

This propounding  
such customs. in  
tarun kumar



**ASSIGN  
BUSTER**

This provision has been given a retrospective effect so as to make it applicable to marriages whether solemnised before or after the commencement of the Marriage Laws (Amendment) Act, 1976 such a petition is required to be moved jointly by the parties to marriage on the ground that they have been living separately for a period of one year or more and they have not been able to live together and also that they have agreed that the marriage be dissolved with effect from the date of the decree. Section 13(B) (2) no doubt cautions the Courts of its duty to fight the last ditch battle to save the marriage, but when the Court is fully satisfied on the basis of the proved facts, that in the interest of justice, of the society and the individuals, marriage tie should be put to an end immediately.

Section 13-B (2) does not impose any fetter on the powers of the Court to grant instant decree of divorce. Therefore, the time table fixed by Section 13-B (2) does not apply to an Appellate Court. In Yanmnaji H. Jadhav v. Nirmala, the Supreme Court has observed that the customary divorce by mutual consent is not recognisable by a court unless specifically permitted by law because in personal law customary divorce being an exception to general law of divorce, ought to have been pleaded and established by party propounding such customs. In Tarun Kumar Vaish v. Menakshi Vaish, the court observed that the both parties appear to be matured, independent and fully committed even after a passage of about 8 months from the date of filing of the petition to Part Company. Thus, even after a passage of about 11 months from the date of the marriage, the parties are firm in their resolve to dissolve the marriage.

Thus it is not a hasty decision to seek a divorce but the decision is a mature and a well considered one and has not been arrived at under any external influence. In Suit. Siislwm Prawod Taksmide v. Pramod Ramaji Taksmide, wife challenged decree of divorce by mutual consent on the ground that her signatures on divorce petition and affidavits were obtained under false pretext and there was no separation for period of one year. After considering the fact court held that while subordinate courts passing the decree of divorce by mutual consent, the court has to be satisfied that consent was not obtained by force, fraud or undue influence.

The trial court can make such enquiry as it thinks fit, including examining parties for that purpose and if it is satisfied that the consent of the parties were not obtained by force, fraud or under influence and they mutually agreed for dissolution of marriage the trial court must pass a decree of divorce.

**Necessary Ingredients:**

The requirements for seeking divorce by mutual consent are: (a) Petition for divorce has to be presented to the district court by both the parties to a marriage supported by affidavits of both the parties; (b) The parties should have been living separately for a period of one year or more; (c) The parties could not adjust with each other and had not been able to live together; (d) There should be mutual request by both the parties to a marriage to dissolve the marriage. After the petition is presented, the parties have to wait for a minimum period of six months after which they have to move the court once again under sub-section (2) of this section. If the parties do not move the court in the matter after six months and before eighteen months from the <https://assignbuster.com/this-propounding-such-customs-in-tarun-kumar/>

date of presenting the petition, the petition for mutual divorce would lapse. Either party can withdraw the petition during this period.

Analysing the provisions of the Section 13-B, the Madhya Pradesh High Court in the decision of Ravi Sliankcr v. Suit. Sliarda, has observed that the party preferring petition for divorce on the basis of mutual consent is not required to prove anything other than the requirements of Section 13-B.

The view that a ground which existed earlier, in addition to that contained in Section 13-B should also be proved, would result in nullifying the very object of providing this new ground of divorce by insertion of Section 13-B. In *Indrawal v. Radhey Raman*, the Allahabad High Court held the view that after passing of the Marriage Laws (Amendment) Act, 1976 whatever change has taken place, the dissolution of marriage by mutual consent of the parties to marriage is most conspicuous. In this case the parties are not required to prove any grounds of dissolution of marriage but the courts have simply to find out that the element, mutual consent is not the result of any conspiracy between them. Once it is proved that they want it voluntarily without any ground of divorce being present, the court would be obliged to pass a decree by mutual consent.

According to Calcutta High Court, a divorce under Section 13-B could not be had merely on the ground of mutual consent. The court must further be satisfied that the parties had been living separately for one year or more and had reached a stage so as to make it impossible to live together. In this section the expression “ they were living separately for one year” and “ they were not able to live together” must be read together, that is to say, they

could not live together and so had been living separately for one year or more. Their marital life had disrupted and cohabitation had come to an end. These presumptions can be drawn from the fact of their not living together.

The decree for divorce would follow only thereafter under this section.