)(ii) of the Act Under this clause also, the court would have to consider under sub-section (1) of section 23 whether the petitioner is taking advantage of his or her wrong in pleading that there has been no restitution of conjugal rights after passing of a decree for that and therefore, the provisions of section 13(1A)(ii) are to section 23(1)(a).

Once right to obtain divorce under section 13(1A)(ii) has accrued to the spouse who has come to the court to seek divorce on grounds of the non-compliance of the decree for restitution of conjugal rights for the requisite period, the spouse can insist on a decree of divorce and can refuse to yield to the efforts for reconciliation and such refusal would not come within the ambit of the word 'misconduct'.

Divorce under Muslim Law

Islam with its realistic and practical outlook on all human recognizes divorce, but only as a necessary evil, inevitable in certain circumstances. The analysis of marriage and divorce laws recognized by Islam clearly shows that the marital ties is to be respected and continued as far as possible. The marriage under such extreme circumstances may be dissolved by the parties or by the court.

Among all the nations of antiquity the power of divorcer was exclusively rested in the husband, and the wife was under no circumstances entitled to claim a divorce.

These social and moral ills and injustices engaged the attention of the Prophet of Islam. Fully conscious of the evils flowing from divorce, he framed the laws of marriage and divorce in



order to remove these evils. These laws ensured permanence of marriage, without impairing individual freedom. They display a wrongful insight into human nature, in as much as they never loose sight of exceptional circumstances, requiring special treatment.

The 'Mussalman' law of divorce is the logical sequence of the status of marriage. As it regards marriage as purely civil contract, it confers on both the parties to the contract the power of dissolving the tie or relationship under certain specified circumstances. The Islamic law did not take away the prevalent customary right of the husband to divorce his wife unilaterally but imposed numerous restrictions, on the exercise of this right.

The rules governing divorce are enunciated thus :

First, divorce cannot be given without a valid reason. Second, divorce will take effect not immediately on pronouncement but after the expiry of the prescribed period of time. Third, after the divorce, the wife would stay with her husband, for the full period of Iddat, provided the reason for the divorce is not adultery on her part, in which case she can certainly be evicted out of his home. Fourth, before giving divorce, the husband must carefully ponder over the contemplated move and make sure that he is not transgressing the limits prescribed by Allah and that he is not exceeding his rights and thus committing a sin.

The Quran says that divorce should not be given without a good cause, but the good cause is not clearly specified, as it is not possible to take into account all possible circumstances. The only thing clearly mentioned is that divorce can be given for bad conduct. The cause of the divorce between Zainab and Zaid bin Sabit was temperamental incompatibility.

Writing a little earlier, another great jurist of the community undoubtedly the greatest alim of his time, Hakim al Ummat, Maulana Ashraf Ali Thanavi had come out with a clear verdict that :

"Where a husband thrice says talaq, talaq, three divorces becomes effective; also if he uses thrice some words implying a talaq, three divorces will become effective. But, if he intends only one talaq has said it twice only to assert, only talaq will be effective."⁹¹

Forms of Dissolution of Marriage

Talaq (Repudiation) or divorce is an Arabic word which means "undoing of or release from a knot". It is used by Muslim jurists to denote the release of a woman from the marriage tie, and means a divorce⁵. The word 'Talaq' is usually rendered, as repudiation⁶ It comes from a root (Talaqa) which means "to release (an animal) from tether". Whence, to repudiate the wife, or

⁵Ibn Qadamah Almughni. Cairo 1376 A.M. Vol VII. p. 96

⁶Fayzee A.A., Outlines of Mohammadan Law, 1974, p 150, Delhi



free her from the bondage of marriage. In law, it signifies the absolute power, which the husband possesses of divorcing his wife of all times.

The marriage under Muslim Law may be dissolved in any one of the following ways :

- (1) by the husband at his will, without the intervention of a court;
- (2) by mutual consent of the husband and wife, without the intervention of a court;
- (3) by a judicial decree at the suit of the wife.

TALAQ BY THE HUSBAND

Talaq-al-Sunnat : The Hanafis recognize two kinds of talaq, namely, (1) Talaq- al-Sunnat, that is, talaq according to the rules laid down in the sunnat (traditions) of the Prophet; and (2) Talaq-al-Bidaat, that is, new or irregular talaq.

Talaq Ahsan: This consists of a single pronouncement of divorce made during a tuhr (period between menstruations) followed by abstinence from sexual intercourse for the period of iddat. On the lapse of the term of three tuhrs the talaq becomes irreversible. When the marriage has not been consummated, a talaq in the ahsan form may be pronounced even if the wife is in her menstruation.

Where the wife has passed the age for periods of menstruation the requirement of a declaration during a tuhr is inapplicable; furthermore, this requirement only applies to an oral divorce and not a divorce in writing.

Talaq Hasan: This consists of three pronouncements made during successive tuhrs, no intercourse taking place during any of the three tuhrs. When the last pronouncement is made talaq becomes irreversible. The first pronouncement should be made during a tuhr, the second during the next tuhr, and the third during the succeeding tuhr.

Talaq-al-Bidaat or Talaq-i-Badai : This consists of :

- (i) three pronouncements made during a single tuhr, either in one sentence, e.g., "I divorce thee thrice", or in separate sentences, e.g., "I divorce thee, I divorce thee, I divorce thee" or,
- (ii) a single pronouncement made during a tuhr clearly indicating an intention irrevocably to dissolve the marriage, e.g., "I divorce thee irrevocably".

A talaq in the ahsan mode becomes irrevocable and complete in the expiration of the period of iddat.



DIVORCE BY THE WIFE

Khula : A divorce by khula is a divorce with the consent, and at the instance of the wife, in which she gives or agrees to give a consideration to the husband for her release from the marriage tie. In such a case the terms of bargain are matters of arrangement between the husband and wife, and the wife may, as the consideration, release her 'dyn-Maher' (dower) and other rights, or make any other agreement for the benefit of the husband. Failure on the part of the wife to pay the consideration for the divorce does not invalidate the divorce, though the husband may sue the wife for it.

Mubara'at : A mubara'at divorce like khula is dissolution of marriage by agreement, but there is a difference between the origin of the two. When the aversion is on the side of the wife, and she desires a separation, the transaction is called khula. When the aversion is mutual, and both the sides desire a separation, the transaction is called mubara'at. The offer in a mubara'at divorce may be proceed from the wife, or it may proceed from the husband, but once it is accepted, the dissolution is complete, and it operates as a talaq-i- bain' as in the case of khula.

Talaq-e-Taliq: It means contingent divorce. Under the Hanafi law the pronouncement of divorce may take effect immediately or at some future specified time or event, a condition may be attached to it and it will be vafid. So there can be a contingent divorce.

JUDICIAL DIVORCE AT THE SUIT OF WIFE (FASKH)

The Dissolution of Muslim Marriages Act, 1939, constitutes the most important enactment among various legislative measures sealing with Muslim personal law in India. Initially passed by the Central legislature of British India, the Act is now applicable in various part the Indian subcontinent (with certain changes in Pakistan and Bangladesh).

Grounds of Decree for Dissolution of Marriage : Section 2 of the Act lays down that a woman married under Muslim law shall be entitled to obtain decree for the dissolution of her marriage on any one or more of the following grounds namely :

(i) That the whereabouts of the husband have not been known for a period of four years provided that a decree passed on this ground shall not take effect for a period of six months from the date of such decree, and if the husband appears either in person or through an authorised agent within that period and satisfied his conjugal duties, the court shall set aside the decree.

(ii) That the husband has neglected or has failed to provide her maintenance for a period of two years.



(iii) That the husband has been sentenced to imprisonment for a period of seven years or upwards, provided that no decree, shall, however, be passed on this ground until the sentence has become final.

(iv) That the husband has failed to perform, without reasonable cause his marital obligations for a period of three years.

(v) That the husband was impotent at the time of marriage and continues to be so provided that before passing a decree on this ground, the court shall, on application by the husband, make an order requiring the husband to satisfy the court within a period of one year from the date of such order that he ceased to be impotent, and if the husband so satisfied the court within such period, no decree shall be passed on this ground.

(vi) That the husband has been insane for a period of two years or is suffering from leprosy or a virulent disease.

(vii) That she, having been given in marriage by her father or other guardian before she attained the age of fifteen years, repudiated the marriage before attaining the age of eighteen years, provided that the marriage has not been consummated (option of puberty).

(viii) That the husband beats her with cruelty.

(ix) Any other ground, which is recognized by law as valid for; dissolution of marriages in Muslim Law.

Though this form of divorce is also mentioned in the Shariat Act, 1937, it is very rare in India and of no practical importance. In *ilaa* the husband swears not to have intercourse with the wife and abstains for four months or more. The husband may revoke the oath by resumption of marital life. After the expiry of the period of four months, in Hanafee law the marriage is dissolved without legal process; but *aliter* in *Ithanaa Asharee* and *Shafai* law where legal proceedings are necessary. This form is obsolete in India. A case of *ilaa* was unsuccessfully raised before Allahabad High Court long ago.⁷

Zihaar (Injurious Assimilation)

The Shariat Act, 1937, also recognizes the right of wife to obtain divorce on the ground of *Zihaar*. It is a form of *inchoate* divorce. It literally means 'a divorce by unlawful compensation'.

In *zihaar* the husband swears that to him the wife is like the back of his mother. If he intends to revoke his declaration, he has to pay money by way of expiation or fast for a certain period.

⁷ Bibi Rebana v. Iqhsdaruddin, 1943 All 295; For detail see K N Ahmad, Muslim Law of Divorce, Chapter on *ilaa*



After the oath has been taken, the wife has the right to go to court and obtain divorce or restitution of conjugal rights on expiation.

Liaan (Mutual Imprecation)

In Muslim law the right of the wife to get a divorce on the husband imputing false unchastity to her fell under a doctrine is known as liaan. The Quran and Hadith both guarantee dissolution of marriage by way of liaan.

The procedure of liaan may be described briefly as follows :

A husband accuses his wife of adultery but is unable to prove the allegation. The wife in such cases is entitled to file a suit for dissolution of marriage. It is to be observed that a mere allegation on oath, in the form of anathema, does not dissolve the marriages. A qadi must intervene; in Indian law, a regular suit has to be filed. The High Court of Bombay has laid down that, three conditions are necessary for a valid retraction :

- (a) the husband must admit that he has made a charge of adultery against wife;
- (b) he must admit that he was false, and;
- (c) he must make the retraction before the end of the trial ⁸

Divorce under the Parsi Marriage and Divorce Act, 1936

The Parsis in India are governed by the Parsi Marriage and Divorce Act, 1936, as amended by the Parsi Marriage and Divorce (Amendment) Act, 1988, in respect of their matrimonial matters.

Grounds for Divorce

Under the said Act, following grounds have been enumerated for seeking the dissolution of marriage :

- (a) Continuous Absence for Seven Years : Section 31 of the Act provides that "If a husband or wife shall have been continually absent from his or her wife or husband for the span of seven years, and shall not have been heard of as being alive within that time by those persons who would have naturally heard of him or her, had he or she been alive, the marriage of such husband or wife may, at the instance of either party thereto, be dissolved".
- (b) Non-consummation of Marriage : Under clause (a) of section 32 it is provided that any married person may sue for divorce on the ground that the marriage has not been

⁸Mohammadali Mahomed Qureshi v. Hazarabi, 1955 Bom. 265.



consummated within one year after its solemnization owing to the willful refusal of the defendant to consummate it.

Thus two conditions are to be satisfied under the provision. There should be non-consummation of marriage within one year after the marriage, and that such non-consummation should be due to willful refusal of the defendant.

(c) Unsoundness of Mind : Clause (b) of section 32 makes unsoundness of mind of the defendant at the time of marriage, a ground of divorce, if he/she remains suffering up to the date of the suit

However, to avail this ground two more conditions are also to be satisfied, (i) that the plaintiff was ignorant of the fact at the time of marriage, and (ii) that the suit is filed within three years from the date of the marriage.

(d) Pregnancy by a Person other than Plaintiff : If at the time of marriage the defendant was pregnant by some person other than the plaintiff, it is a ground for seeking divorce under clause (c) of section 32.

However, for availing this ground it has to be shown, (i) that the plaintiff was ignorant of the said fact at the time of Marriage, (ii) that the suit has been filed within two years from the date of Marriage, and (iii) that marital intercourse has not taken place after the plaintiff came to know of the said fact.

(e) Adultery, Fornication, Bigamy, Rape or Unnatural Offence : If a defendant is guilty of committing adultery or fornication or bigamy or rape or an unnatural offence, the divorce may be granted to the petitioner under clause (d) of section 32. However, a suit seeking divorce under this clause must be filed within two years of plaintiffs coming to know of the fact.

(f) Cruelty : Under clause (dd) of section 32, cruelty is a ground for divorce.

(g) Grievous Hurt, Venereal Disease, Compelling to Prostitution : Clause (e) of section 32 provides that the plaintiff may file for divorce on the ground "that the defendant has since the marriage voluntarily caused grievous hurt to the plaintiff or has infected the plaintiff with venereal disease or, where the defendant is the husband, has compelled the wife to submit herself to prostitution".

(h) Sentence for Seven Years : If the defendant is undergoing a sentence of imprisonment for seven years or more for an offence under the Indian Penal Code, 1860, the plaintiff may file for divorce under clause (f) of section 32.

However, to avail this ground, the defendant must have undergone at least one year's imprisonment out of the said period prior to the filing of suit under this clause. Further, such



imprisonment must have become final, in the sense that no appeal or revision is left to be filed against order of such sentence of imprisonment.

(i) Desertion : Deserting the plaintiff for at least two years is also a ground for divorce under clause (g) of section 32.

(j) Non-resumption of Cohabitation after Passing of Maintenance Order : Under clause (h) of section 32, if an order has been passed against the defendant by a Magistrate awarding separate maintenance to the plaintiff, and the parties have not had marital intercourse for one year or more, a decree for divorce may be sought.

(k) Conversion : Clause (j) of section 32 provides that if the defendant has ceased to be a Parsi by conversion to another religion, the plaintiff may file for divorce.

(l) Non-resumption of Cohabitation :

This ground is pari materia with sub-section (1A) of section 13 of the Hindu Marriage Act, 1955.

(m) Divorce by Mutual Consent :

A suit for divorce under this proviso may be filed by both the parties to a marriage on the ground:

(i) that they have been living separately for a period of one year or

(ii) that they have not been able to live together; and

(iii) that they have mutually agreed that the marriage should be dissolved.

However, no suit under this proviso can be filed, unless one year has lapsed since the date of the Marriage, at the time of filing of the suit.

DIVORCE UNDER THE SPECIAL MARRIAGE ACT, 1954

The Special Marriage Act, 1954, which applies to all citizens irrespective of caste, creed or religion, can safely be called a national matrimonial law for its uniformity and lack of discrimination. The marriage conceived under the Act is monogamous, and the dissolution is judicial. Under the said law all modern matrimonial relief, in the event of the breakdown of marriage, are available to both the spouses.

Grounds for Divorce

Sections 27 and 28 of the Act are the provisions dealing with grounds for divorce available under the Act. These are as follows :



(a) Adultery : This clause is in similar terms as clause (i) of sub-section (1) of section 13 of the Hindu Marriage Act.

(b) Desertion : Under clause (b) of sub-section (1) of section 27 of the Act, if the respondent "has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition", it is a ground for seeking divorce.

It is well-settled that to constitute desertion there must be : (i) the factum of separation;

(ii) the intention to bring cohabitation to a permanent end;

(iii) the element of permanence, which is the prime condition, requires that both these essential ingredients should continue during the entire period mentioned under the statute.

(c) Sentence of Imprisonment for Seven Years : In view of clause (c) of sub-section (1) of section 27, the petitioner may file for divorce on the ground that the respondent "is undergoing a sentence of imprisonment for seven years or more for an offence defined in the Indian Penal Code".

(d) Cruelty : Treating the petitioner with cruelty also affords a valid ground for divorce under clause (d) of sub-section (1) of section 27, as under clause (ia) of sub-section (1) of section 13 of the Hindu Marriage Act, 1955.

The ground of cruelty is available both under section 13 of the Hindu Marriage Act and section 27 of the Special Marriage Act.

(e) Insanity : Clause (e) of sub-section (1) of section 27 states that the petitioner may sue for divorce if the respondent "has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

(f) Venereal Disease : Under clause (f) of sub-section (1) of section 27, if the respondent suffering from venereal disease is in a communicable form, entitles the petitioner to divorce.

(g) Leprosy : Clause (g) of sub-section (1) of section 27 provides that if the respondent has been suffering from leprosy, the disease not having been contracted from the petitioner, the petitioner may seek divorce.

(h) Presumption of Death : Under clause (h) of sub-section (1) section 27 the petitioner may seek divorce on the ground that 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 the respondent if the respondent had been alive.



(i) Rape, Sodomy, Bestiality : Under clause (i) of sub-section (1A) of section 27, a wife may seek divorce on the ground that her husband has, since the solemnization of the marriage, been guilty of rape, sodomy or bestiality.

(j) Non-resumption of Cohabitation after Passing of a Decree for Maintenance : A wife may also sue for divorce under clause (ii) of sub-section (1A) of section 27 on the ground that 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 (or under the corresponding section 488 of the Code of Criminal Procedure, 1898) a decree or order, as the case may be, has been passed against the husband awarding maintenance to the wife notwithstanding that she was living apart and that since the passing of such decree or order, cohabitation between the parties has not been resumed for one year or upwards.

(k) Non-resumption of Cohabitation after Passing of a Decree for Judicial Separation or Restitution of Conjugal Rights : Sub-section (2) of section 27 provides that either party to a marriage may seek divorce on the ground that there has been no. resumption of cohabitation between the parties to the marriage for a period of one year or upwards after the passing of a decree for judicial separation or a decree for restitution of conjugal rights in proceeding to which they were the parties.

(l) Divorce by Mutual Consent : Under section 28 of the Act, divorce by mutual consent may be sought by the parties to the marriage by presenting a joint petition on the ground that they have not been able to live together and they have mutually agreed to dissolve the marriage. Only if, On the motion of both the parties made not earlier than six months after the date of the presentation of such petition and not later than eighteen months after the said date, if the petition is not withdrawn in the meanwhile,

In view of section 29 of the Act, no petition for divorce can be presented before the expiry of one year from the date of entering the certificate of marriage in the Marriage Certificate Book. However, the Court may, upon an application, allow a petition to be presented before one year on the ground that the case is one of exceptional hardship suffered by the petitioner or of exceptional depravity on the part of the respondent

Orders and decrees passed by the Special Marriage Act, 1957 are appealable as per the provisions of section 39 of the Act.

DIVORCE UNDER FOREIGN MARRIAGE ACT, 1969

This Act was brought into existence to make provisions relating to marriages of citizens of India outside India. Section 30 of the Foreign Marriage Act, 1969, repeals the India Foreign Marriage Act,



The Foreign Marriage Act, 1969 therefore, deals with the marriages between the parties at least one of whom is a citizen of India and such a marriage is solemnized in a foreign country but registered under the provisions of the Foreign Marriage Act. The central government may declare that marriage solemnized under the law in force in such foreign country shall be recognized by Courts in India as valid.

Grounds for Divorce

All the grounds for seeking divorce as provided for in the Special Marriage Act, 1954 have been recognized as grounds for divorce under the Foreign Marriage Act, 1969 too. In this respect section 18(1) of the Act states "subject to the other provisions contained in this section, the provisions of Chapter VI (Nullity of Marriage and Divorce), of the Special Marriage Act,

1954 shall apply in relation to marriages solemnized in a foreign country between the parties of whom at least one is a citizen of India as they apply in relation to the marriages solemnized under that Act".

Therefore, section 18 of the Foreign Marriage Act provides for granting matrimonial relief under the Special Marriage Act, 1954 not only in relation to the marriage solemnized under the Foreign Marriage Act but also in relation to any marriage solemnized in a foreign country between the parties of whom at least one is a citizen of India. The provisions of the Special Marriage Act, 1954, apply in relation to marriages solemnized in a foreign country between parties of whom one at least is a citizen of India as they apply in relation to marriages solemnized under the Foreign Marriage Act, 1969.