

NEWS LETTER

MARRIGE & DIVORCE LAWS

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CASE STUDY OF RELEVANCE

1. Shah Bano Case (Mohd. Ahmed Khan v. Shah Bano Begum, 1985)

The Shah Bano case is a cornerstone in Indian legal history concerning the rights of divorced Muslim women. Shah Bano, a 62-year-old woman, sought maintenance under Section 125 of the Criminal Procedure Code (CrPC) after being divorced by her husband through triple talaq.

- The Supreme Court held that a divorced Muslim woman was entitled to maintenance beyond the iddat period.
- It highlighted the need for a uniform civil code, sparking debates on personal laws versus secular laws.

2. Navin Kohli v. Neelu Kohli (2006)

This case is known for its observations on irretrievable breakdown of marriage as a ground for divorce. The husband sought divorce, alleging cruelty by the wife.

- The Supreme Court recommended irretrievable breakdown of marriage as a valid ground for divorce.
- The judgment paved the way for future discussions on adding this ground to Indian divorce laws.

3. Saroj Rani v. Sudarshan Kumar Chadha (1984)

This case dealt with Section 9 of the Hindu Marriage Act, 1955, which provides for restitution of conjugal rights.

- The Supreme Court upheld the constitutional validity of Section 9, emphasizing that the provision aimed to preserve the marriage.
- However, the judgment has also been critiqued for prioritizing marital unity over individual autonomy.

4. K. Srinivas Rao v. D.A. Deepa (2013)

This case set an important precedent regarding cruelty as a ground for divorce. The wife filed false criminal complaints against the husband and his family, leading to their harassment.

- The Supreme Court held that filing false cases constitutes mental cruelty, sufficient for granting divorce.
- It underscored the misuse of legal provisions and the need for judicial intervention in such matters.

5. Danial Latifi v. Union of India (2001)

This case is critical in understanding the rights of Muslim women post-divorce under the Muslim Women (Protection of Rights on Divorce) Act, 1986.

- The Supreme Court clarified that a Muslim husband must make reasonable provision for the wife's maintenance beyond the iddat period.
- It upheld the constitutional validity of the 1986 Act while ensuring justice for divorced Muslim women.

6. Mayadevi v. Jagdish Prasad (2007)

This judgment elaborates on what constitutes mental cruelty under the Hindu Marriage Act, 1955.

- The Supreme Court noted that persistent accusations, baseless allegations, and abnormal behavior could amount to mental cruelty.
- It provided clarity on assessing cruelty in divorce cases.

7. Joseph Shine v. Union of India (2018)

Though primarily dealing with adultery under Section 497 of the Indian Penal Code, this judgment indirectly influenced divorce law.

- The Supreme Court decriminalized adultery, stating that it could still be a ground for divorce but not a criminal offense.
- It marked a progressive step in recognizing individual freedoms within marriage.

8. Amardeep Singh v. Harveen Kaur (2017)

This case addressed the cooling-off period under Section 13B(2) of the Hindu Marriage Act for mutual consent divorces.

- The Supreme Court held that the six-month cooling-off period is not mandatory and can be waived in certain cases.
- This judgment expedited the divorce process in mutual consent cases, reducing unnecessary delays.

9. Lata Singh v. State of Uttar Pradesh (2006)

Though not directly related to divorce, this case addressed the rights of inter-caste and inter-religious couples, influencing societal perceptions of marriage and divorce.

- The Supreme Court upheld the right of adult individuals to marry persons of their choice.
- It strengthened the idea of individual autonomy in marital decisions.

10. Narendra v. K. Meena (2016)

This judgment further clarified what constitutes cruelty as a ground for divorce. The wife refused to live with the husband and repeatedly threatened him with suicide.

- The Supreme Court ruled that such behavior amounts to cruelty, justifying divorce.
- It highlighted the impact of psychological harassment on marital relationships.

11. Parvin Kumar Jain vs. Anuj Jain (20245 INSC 961)

This judgment laid down a eight factor guidelines for determining permanent spousal maintenance – not a rigid formula, but as a flexible framework grounded in fairness.

First Factor: Social & Financial Status of both spouses

Second Factor: Reasonable needs of wife & Children

Third Factor: Educational qualification & employment status of both

Fourth Factor: Assets & Independent Assets owned by each spouse

Fifth Factor: Standard of Living enjoyed during marriage

Sixth Factor: Employment sacrifices made by wife for family responsibilities'

Seventh Factor: Reasonable litigation cost

Eighth Factor: Husband's financial capacity, including income, liabilities and maintenance obligations

ARTICLE

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FREQUENTLY ASKED QUESTIONS (FAQs)
ON
INSOLVENCY AND BANKRUPTCY CODE, 2016

Question 1: What are the valid grounds for divorce under Hindu law?

Answer 1: Grounds include cruelty, adultery, desertion, conversion, mental disorder, leprosy, venereal disease, renunciation of the world, and presumption of death.

Question 2: Can mutual consent divorce be obtained in less than 6 months?

Answer 2: Yes, the Supreme Court has allowed waiver of the 6-month cooling-off period in certain cases under Section 13B(2) of the Hindu Marriage Act.

Question 3: What is the difference between judicial separation and divorce?

Answer 3: Judicial separation allows spouses to live apart without ending the marriage, whereas divorce legally dissolves the marriage.

Question 4: What is irretrievable breakdown of marriage and is it a valid ground for divorce?

Answer 4: Though not a statutory ground, the Supreme Court can grant divorce on this basis under Article 142 of the Constitution in exceptional cases.

Question 5: Is adultery still a crime in India?

Answer 5: No. Adultery was decriminalized in 2018 (Joseph Shine v. Union of India), but it remains a civil ground for divorce.

MARITAL DISPUTES & CRUELTY

Question 6: What constitutes cruelty as a ground for divorce?

Answer 6: Cruelty includes physical violence, emotional abuse, false allegations, public humiliation, and repeated legal harassment.

Question 7: Can a single incident of cruelty lead to divorce?

Answer 7: Yes, if it is serious enough to cause mental agony and makes cohabitation impossible.

Question 8: Is filing a false 498A case considered cruelty?

Answer 8: Yes, courts have held that making false criminal allegations can amount to mental cruelty.

Question 9: What happens if one spouse refuses to return to the matrimonial home?

Answer 9: It can be treated as desertion, a valid ground for divorce if continued for at least 2 years.

Question 10: Can refusal to have sexual relations be considered cruelty?

Answer 10: Yes, consistent refusal without valid reason can be treated as cruelty or grounds for annulment.

MAINTENANCE, ALIMONY & CUSTODY

Question 11: Who is entitled to maintenance after divorce?

Answer 11: Typically, the financially dependent spouse—usually the wife—is entitled to maintenance or alimony.

Question 12: Can a working woman claim maintenance?

Answer 12: Yes, if her income is insufficient to maintain the standard of living she had during marriage.

Question 13: How is alimony calculated in India?

Answer 13: There's no fixed formula; factors include duration of marriage, income of parties, and responsibilities like child care.

Question 14: What is the difference between maintenance and alimony?

Answer 14: Maintenance is periodic (monthly), while alimony is usually a lump sum payment.

Question 15: Who gets custody of children after divorce?

Answer 15: Courts consider the best interest of the child — often granting custody to the mother in early years, but it can vary.

LEGAL PROCESS & DOCUMENTATION

Question 16: Can I get a divorce without going to court?

Answer 16: No, all divorces must be legally granted by a competent court, even if by mutual consent.

Question 17: How long does a contested divorce take in India?

Answer 17: It may take 2–5 years depending on the complexity, evidence, and court workload.

Question 18: Is marriage registration mandatory in India?

Answer 18: Though not compulsory under personal laws, registration is highly recommended and is mandatory in some states.

Question 19: Can Non-Resident Indians (NRIs) file for divorce in India?

Answer 19: Yes, provided the marriage was solemnized in India or falls under Indian personal law jurisdiction.

Question 20: Can WhatsApp chats or emails be used as evidence in divorce cases?

Answer 20: Yes, digital communication can be admissible in court to prove cruelty, infidelity, or harassment.

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