

# THE CHANGING PERSPECTIVE OF DIVORCE UNDER HINDU LAW

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**Abstract:** This Article discusses the changes made under the Hindu law of divorce including the historical background of divorce and its origin through legislation, and legislative modifications in the Hindu law of divorce and effects of such legislations and modifications. This chapter deals with matrimonial relief of judicial separation and remedy of divorce. Under the Shastric Hindu law, divorce was not recognized, unless it was allowed by custom. The reason was that, a Hindu marriage was an indissoluble tie between the husband and the wife. However painful cohabitation may be, divorce was not accepted by the old law. In some communities, such customs fulfilled the requisites of a valid custom.

**Keywords:** Divorce, Hindu law, Marriage, judicial separation.

**1.0 Introduction :** Under old Hindu Law marriage was regarded as an indissoluble union of the husband and wife. Manu declared that a wife cannot be released by her husband either by sale or by abandonment, implying that the marital tie cannot be severed in anyway. Although Hindu law does not contemplate divorce yet it has been held that where it is recognized as an established custom it would have the force of law. According to Kautilya's Arthashastra, marriage might be dissolved by mutual consent in the case of the unapproved form of marriage. But, Manu does not believe in discontinuance of marriage. He declares "let mutual fidelity continue till death; this in brief may be understood to be the highest dharma of the husband and wife."

The modern marriage law in India has been greatly influenced by and based upon English matrimonial law. In England, the Matrimonial Causes Act, 1857 for the first time permitted divorce by judicial process. Before 1857, divorce could be obtained only by a private Act of parliament and only very rich could afford this luxury. Under the Act, the husband could file a petition for divorce on the ground of wife's adultery (single act was enough), but a wife had to prove adultery coupled with either incest, bigamy, cruelty or two years desertion or alternatively, rape or any other unnatural offence. This was the typical mid-Victorian attitude to sexual morality<sup>1</sup>. The Matrimonial Causes Act, 1923 put both spouses at par and wife could also sue for divorce on the ground of adultery. The Matrimonial Causes Act, 1937 added three more grounds; cruelty, three years desertion and supervening incurable insanity. After the Second World War, a movement developed for the reform of divorce law which accepts the breakdown of marriage as the basic principle of divorce. Later, the Matrimonial Causes Act, 1973 was passed which is a consolidating statute and retains the breakdown of marriage as the basic ground of divorce. The Indian matrimonial law has closely followed the development in English law. The Converts Marriage Dissolution Act, 1866 was passed to provide facility of divorce to those native converts to Christianity whose spouses refused to cohabit with them on account of their conversion. But the first divorce statute was passed in 1869.

The Indian Divorce Act, 1869 is based on the Matrimonial Causes Act, 1857 and lays down the same grounds of divorce. At the time when the statute was passed, it applied only to Christian marriages. The Indian Divorce Act was extended to marriages performed under the Special Marriage Act 1872. This Act was repealed by the Special Marriage Act, 1954. The Special Marriage Act was passed in 1954 and the Hindu Marriage Act, 1955. some States introduced divorce by legislation<sup>3</sup>.

Section 13 of the Hindu Marriage Act, 1955 has introduced a revolutionary amendment to the Shastric Hindu law. It provides for the dissolution of marriage. Under the Hindu law, divorce does not take place unless it has been granted by a court. Before passing of the Marriage Laws (Amendment) Act, 1976, the grounds for judicial separation and divorce were different. The Marriage Laws (Amendment) Act, 1976 makes the grounds of divorce and judicial separation common. An aggrieved party may sue for divorce or judicial separation. In 1964, Section 13 (1- A) has been inserted containing 2 clauses under which, non-resumption of cohabitation for 2 years or upwards after the decree of judicial separation or restitution of conjugal rights was made a ground of divorce. This is a modification of clauses (viii) and (ix) of Section 13 of the Hindu Marriage Act, 1955. After the amendment, either party to the marriage can prefer such petitions. However, this facility is not available to the cases where the decrees of judicial separation and restitution of conjugal rights were obtained prior to the passing of the Amendment of 1964. The Marriage Laws (Amendment) Act, 1976 reduced the time limits from two years to one year<sup>4</sup>. Section 13 (1-A) introduced Break-down theory in the Hindu Marriage Act, 1955.

The Hindu Marriage Act, 1955 permitted divorce to all the Hindus on certain reasonable grounds. Perhaps this permission was given for the first time in the history of Hindu law. The Act of 1955 also saved the customs and special legislation granting the dissolution of marriage before its time. Under Shastric Hindu law, wedlock was unbreakable and the marital bond existed even after the death of a party to marriage. Divorce was known only as a matter of exception in certain tribes and communities which were regarded uncivilized by the Hindu elite. The courts recognized it in these communities due to the binding force of custom. But the general Hindu law did not recognize it<sup>5</sup>.

The provisions regarding divorce have been twice amended since the passing of the Hindu Marriage Act, 1955; i) by the Hindu Marriage (Amendment) Act, 1964 and ii) by the Marriage Laws (Amendment) Act, 1976. The original provisions of the Hindu Marriage Act regarding divorce have been liberalized by the Marriage Laws (Amendment) Act, 1976. It also added a new ground namely divorce by mutual consent of the parties has been made available as a matrimonial relief under the Hindu Marriage Act, 1955.

### **2.0 Relief of Judicial Separation:**

Section 10 of the Hindu Marriage Act, 1955 deals with judicial separation. This Section lays down that-

- ❖ Either party to a marriage, whether solemnized before or after the commencement of this Act may present a petition praying for a decree for judicial separation on any of the grounds specified in sub-Section (1) of Section 13 and in case of a wife also on any of the grounds specified in sub-Section (2) thereof, as grounds on which a petition for divorce might have been presented<sup>7</sup>.
- ❖ “where a decree for judicial separation has been passed, it shall no longer be obligatory for the petitioner to cohabit with the respondent, but the court may, on the application by petition of either party and on being satisfied of the truth of the statements made in such petition, rescind the decree if it considers it just and reasonable to do so.”

Section 10 provides that either party to marriage may present a petition praying for a decree of judicial separation on any of the grounds specified in sub-Section (1) of Section 13 and in case of wife also on any of the grounds specified in sub-Section (2) thereof, as grounds on which a petition for divorce might have been presented<sup>8</sup>. After passing of a decree of judicial separation, the parties are not bound to cohabit with each other. During the continuance of separation, the parties are entitled to separate from each other and all basic marital obligations remain suspended. Mutual rights and obligations of living with each other and marital intercourse no longer remain enforceable; marital obligations and rights are not available to the parties. Nonetheless, marriage subsists<sup>9</sup>.

During the course of judicial separation, either party may be entitled to get maintenance from the other if the situation so warrants. It is temporary suspension of marital rights between the spouses<sup>10</sup>. The parties remain husband and wife. If any of them remarries, he or she will be guilty of bigamy. In the event of one of the parties dying, the other party will inherit the property of the deceased spouse<sup>11</sup>. Judicial separation can be allowed only if the marriage is valid. If the parties want to resume cohabitation, an order of the court rescinding the decree will be necessary. Generally the court will rescind the decree whenever parties ask for it. If the cohabitation is not resumed for a period of one year or more after the passing of decree of judicial separation, any party may apply for divorce under Section 13 (1-A) (i) of the Hindu Marriage Act, 1955. Before passing of the Marriage Laws (Amendment) Act, 1976, the grounds for divorce are more serious than those for judicial separation. After the amendment of 1976, Section 10 has been completely recast. The various grounds for judicial separation mentioned in the old Section- 10 have been omitted. It is provide that the petitioner may apply for judicial separation on precisely the same grounds that can support a petition for divorce. The Marriage Laws (Amendment) Act, 1976 has inserted a new Section 13-A in the Hindu Marriage Act, 1955 to give statutory recognition to the judiciary evolved law. Section 13-A runs as under:

“In any proceedings under this Act, on a petition for dissolution of marriage by a decree of divorce, except in so far as the petition is founded on the grounds mentioned in clauses (ii), (vi) and (vii) of sub-Section (1) of Section 13<sup>12</sup>, the court may, if it considers it just so to do having regard to the circumstances of the case, pass instead a decree for judicial separation.” A spouse who is merely living apart without having obtained a decree for judicial separation cannot be said to be judicially separated<sup>13</sup>

Hence if a petition for divorce is filed on the ground of change of religion, renunciation of the world or presumption of death, the court has no power to pass a decree of judicial separation in place of decree for divorce. Under Section 14, no petition for divorce can be presented within one year of marriage. For the lesser remedy of judicial separation, there is no such restriction.

**3.0 Matrimonial Remedy of Divorce:** Shastric Hindu law does not contemplate divorce, yet it has been held that it is recognized as an established custom<sup>14</sup>. In Bombay, Madras and Saurashtra, it was permitted by legislation<sup>15</sup>. In the absence of a custom to the contrary, there can be no divorce between a Hindu husband and

his wife, who by their marriage, had entered into sacred and indissoluble union and neither conversion nor degradation nor loss of caste nor the violation of an agreement against polygamy dissolves the marriage tie<sup>16</sup>. The Hindu Marriage Act, 1955 originally based divorce on the fault theory and enshrined 9 fault grounds in Section 13 (1) on which, either the husband or the wife could sue for divorce. Section 13 has undergone a substantial change by reason of subsequent amendments. The grounds mentioned in sub-Section (1) and (1-A) are available to both the husband and wife; while the grounds mentioned under sub-Section (2) are available only to the wife.<sup>17</sup>In 1964, Section 13 (1-A) has been inserted containing two clauses under which, non-resumption of cohabitation for two years or upwards after the decree of judicial separation or restitution of conjugal rights was made a ground of divorce. This is a modification of clauses (viii) and (ix) <sup>18</sup>of Section 13 of the Hindu Marriage Act, 1955. By the Marriage Laws (Amendment) Act 1976, the period of two years is reduced to one year. Section 13 (1-A) introduced an element of Break-down theory in the Hindu Marriage Act 1955.<sup>19</sup> Prior to the amendments the petition for divorce could be filed on the grounds of non-resumption of cohabitation after the decree of judicial separation and restitution of conjugal rights only by the petitioner. After the amendments, either party to the marriage can prefer such petitions. However, this is not applicable to in the cases where the decrees of judicial separation and restitution of conjugal rights were obtained prior to the passing of the Hindu Marriage (Amendment) Act, 1964. If the decrees are obtained after 1964, the respondent also can take advantage of the new Section.<sup>20</sup>

The Hindu Marriage Act, 1955 originally contained two fault grounds in Section 13 (2) on which, a Hindu wife alone could sue for divorce. The Marriage Laws (Amendment) Act 1976 has inserted two additional fault grounds of divorce for wife<sup>21</sup>and a new Section 13-B under which, divorce by mutual consent has been made available as a matrimonial relief. Thus, in the modern Hindu law, the position is that all the three theories of divorce are recognized and divorce can be obtained on the basis of any one of them. Further, the customary mode of divorce is also retained.<sup>22</sup> The Marriage Laws (Amendment) Act, 1976 has introduced certain changes of far-reaching consequences, which have materially affected the sacramental character of marriage. The relief of divorce may be obtained in respect of any marriage whether solemnized before or after the commencement of this Act. Thus, Section 13 is retrospective as well as prospective operation.

#### **4.0 Fault Grounds of Divorce:**

**4.1 Extra-Marital Sex: (Adultery):** Adultery is extra-marital sex. It is consensual sexual intercourse between a married person and a person of the opposite sex not being the other spouse, during the subsistence of the former's marriage.<sup>23</sup>Where the other party has, after the solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse, a divorce petition can be filed. Section 497 of the Indian Penal Code defines adultery: "Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man without the consent or connivance of that man such intercourse not amounting to the offence of rape is guilty of the offence of adultery

The criminal action is filed not against the wife but against the adulterer. The wife is not guilty of offence, not even as an abettor. In the matrimonial court, when a petition is filed for the matrimonial relief of divorce or judicial separation on the ground of adultery, the main relief is sought against the spouse and not against the adulterer. The adulterer or the adulteress is made merely a co-respondent, and that too is not always necessary. It is in this aspect, that the matrimonial offence of adultery is different from the criminal offence.<sup>24</sup>

It must be notice that after amending act of 1976, a petition for divorce can lie at the instance of the husband or the wife, if the other party has after the solemnization of the marriage committed even a single act of adultery. It must also be noticed that to bring a case under this section it is not necessary now to show that the respondent is living in adultery.<sup>25</sup> It is also essential to establish in the matrimonial offence of adultery, that the sexual intercourse was willingly indulged into by the respondents. If the wife can establish that she was raped by the co-respondent, then the husband would not be entitled to divorce. Further, in a petition for dissolution of marriage, it is not necessary to prove that the co-respondent had knowledge or reason to believe that the respondent was the wife or husband of the petitioner. It seems difficult for a man to establish that he was forced. But if he can establish that in fact he was forced, the court would not grant the relief to the wife.<sup>26</sup> A spouse is not entitled to a decree on allegation arising out of suspicious created by surrounding circumstances, for such allegation would have to be proved. Mere suspicious is not enough to avail of remedy under this section.<sup>27</sup>

Before passing of the Marriage Laws (Amendment) Act 1976, in order to obtain divorce on this ground, the petitioner had to prove that the other party was living in adultery which would cover more or less continuous and habitual course of action. An isolated act of immorality was not sufficient. But after the passing of the Act of 1976, even a single and isolated act of infidelity would be a sufficient ground to obtain divorce.<sup>28</sup>The actual penetration need not be proved it can be proved by preponderance of probabilities. Sexual intercourse contemplated by the clause is an intercourse with a third person, i.e., non-spouse. Thus, intercourse with the wives of pre-Act polygamous marriage will not amount to extra-marital intercourse. But if the second marriage

is void, then intercourse with the second wife will amount to extra-marital intercourse within the meaning of the clause.<sup>29</sup>

**4.2 Clause (i-a): Cruelty** The legal conception of cruelty and the kind of degree of cruelty necessary to amount to a matrimonial offence has not been defined by any statute by Indian legislature relating to marriage and divorce; nor has the expression been defined in the Matrimonial Clauses Act, 1950, or any later enactment in England. The danger of any attempt at giving a comprehensive definition that may cover all cases has been emphasized in a number of decisions.<sup>30</sup> The law on the subject had hitherto to be granted from decided cases and courts in India had accepted and adapted to condition in India, The principles underlying the judge-made law on the subject in England. The accepted legal meaning in England, as also in India, of this expression, which is rather difficult to define, had been 'conduct of such character as to have caused danger to life, limb or health (bodily or mental), or as to give rise to a reasonable apprehension of such danger.'<sup>31</sup>

Before passing of the Marriage Laws (Amendment) Act 1976, cruelty was a ground only for judicial separation<sup>32</sup> and the petitioner was required to prove that the respondent had treated him or her with such cruelty as to cause a reasonable apprehension in his or her mind that it would be harmful or injurious for the petitioner to live with the other party. The Marriage Laws (Amendment) Act, 1976 which makes cruelty also a ground for divorce, has changed the wording of the clause thus: "respondent has treated the petitioner with cruelty".<sup>33</sup> The change in the definition of cruelty will signify that an act or omission or conduct which constitutes cruelty is a ground for judicial separation or divorce.

In *Sobha Rani v. Madhukar Reddi*,<sup>34</sup> it has been held that demand for dowry by parents of husband with support for husband can in circumstances and facts of case amount to cruelty within ambit of the expression 'treated'. Cases wherein there was no cruelty-

- Persuading and pressing on unwilling wife to accompany the husband to his place.<sup>35</sup>
- Solitary and or occasional beating of the wife by the husband.<sup>36</sup>
- Petty quarrels and troubles.<sup>37</sup>
- Beating of the child and quarrel between the couple.<sup>38</sup>
- Refusal to give treatment and diet as prescribed by a doctor, because that was beyond the means of the husband.<sup>39</sup>
- Mere consumption of alcohol by the husband unaccompanied by abuses, insults and violence.<sup>40</sup>
- Mere filing of an FIR. U/S. 498-A, IPC<sup>41</sup>. by wife against the husband.<sup>42</sup>
- To live with a wife who is a victim of gang rape.<sup>43</sup>
- Initiation of legal proceedings U/S. 498-A, and 323 of IPC<sup>44</sup>. Against the husband, which failed?<sup>45</sup>
- Wife going to her parents' house without husband's permission.<sup>46</sup>
- Husband negligent about wife's health, not visiting her even after she gave birth to a child.<sup>47</sup>

**4.3 Clause (i-b): Desertion:** It may noticed that desertion per se was not a ground for relief by way of divorce prior to the amendment of this section by the amending act of 1976, but was only a ground for the relief of judicial separation under clause (a) of s 10(1) which was in identical terms. The expression 'desertion' in content of matrimonial law represents a legal conception and is only very difficult to define. Desertion means withdrawing from the matrimonial obligation, i.e., not permitting or allowing and facilitating the cohabitation between the parties. It 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.<sup>48</sup>

The deserting spouse should be proved that there is-

- ❖ factum of separation; i.e., living apart and away from the deserted spouse, and *Animus deserendi*; i.e., an intention to bring cohabitation to an end permanently. Further, if by words or conduct, a spouse makes it impossible for the other spouse to live in his or her company and as a result, the other spouse leaves the matrimonial home, the other spouse cannot be said to be the deserter. On the other hand, the spouse who makes it impossible for other spouse to continue matrimonial relations would be the deserter. If the wife leaves her matrimonial home and lives apart this would be desertion by her. But if she shows that there was cruelty on the part of the husband and so she had quit the matrimonial home, there would be no legal desertion by her. On the contrary, it would be treated a desertion by the husband who had driven her out. So the question of legal desertion cannot be established merely by showing who left the matrimonial home. Thus desertion has to be inferred from the state of things. This is known as constructive desertion.<sup>49</sup>

**4.3.1 Termination of Desertion:** Desertion may be terminated at any time by resumption of cohabitation, because a resumption of cohabitation is the exact negation of a state of desertion. Desertion is a continuing offence. It is possible to bring the state of desertion to an end by some act or conduct on the part of deserting spouse. It may come to an end in the following ways:

- ❖ Resumption of cohabitation.
- ❖ Resumption of marital intercourse.
- ❖ Offer of reconciliation.

**4.4 Clause (ii): 'Ceased to be a Hindu by Conversion':** The term 'Hindu' in this clause must be understood in wide sense given to it in s-2 which include all Hindus, Buddhists, Jains and Sikhs. So a person continues to be a Hindu even though he may have been converted from one to any other of these religions and his case will not be covered by this clause. Conversion in the present context implies that the person have voluntarily relinquished his religion and adopted another religion after formal ceremonial conversion. A Hindu does not cease to a Hindu merely because he professes a theoretical allegiance to another faith, or is an ardent and advocate of such religion and its practices.<sup>50</sup>

Under Section 13 (1) (ii) of the Hindu Marriage Act, 1955 if the spouse has ceased to be a Hindu by conversion to another religion, divorce may be obtained. Originally, this ground was not available for judicial separation in Section 10 of the Hindu Marriage Act, 1955. By an Amendment of Section 10 in 1964, it was made a ground for judicial separation. Subsequently in 1976, the grounds for judicial separation were omitted in Section 10 and were incorporated with slight modifications in Section 13, and are therefore a ground for divorce under Section 13 (1) (ii).<sup>51</sup>

When one spouse voluntarily relinquishes one's religion and adopts another distinctive religion after formal ceremonies, it is conversion on his part. Thus, one should adopt some other religion which cannot be regarded as Hindu religion. If a Hindu person who is a Jain adopts Buddhism, he is still a Hindu<sup>52</sup>. He cannot be said to have changed his religion.<sup>53</sup>

Change from one faith of Hinduism to another does not amount to conversion. Conversion does not of itself result in divorce; a petition under this Section is to be made to the court for divorce. Under the ancient Hindu law, the marriage being a sanskar, it subsisted even though one of the spouses has changed his religion. But under the codified law, the other spouse who continues to be a Hindu gets a right under this Section to obtain divorce.<sup>54</sup>

**4.5 Clause (iii): Unsound Mind:** Before passing of the Marriage Laws (Amendment) Act, 1976 the position of insanity as ground of divorce or judicial separation was as follows:

- ❖ Insanity (whether curable or incurable) - lasting for not less than two years ending with the filing of the petition was a ground for judicial separation;<sup>55</sup>
- ❖ Incurable insanity- lasting for at least three years immediately preceding the filing of the petition was a ground for divorce.<sup>56</sup>

In 1974, the law commission recommended abolition of the duration for the purpose of treating it as a ground for divorce.<sup>57</sup> In 1976, while unifying the grounds for judicial separation and divorce, the legislature not only accepted the said recommendation, it also went further to explain and expand the concept of insanity under Section 13. This was done in the light of the commission's general observations regarding insanity.<sup>58</sup>

The Act refers to two distinct mental conditions, namely-

1. Unsoundness of mind, and
2. Mental disorder.

The conditions attached to each of these two are:

- a) Unsoundness of mind must be incurable; and
- b) Mental disorder (whether continuous or intermittent) must be 'of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent'.<sup>59</sup>

After passing of the Marriage Laws (Amendment) Act 1976, incurable unsoundness of mind or continuous or intermittent mental disorder of such a nature as to disable the petitioner to live reasonably with the respondent makes the petitioner eligible to get a decree of divorce. The term "mental disorder" has been widely interpreted so as to include mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia.<sup>60</sup>

**4.6 Clause (iv): Incurable and Virulent Leprosy:** This clause as amended now lays down as one of the grounds for decree by way of divorce that the respondent has been suffering from incurable and virulent form of leprosy.<sup>61</sup> Before passing of the Marriage Laws (Amendment) Act, 1976 the position of ground of leprosy for divorce was as follows: “the other party has for a period of not less than one year immediately preceding the presentation of the petition, been suffering from a virulent form of leprosy”<sup>62</sup>, it was a ground for judicial separation. If it was virulent<sup>63</sup> and incurable, it was a ground for divorce, where it lasted for three years ending with the filing of the petition.

The Marriage Laws (Amendment) Act 1976 has made leprosy, a ground for both judicial separation and divorce. It omitted the period of three years. Under this clause, the petitioner is required to show that the respondent has been suffering from virulent and incurable leprosy.

Clause (iv) of Section 13 (1) of the Hindu Marriage Act, 1955 lays down that the divorce can be obtained by a spouse if the other party has been suffering from a virulent and incurable form of leprosy.

**4.7 Clause (v): Venereal Disease:** this clause lays down as one of the grounds on which marriage may be dissolved by a decree of divorce that the respondent has been suffering from venereal disease in a communicable form.<sup>64</sup> Before its amendment in 1976, this ground required that the disease must have been there for a period of not less than three years immediately preceding the petition. Venereal disease is a ground both for judicial separation and divorce. Originally under the Hindu Marriage Act 1955, the requirement for judicial separation was as follows: “Respondent has for a period of not less than three years immediately preceding the presentation of the petition, been suffering from venereal disease in a communicable form, the disease not having been contracted from the petitioner”<sup>65</sup>. Clause (v) of Section 13 of the Hindu Marriage Act 1955 which contains the venereal disease as a ground of divorce lays down that a spouse may present a petition for dissolution of marriage on the ground that the other spouse has been suffering from venereal disease in a communicable form.

The Marriage Laws (Amendment) Act, 1976 has simplified this ground. Prior to amendment, the disease was required to be of three years duration. The amendment has done away with the period. Now under the Hindu Marriage Act, 1955 the venereal disease to be a ground of judicial separation or divorce, should be in a communicable form.

**4.8 Clause: (VI) Renunciation of World** -- Clause (vi) of Section 13 (1) lays down that a spouse may seek divorce if the other has renounced the world by entering into any religious order. Thus the requirements of the clause are:

- a) the other party has renounced the world, and
- b) has entered into a holy order.

Hindus recognize Sanyasa Ashrama as the last of the four Ashramas into which, the life of a Hindu is organized. According to Hindu religion, every Hindu is required to enter the last ashrama in his old age. Entering into this ashrama amounts to civil death. For taking sanyas, a person has to perform eight shradhas (including his own shradha) and has to give up his matrimonial life and property.<sup>66</sup> A Hindu can according to his religion, renounce the world and take up sanyas or vanaprastha ashram. Such a person is known as sanyasi, yati, vanaprastha or perpetual brahmachari, cannot any more attend to his worldly obligations. Therefore, law treats sanyas etc., as civil death.<sup>67</sup>

**4.9 Clause: (vii) Presumption of Death,** -- Clause (vii) of Section 13 (1) of the Hindu Marriage Act, 1955 which lays down that a spouse may file a petition for divorce on the ground that the other spouse has not been heard of being alive for a period of seven years or more by those persons who would naturally have heard of it, had that party been alive.

Under Section 108 of the Indian Evidence Act, 1872, a person is presumed to be dead if he is not heard of as alive for seven years or more by those who would have normally heard from him or about him had he been alive. Under matrimonial law, the other spouse on the basis of presumption of death, by assuming that he or she has become a widower or widow, contracts a second marriage and after some time, the missing spouse reappears, then the second marriage is void under Section 11 and the spouse can also be prosecuted for bigamy.<sup>68</sup>

**5.0 Section 13 (1-A):** In 1964, Section 13 (1-A) was inserted which contains second type of divorce based on the ‘Break down’ theory. Thus the two grounds mentioned in sub-Section (1-A) are available to both the husband and wife. The two clauses under which, non-resumption of cohabitation for two years or upwards after the decree of judicial separation or restitution of conjugal rights was made a ground of divorce. This is a modification of clauses (viii) and (ix) of Section 13 (1) of the Hindu Marriage Act, 1955. By the Marriage Laws (Amendment) Act, 1976 the period of two years is reduced to one year. Section 13 (1-A) introduced an element of Break- down theory in the Hindu Marriage Act, 1955.<sup>69</sup>

Trace of the breakdown principle is evident in Section 13 (1-A) of the Hindu Marriage Act, 1955. However, for passing of the decree, either a decree of judicial separation or that of restitution of conjugal rights, court is invariable required to go into the question of marital offence or withdrawal by one spouse from the society of other spouse without reasonable cause, respectively. The necessary implication is that the consideration of fault is brought in though indirectly.<sup>70</sup>

But according to the Law Commission of India, this is not purely a case of breakdown of marriage. A petition for divorce under Section 13 (1-A) must be preceded by a decree for judicial or a decree of for the restitution of conjugal rights. A decree for judicial separation, in its turn, could not have been passed unless circumstances which prove what may be called marital offence or marital disability were established. In this sense, a petition for divorce under Section 13 (1-A) indirectly brings in a consideration of fault or disability.

Similarly, a decree for the restitution of conjugal rights could not have been passed unless it has been proved that the respondent had “without reasonable excuse” withdrawn from the society of the other. Thus, a petition under Section 13 (1-A), in so far as it is based on a prior decree of restitution, also involves consideration of fault.<sup>71</sup>

The two clauses under Section 13 (1-A) are:

72[1-A. Either party to a marriage, whether solemnized before or after the commencement of this Act, may also present a petition, for the dissolution of the marriage by a decree of divorce on the ground,—

- I. That there has been no resumption of cohabitation as between the parties to the marriage for a period of (one year)<sup>73</sup> or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties; or
- II. That there has been no restitution of conjugal rights as between the parties to the marriage for a period of (one year)<sup>74</sup> or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.]

Prior to the amendments the petition for divorce could be filed on the grounds of non-resumption of cohabitation after the decree of judicial separation and restitution of conjugal rights only by the petitioner. After the amendments, either party to the marriage can prefer such petitions. However, this is not applicable to in the cases where the decrees of judicial separation and restitution of conjugal rights were obtained prior to the passing of the Hindu Marriage (Amendment) Act 1964. If the decrees are obtained after 1964, the respondent also can take advantage of the new Section.

The present provision has come into existence after two amendments in the original provision. The original provision under Section 13 (1) (viii) and (ix) was that a party to marriage may petition for divorce if the other party (i) has not resumed cohabitation for a period of two years or upwards after the passing of a decree for judicial separation against that party,<sup>75</sup> or (ii) has failed to comply with a decree for restitution of conjugal rights for a period of two years or upwards after passing of that decree.<sup>76</sup> It was judicially held that, only the decree holder could obtain divorce on the basis of the decree for judicial separation or as the case may be, for the restitution of conjugal rights. The reason given was that a decree is passed for the benefit of the decree holder. If the judgment debtor were given the right to divorce on the ground of that decree, it will mean that he is allowed to benefit himself from his own wrong. That will be violative of Section 23 (1) (a) of the H.M. Act, 1955, which provides that no one will be permitted to benefit oneself from one's own wrong or disability.<sup>77</sup>

It means that one who was found guilty of some matrimonial wrong or disability for the purpose of either of the decrees can benefit oneself from that decree. That will be violative of Section 23

(1) (a) of the Hindu Marriage Act 1955, which provides that no one will be permitted to benefit oneself from one's own wrong or disability. Apparently there seems conflict between the

**6.0 Additional Grounds of Divorce for Wife:** This clause was added by the amending Act of 1976. It provides an additional ground to the wife to seek divorce if a period of one year has elapsed after passing of an order or decree<sup>78</sup>. In addition to the above mentioned grounds; Sub- Section (2) of Section 13 of Hindu Marriage Act, 1955 provides four additional grounds to the women for obtaining divorce from her husband.

Originally, Section 13 (2) of the Hindu Marriage Act, 1955 provided only for two special grounds on which, a Hindu wife alone could seek divorce. Later, the Marriage Laws (Amendment) Act, 1976 has added two more grounds. Thus, a wife may file a petition for divorce on any one of the following four grounds:

- I. in the case of any marriage solemnized before the commencement of this Act, that the husband had married again before such commencement or that any other wife of the husband married before such

- commencement was alive at the time of the solemnization of the marriage of the petitioner: Provided that in either case, the other wife is alive at the time of the presentation of the petition; or
- II. that the husband has, since the solemnization of the marriage, been guilty of rape, sodomy or bestiality; or
  - III. 79 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 passing of such decree or order, cohabitation between the parties has not been resumed for one year or upwards; or
  - IV. that her marriage (whether consummated or not) was solemnized before she attained the age of fifteen years and she has repudiated the marriage after attaining that age but before attaining the age of eighteen years.

**7.0 Explanation:** This clause applies whether the marriage was solemnized before or after the commencement of the Marriage Laws (Amendment) Act 1976.

**7.1 Section 13 (2) (i): Deals with Bigamous Marriage:** Sub-section (1) provides for a decree divorce dissolving a marriage, solemnised before or after the commencement of this Act<sup>80</sup>. Before passing of the Hindu Marriage Act, 1955 a Hindu male can marry as many wives as he liked and no limit to the number of wives. Later, It is provided by Section 13 (2) (i) that if a man had married more than one wife before the Hindu Marriage Act, 1955 came into force, then every wife was given a right to seek divorce from the husband on the ground of his pre-Actremarriage. The first wife on the plea that her husband married again during her life time and the second wife on the plea that her husband married her when he already possessed a wife.<sup>81</sup>

**7.2 Section 13 (2) (ii):** provides three additional grounds of divorce to a Hindu wife. They are Rape, Sodomy and Bestiality committed by the husband after the marriage. In addition to the ground mentioned in sub-s (1) and cl (i) of sub-s (2), a wife can seeks divorce on the ground that the has, since solemnization of the marriage, been guilty of rape, sodomy, or bestiality. It is not necessary that the husband should have been convicted of any of these offences in any criminal proceedings.<sup>82</sup>

According to Section 375 of Indian Penal Code 1860, rape<sup>83</sup> is a sexual intercourse by a man with a woman against her desire or without her consent. Exception to Section 375 says that the sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape. The Indian Penal Code specifically lays down that if wife is not under fifteen years, it is not a rape. But if the wife is below the age of 15 years and the husband forces sexual intercourse on her, he could be guilty of rape and his wife can sue him for divorce.<sup>84</sup> If a person rapes a woman who is not his wife, he is guilty of rape and his wife can sue for divorce. It is immaterial as to whether the woman is related to him or not. The age of the woman raped is also immaterial. A mere attempt of rape will not be sufficient.<sup>85</sup> Further, Section 376-A provides punishment to a husband having intercourse with his wife during separation. Rape is a criminal offence under Section 375 of Indian Penal Code and a person guilty of these offences can be prosecuted in a criminal court. However, under the Hindu law, these are recognized as special grounds of divorce for the wife.

‘Bestiality’ means sexual intercourse with an animal.<sup>86</sup> When a wife files a petition for divorce on the grounds of rape, sodomy or bestiality, it is not necessary for her to show that he was prosecuted or convicted for the offence. Even if the husband has been acquitted by the criminal court, she can in divorce proceedings, establish his guilt and obtain relief. On the other hand, even if the husband has been convicted by a criminal court, the wife will have to prove the offence de novo in the matrimonial proceedings, and then alone she will be entitled to the decree of divorce.<sup>87</sup>

The Section is wide enough. Hence a woman is also liable for committing unnatural offence under this Section. However, this Section is not attracted if the act is done either by a man or a woman with an inanimate object. Section 13 (2) (iii) lays down that, where a wife obtains a decree or order for maintenance either under Section 18 of the Hindu Adoptions and Maintenance Act, 1956 or under Section 125 of the Code of Criminal Procedure, 1973 if cohabitation between the parties had not been resumed for one year or upwards after the decree, can avail herself of this provision for obtaining divorce, not withstanding that she was living apart.<sup>88</sup>

Where a decree under Section 18 of the Hindu Adoptions and Maintenance Act, 1956 or under Section 125 of the Code of Criminal Procedure, 1973 is passed in favour of the wife, it becomes the duty of her husband to pay maintenance to her and he must resume cohabitation within one year. If he fails to do so, the wife can seek divorce.<sup>89</sup>

Section 13 (2) (iv) lays down that a wife who was married before she had attained the age of 15 years, and who had repudiated the marriage after attaining that age but before attaining the age of 18 years, may bring a petition for divorce.<sup>90</sup> Consummation of marriage is immaterial. The Act or the Section does not prescribe any procedure for repudiation of marriage. Therefore, the fact of repudiation has to be proved by the wife.<sup>91</sup> No such relief is provided for a male who is married below the age of fifteen or eighteen or twenty one year.

She can apply for divorce whether her marriage was consummated or not. The explanation to this clause states that this clause applies whether the marriage was solemnized before or after the commencement of the Marriage Laws (Amendment) Act, 1976. It is sufficient if she repudiates the marriage before completion of 18 years and it is not necessary that she should file a petition under Section 13 (2) (iv) before that date. She could file it even after that date.<sup>92</sup> Where the wife declined to go to her husband before attaining the age of 18 years, it was held that it amounted to repudiation by conduct.<sup>93</sup>

**8.0 Divorce by Mutual Consent:** This section was introduced (w. e. f. 25-5-1976) by the amending Act of 1976. Divorce by mutual consent is not new to Hindus and it was recognized through legislation and customs by some states and communities<sup>94</sup>. But there was no provision of divorce by mutual consent under Hindu Marriage Act, 1955. Section 13-B was added by the Marriage Laws (Amendment) Act, 1976 where the parties can now obtain divorce by mutual consent. This provision is retrospective as well as prospective. Hence, parties to a marriage whether solemnized before or after that Amending Act can avail them of this provision. If both the parties have agreed to dissolve their marriage, they may do so in a more civilized and cultured way than by quarrelling between themselves in a court. They may petition together under Section 13-B in a District court that they may be granted a decree of divorce.

It is absolutely clear that the petition for divorce by mutual consent must be presented to the court jointly by both the parties and not by one party,<sup>95</sup> the court can allow the parties to amend a petition for divorce under Section 13-B to be converted into a petition for divorce by mutual consent. This is possible even at the appellate stage. When a decree of divorce under Section 13-B is passed on such an amended petition, the effect is that all the past allegations and cross-allegations made by the parties against each other during the hearing of the petition under Section 13-B are quashed.

### **9.0 Conclusion:**

The changes made in the law of divorce are too much and undesirable. These changes have almost altered the nature of Hindu marriage. The original provisions of the Hindu Marriage Act regarding divorce have been liberalized by the Marriage Laws (Amendment) Act, 1976. Too much liberalization can be seen from the passing of Marriage Laws (Amendment)

Act, 1976. It reduced the time limits for few grounds and it added new grounds of divorce. With these changes, it almost altered the sacramental nature of Hindu marriage.

The first amendment to this provision was effected by the Hindu Marriage (Amendment) Act 1964 which substituted Section 13 (1-A) (i) and (ii) for Section 13 (1) (viii) and (ix). The second amendment is made by the Marriage Laws (Amendment) Act 1976. It has reduced the period after the passing of the decree on the expiry of which, the petition for divorce can be made from two years to one year. The amendment of 1964 has entitled even the judgment-debtor to the relief of divorce on the basis of that decree. It means that one who was found guilty of some matrimonial wrong or disability for the purpose of either of the decrees can benefit oneself from that decree. Both the amendments have liberalized the law.<sup>96</sup> The Marriage Laws (Amendment) Act, 1976 through its unnecessary interference, almost altered the sacramental nature of Hindu marriage.

### **10.0 References:**

1. Dr. Paras Diwan- Family Law, 6th edn. 2001, p.124, Allahabad Law Agency, Faridabad (Haryana).
2. Dr. Paras Diwan- Family Law, 6th edn. 2001, p.124, Allahabad Law Agency, Faridabad (Haryana).
3. Madras Hindu (Bigamy Prevention and Divorce) Act, 1949 Saurashtra Hindu Divorce Act, 1952.
4. Prof. G.C.V. Subba Rao- Family Law in India, 8th edn. 2005, p.205, S. Gogia & Company, Hyderabad.
5. Swarajya Lakshmi v. Padma Rao AIR 1974 SC 165.
6. Ramesh Chandra Nagpal- Modern Hindu Law, 1st edn. 1983, p.144, Eastern Book Company, Lucknow
7. Subs. by Act. No. 68 of 1976.
8. R.K. Agarwala- Hindu Law, 21st edn. 2003, p.59, Central Law Agency, Allahabad
9. Dr. Paras Diwan- Modern Hindu Law, 18th edn. 2007, p.125, Allahabad Law Agency, Faridabad (Haryana).
10. R.K. Agarwala- Hindu Law, 21st edn. 2003, p.58, Central Law Agency, Allahabad
11. Narasimha Reddy and others v. M. Boosamma AIR 1976 AP 77.
12. Grounds of divorce under Hindu Marriage Act, 1955.

13. Darshan Prasad v. Civil Judge, Gorakhpur, AIR 1992 SC 967.
14. The custom of divorce existed among the lower castes such as Sudras among the Hindus of Manipur Divorce at the pleasure of either party was permissive
15. Bombay Hindu Divorce Act, 1947 and the Madras Hindu (Bigamy Prevention and Divorce) Act 1949, and the Saurashtra Hindu Divorce Act, 1952. All these Acts have been repealed by the Hindu Marriage Act, 1955
16. R.K. Agarwala- Hindu Law, 21st edn. 2003, p.73, Central Law Agency, Allahabad
17. Mayne's -Hindu Law & Usage, 13th edn. 1995, p.218, Bharat Law House, New Delhi.
18. See grounds of divorce under Section 13.
19. Prof. G.C.V. Subba Rao- Family Law in India, 8th edn. 2005, p.205, S. Gogia & Company, Hyderabad
20. Ibid.
21. Section 13 (2) (iii) and (iv).
22. Dr. Paras Diwan- Modern Hindu Law, 18th edn. 2007, p.129, Allahabad Law Agency, Faridabad (Haryana)
23. B.M. Gandhi- Hindu Law, 3rd edn. 2008, p. 299, Eastern Book Company, Lucknow
24. Dr. Paras Diwan on Hindu Law, 2nd edn. 2005, p.771. Orient Publishing Co., Allahabad.
25. Re Fulchand 1928 30 Bom LR 79; Kallu v. Kausilia 1904 26 All 326; Patala Atchamma v. Patala Mahalakshmi, (1970) 30 Mad 332; Jatindra Mohan v. Gauri Bala 1924 29 CWN 674.
26. Dr. Paras Diwan on Hindu Law, 2nd edn. 2005, p.771. Orient Publishing Co., Allahabad.
27. Arun Kumar v. Nalin, AIR 2003 Kant 25; Jyotishwer Sen v. Anjana Sen, AIR 2010
28. B.M. Gandhi- Hindu Law, 3rd edn. 2008, p. 300, Eastern Book Company, Lucknow
29. Clause (i) of Sub-Section (1) of Section 13; cf: Dr. Paras Diwan- Modern Hindu Law, 18th edn. 2007, p.158, Allahabad Law Agency, Faridabad (Haryana)
30. Sheldon v. Sheldon (1966) 2 All ER 257.
31. Russell v. Russell, (1897) AC 395; Kallan v. Kallan, AIR 1933 Lah 728.
32. Section 10 (1) (b) of Hindu Marriage Act, 1955. judicial separation is a lesser remedy when compared to divorce. Where a decree for judicial separation has been passed, it shall no longer be obligatory for the parties to cohabit with each other. Mutual obligations and rights are not available to the parties. Nonetheless marriage subsists. At any time they can resume cohabitation. If the cohabitation is not resumed for a period of one year or more after the passing of judicial separation, any party may apply for divorce under Section 13 (1-A) (i) of the Hindu Marriage Act, 1955.
33. Section 13 (1) (i-a) of the Hindu Marriage Act, 1955.
34. AIR 1988 SC 121; Prakash Kaur v. Harjindal Pal, AIR 1999 Raj 46.
35. Anna Saheb v. Tarabai AIR 1970 MP 36.
36. Tulsa v. Pannalal AIR 1963 MP 5.
37. J.L. Nanda v. Veena Nanda 1988 SCC 122.
38. Harpal Sharma v. Tripta ani (1994)1 HLR 151 (P&H).
39. Shyamlal v. Saraswati Bai AIR 1967 MP 204.
40. Harjit Kaur v. Roop Lal (2004)1 HLR 143 (P&H).
41. "Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine".
42. Virender Kumar v. Santro Devi (2003)2 HLR 401 (P&H).
43. Rajesh Kumar Singh v. Rekha Singh (2005)1 HLR 759 (All DB.); cf: B.M. Gandhi, Hindu Law, 3rd edn. 2008, p. 318, Eastern Book Company, Lucknow.
44. Whoever, except in the case provided for by Section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both
45. Radha Rani v. Har Bhagwan (2004)1 HLR 50 (P&H).
46. Kamlesh v. Prem Prakash (1989)1 HLR 554 (Raj).
47. Rajinder Prasad Jain v. Rama Jain 1980 HLR 122 (P&H).
48. R.K. Agarwala- Hindu Law, 21st edn. 2003, p.86, Central Law Agency, Allahabad.
49. Mayne's- Hindu Law & Usage, 13th edn. 1995, p.329, Bharat Law House, New Delhi.
50. Mulla- Hindu Law, 21st updated edn. (Feb) 2013, p.945, LexisNexis, New Delhi.
51. Mayne's- Hindu Law & Usage, 13th edn. 1995, p.246, Bharat Law House, New Delhi
52. Though the Jains may not be Hindus by religion (Jainism is a distinctive religion) they would be governed by the same law as the Hindus. Section 2 of the Hindu Marriage Act, 1955 deals with Application of the Act. It lays down a list of persons who would be governed by this Act. These persons can be brought under the following three main groups. 1) Persons who are Hindus by religion- Section 2 (1) (a). 2) Persons who are Buddhists, Jains and Sikhs by religion- Section 2 (1) (b). 3) any

- other person domiciled in the territories to which this Act extends who is not a Muslim, Christian, Parsi or Jew by religion- Section 2 (1) (c). B.M. Gandhi- Hindu Law, 3rd edn. 2008, p. 257, Eastern Book Company, Lucknow
53. B.S. Mohankumar v. B.K. Nirmala (2005)1 HLR 117 (Kant DB).
54. B.M. Gandhi- Hindu Law, 3rd edn. 2008, p. 327, Eastern Book Company, Lucknow
55. Section 10 (1) (e) - repealed in 1976
56. Section 13 (1) (iii) as it stood before the 1976 amendment.
57. 59th Report 1974, p. 110.
58. 59th Report 1974, pp. 42-50; cf: Dr. Tahir Mahmood- Hindu Law, 2nd edn. 1986, p. 456, The Law Book Co. (P) Ltd. Allahabad.
59. Section 13 (1) (iii) of Hindu Marriage Act, 1955.
60. R.K. Agarwala- Hindu Law, 21st edn. 2003, p.91, Central Law Agency, Allahabad
61. Mulla- Hindu Law, 21st updated edn. (Feb) 2013, p.948, LexisNexis, New Delhi
62. Sec. 10 (1) (c) of the Hindu Marriage Act, 1955.
63. 'Virulent' means highly poisonous or malignant, venomous or acrimonious.
64. Mulla- Hindu Law, 21st updated edn. (Feb) 2013, p.948, LexisNexis, New Delhi
65. Section 10 (1) (d) of the Hindu Marriage Act, 1955.
66. R.C. Nagpal- Modern Hindu Law, edn. 1983, p.170, Eastern Book Co., Lucknow.
67. Dr. Tahir Mahmood- Hindu Law, 2nd edn. 1986, p.460, The Law Book Company (p) Ltd. Allahabad.
68. Section 494 of I.P.C, 1860
69. Prof. G.C.V. Subba Rao- Family Law in India, 8th edn. 2005, p.205, S. Gogia & Company, Hyderabad.
70. An article published in the Journal of Indian Bar Review, Vol. XXXVI (1to 4) 2009, p. 130, by Divya Tyagi, Faculty, Hidayatullah National Law University, Raipur, Chhattisgarh.
71. Law Commission of India, Seventy-first Report, 1978, p. 71.9.
72. Sub-Sec. (1-A) ins. by Act 44 of 1964
73. Subs. by Act No. 68 of 1976 for the words "two years".
74. Subs. by Act No. 68 of 1976 for the words "two years".
75. Section 13 (1) viii) of the H. M. Act, 1955.
76. Section 13 (1) (ix) of the H. M. Act, 1955.
77. R.C. Nagpal- Modern Hindu Law, 2nd edn. 2008, p.234, Eastern Book Co., Lucknow.
78. Mulla- Hindu Law, 21st updated edn. (Feb) 2013, p.957, LexisNexis, New Delhi.
79. Ins. by Act No. 68 of 1976.
80. Mulla- Hindu Law, 21st updated edn. (Feb) 2013, p.955, LexisNexis, New Delhi.
81. R.C. Nagpal- Modern Hindu Law, edn. 1983, p.178, Eastern Book Co., Lucknow.
82. Mulla- Hindu Law, 21st updated edn. (Feb) 2013, p.955, LexisNexis, New Delhi.
83. Rape. A man is said to commit "rape" who, except case hereinafter excepted, has sexual intercourse with a woman in circumstances falling under any of the six following descriptions:-Firstly. — Against her will. Secondly. — Without her consent.Thirdly. — With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt. Fourthly. — With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married. Fifthly. — With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent. Sixthly. — With or without her consent, when she is under sixteen years of age.Explanation. — Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape. Exception. — Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.
84. Dr. Paras Diwan on Hindu Law- 2nd edn. 2005, p.876, Orient Publishing Co., Allahabad.
85. Ibid.
86. Section 377 of IPC, 1860.
87. Dr. Paras Diwan- Modern Hindu Law, 18th edn. 2007, p.165, Allahabad Law Agency, Faridabad (Haryana).
88. Mayne's- Hindu Law & Usage- 13th edn. 1995, p.254, Bharat Law House, New Delhi.
89. B.M. Gandhi- Hindu Law- 3rd edn. 2008, p. 333, Eastern Book Company, Lucknow.
90. Dr. Paras Diwan- Modern Hindu Law, 18th edn. 2007, p.166, Allahabad Law Agency, Faridabad (Haryana).

91. B.M. Gandhi- Hindu Law, 3rd edn. 2008, p. 333, Eastern Book Company, Lucknow.
92. Kamlesh v. Chamel Singh (1986)2 HLR 464. (P&H); cf: Mayne's Hindu Law & Usage- 13th edn. 1995, p.255, Bharat Law House, New Delhi.
93. Seethal Das v. Bijay Kumari (1988)2 HLR 359 (P&H).
94. It was permitted by the Travancore Exhara Act, 1100 (1925 BC). The Travancore Act, 1925 (Reg. III of 1100), the Cochin Marumakkattayam Act, 1133 (1938 BC) and the Cochin Nayar Act, 1113 (1938 BC). In certain communities, it was provided by custom (Jina Magan Pakhali v. Rai Jethi AIR 1941 Bom 298; ILR 1941 Bom 535; cf: B.M. Gandhi- Hindu Law, 3rd edn. 2008, p. 335, Eastern Book Company, Lucknow.
95. Mulla- Hindu Law, 21st updated edn. (Feb) 2013, p.963, LexisNexis, New Delhi.
96. R.C. Nagpal- Modern Hindu Law, 2nd edn. 2008, p.234, Eastern Book Co., Lucknow