

Section again.
moreover, the
marriage laws
(amendment) act,



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Section 13 of the Act describes the circumstances which extend the right of divorce. Section 14 renders the provisions of divorce a bit difficult as it provides that no petition for divorce can be presented within one year of the marriage unless it causes exceptional hardship to the petitioner or it becomes a case of exceptional depravity on the part of the respondent. Section 15 lays down the limitations on the right of divorced persons to marry again. Moreover, the Marriage Laws (Amendment) Act, 1976 has brought about certain changes of far reaching consequences, which have substantially affected the sacramental character of marriage.

The Amendment Act has introduced a new mode of divorce, i. e. divorce by mutual consent, under section 13B to the parties of marriage.

The new provision denotes an implied suggestion that marriage is a contract and hence it could be dissolved by the consent of the parties. Besides the above grounds of divorce as contemplated by Section 13(1) and 13(2) and that of judicial separation have become identical. An analysis of these grounds reveals that matrimonial relief of divorce is founded on fault theory. Where a party to marriage is guilty of any prescribed matrimonial offence, the other party earns a right to divorce under section 13. Generally, the entire structure of divorce has been built on fault theory. Section 13(1-A) which was included in 1964 envisages only two grounds which have their roots in the break-down theory. These two grounds include (i) non-compliance with the decree of restitution of conjugal right and, (ii) omission to resume cohabitation for a period of one year after the decree of judicial separation is passed.

Thus in both these situations, on the breakdown of marriage, either party thereto could avoid the marriage through a decree of divorce. Thus by effecting an amendment in 1964 by adding Section 13(1-A) to the Hindu Marriage Act of 1955, a decree of divorce could be granted not only on the basis of fault theory, but also upon the frustration of marriage i. e, partially on breakdown theory. Marriage laws (Amendment) Act, 1976 has further liberalised the law pertaining to divorce. The addition of Section 13B enables the parties to marriage to obtain a decree of divorce by mutual consent without proof of any matrimonial offence. Thus the third principle of divorce based on consent theory which was added by the Amendment Act of 1976 exhibits a very progressive approach towards break-down theory of divorce.

The marital life of Hindus is undergoing noteworthy changes. In the changed social scenerio new problems are cropping up every day which tend to destroy the matrimonial harmony between the husband and wife. But still there being no fulfilment of the conditions enumerated for divorce they would not succeed in securing divorce. In the present age of materialism when the old values of marital relationship are being shattered, the entire philosophical background of marriage needed a reconsideration. Now it is becoming necessary that in the event of spoiled relationship between the spouses they be accorded the matrimonial remedies of divorce or judicial separation. In England the Matrimonial Act, 1973 permitted divorce in the event of frustration of marriage. Courts have further emphasized that where a marriage reaches the stage of frustration, the said situation itself must afford a strong ground for divorce arid in that circumstance it would be futile to ascertain as to which party was at fault.

The breakdown theory of marriage which finds the decree of divorce in the event of failure of marriage had become an impending need of the hour and so it was desirable to import it in the present Hindu Marriage Act. It is meaningless to keep the parties tied up in marital relationship despite failure of marriage. The law must give them freedom to wriggle out of such marriages and avail another opportunity to try their luck in another marriage. The Law Commission of India had made similar recommendation in 1978. It has pointed out:— “ The theoretical basis and necessity for introducing irretrievable breakdown as a ground of divorce is that the marriage has all the external appearance of marriage, but none of the reality. The marriage is merely a “ shell out of which the substance is gone.

” In such circumstances, there is hardly any utility in maintaining the marriage as a facade, when the emotional and other bonds, which are of essence of marriage have disappeared.” The Commission also recommended the insertion of a new Section 13-C in the Hindu Marriage Act, under which a petition for the dissolution of marriage by a decree of divorce may be presented to the Court by either party to marriage on the ground that the marriage has broken down irretrievably. On the basis of the said recommendation Marriage Laws Amendment Bill was moved in Lok Sabha, but because of dissolution of the House later on, it lapsed.

But the question requires introspection as to whether with the liberalisation of divorce laws to such an extent would not lead to a stage toward damaging the Indian culture and loosening of the social tie culminating in its disintegration? In the background of present Indian society, enmeshed in deep materialism, it would not be unnatural for one party, desirous of

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avoiding marriage, to create such a situation under which he may reside separately for a period of three years (as desired under the lapsed proposed Bill) and then obtain a decree of divorce on the basis of irretrievable breakdown of marriage. This would be specially favourable to Indian husbands as ours is a male dominated society. How far the Commission's aforesaid proposition would be justifiable in the background of Hindu way of life and the extent of its utility in bringing out new amendments in the existing law is a debatable question?