

# Gulliver's travels essay sample

[Family](#), [Divorce](#)



(1) This act applies

a. to any person who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthna or Arya Samaj b. to any person who is a Buddhist, Jaina or Sikh by religion and c. to any other person domiciled in the territories to which this Act extends who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed Explanation: the following people are Hindus, Buddhists, Jains or Sikhs by religion as the case may be:- (a) any child, legitimate or illegitimate

Concepts and Forms of Marriage

Conditions for validity of marriage(sec 3 & 5)

Solemnization of Marriage S7

Registration of Marriage S8

Void and Voidable Marriage S11 & S12

1. Surajmani Stella Kujur v Durga Charan Hansdah, 2001

husb – 2nd marriage – 1st wife sues for bigamy under S494 IPC – conceded by appellant that marriage out of HMA in light of S2(2) of the act(Schd Tribe) – appellant relied on alleged custom in tribe which mandates monogamy as a rule – could not prove the same – burden on proof on one who is alleging the custom – court observed S29(2) HMA recognizes importance of customs – to prove that the custom is ancient, certain and reasonable – no proof of alleged custom making the 2nd marriage void – hence no offence under bigamy S494 IPC

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## 2. S. Nagalingam v Sivagami, 2001

appellant-accused second marriage – while 1st marriage still subsisting – 2nd marriage performed under S7A, HMA. – Appellant took plea that the second marriage solemnized without saptapadi therefore not guilty under bigamy – SC held appellant guilty of bigamy – saptapadi is necessary only when admitted by parties that essential ritual to be performed for the marriage as per the personal law or form of marriage applicable to them – present case appellant performed a valid marriage under S7A, HMA

## 3. Bhaurao Shankar Lokhande v State of Maharashtra, 1965

Celebrations and ceremonies does not amount to solemnization of HM – essential ceremonies for solemnization of Hindu Marriage are (1) Invocation before the sacred fire (2) Saptapadi – these 2 can be dispensed with only if custom permits – custom itself must be cogently established – S17 of HMA provides that any marriage between two hindus solemnized after commencement of the Act is void if either party had a husband or wife living, and S494, S495 IPC shall apply accordingly – intention to marry while performing ceremonies does not solemnize a marriage – Court observed that parties abandoned some essential ceremonies which were customary in their community – hence second marriage not valid – offence of bigamy not made out – prosecution failed to establish solemnization as per S7a – S3a signifies custom

## 4. Lily Thomas v UoI, 2000

Married under Hindu Law – cannot solemnize a 2nd marriage under Muslim Law – Conversion does not dissolve a marriage automatically, it only

provides a ground for divorce under S13, HMA – 2nd Marriage void under S11 HMA – Offense created under S17 HMA – S17 HMA – 494, 495 IPC – Religious freedom also means not infringing religious right and personal freedom of others – wider scope of Muslim law cannot be allowed to be misused by unscrupulous litigants –

#### 5. Pinninti Venkataramana v State, 1977

Child Marriage -> valid marriage – court should lean against any provision of law which is liable to render innocent children of the marriage as illegitimate – A full bench AP HC held marriage solemnized in contravention of S5(iii) HMA, 1955 neither void nor voidable – Marriage bw 13yr & 9yr old valid – Violation of S5(i, iv & v ) marriage null and void – violation of S5(ii) voidable – violation of S5(iii) punishment as in S18 – parental consent not required for valid minor marriage – doctrine of factum valet – a fact cannot be altered by a 100 texts – minors marriage was the factum of marriage – could not be undone by legal provisions contrary to the same – S4 of HMA says Old HMA to continue if no provision made wrt that in HMA – Old HMA minor marriages valid – S16 legitimize children frm void & voidable marriages – Consequences of violation of S5(iii) not interfered with, clause (iv) added to provide for grounds of divorce – divorce presumes valid marriage

Fraud or force-(i) consent by fraud or force (ii) petition within 1 year of discovery of fraud or force [Sec 12(2)(a) (iii) petitioner must not have lived as husband or wife after cessation of force or discovery of fraud [S12(2)(a)] – single act of sexual intercourse fatal to prosecution – Fraud S12(1)(c) 1976  
Amendment has widened the scope of fraud (i) Nature of Ceremony (ii)

Identity of the Party (iii) Concealment of disease (iv) Concealment of religion or caste (v) Concealment of previous marriage (vi) Concealment of unchastity (vii) Concealment of illegitimacy(& not adoption) – fraud (viii) Concealment of age (ix) Petitioner's father's fraud (Babui vs Ram) 6. Asha Qureshi v Afaq Qureshi, 2002

Suppression and active concealment of fact by wife of her earlier marriage and she being a widow amounts to material misrepresentation i. e. ' exercise of fraud' – Respondent filed a petition under S34 & S25 of SMA1954 seeking decree of nullity and declaration of marriage as null and void – Asha-Afaq Marriage on 23. 1. 1990 resp husb came to know wife was already married to Motilal Vishwakarma(deceased before marriage) – fact suppressed by wife – appellant denied – court held no specific pleading – S25(iii) of SMA decree of nullity granted – 17(4) Contract Act misrep need not be in express words

#### 7. P. v K. 1982

Respondant wife without uterus – medically unfit to consummate the marriage – Resp & parents unable to understand docs report – averse to sexual act – S 12(1)(c) – granted relief to husband

#### 8. Babui Panmato Kuer vs Ram Agya Singh, 1968

Petitioner's father's fraud – no misrep to petitioner directly – age of bridegroom – over heard father telling mother – affluent – 25 to 30 years – hearing this no objection – impliedly consent through silence – later discovered respondent > 60yrs old > fathers age – no cohabitation – TC Judge rejected petition (i) no misrep frm petitioner himself (ii) fraud misrep must be at time of solemnization of marriage and not earlier(time of

negotiations of marriage) – HC observed TC Judge made error – Fraud defined in S17 of Contract Act includes any of the following acts committed by a party(or agent) to induce him into the contract (i) Suggestion as a fact which is not true to make him believe it is true (ii) Active concealment of a fact by one having knwlg of fact (iii) Any other act fitted to deceive. – Marriage anulled under S12(1)(c)

Pre marriage boastings not voidable – Law Commission 59th report, 1974.  
Purbi vs Basudev.

#### 9. Seema vs Ashwani Kumar, 2006

SC emphasizing Registration of Marriages

(i) Rigvedic Age – Aryan ideal of marriage – high (ii) CEDAW india signatory – comp regis impractical in large country (iii) Constitution List III(Concurrent List) of the 7th Schedule provides in Entry 5 (Marriage & Divorce) & Entry 30 (Vital Stats incl reg of birth and death) (iv) S8 HMA , UP Hindu Marriage Registration Rules (v) NCW non registration of marriages affects women – Prevention of Child marriages – prevention of marriages w/o consent of parties -check illegal bigamy/polygamy – enabling maintenance , right to live in matrimonial house – enabling widows to claim inheritance rights – Deterring men from deserting women after marriage – deterring parents/guardians from selling daughter/young girls to any person including a foreigner, under garb of marriage (vi) evidence of marriage – registration rules in many states – not yet compulsory in many – legislative intent of S8 HMA – purpose of facilitating proof of HM (vii) Procedure for registration within 3 months – however objections from members of public req to bring

rule into force from date of Ad – officer appointed duly authorized to register the marriages – age marital status to be clearly stated (unmarried – divorcée), consequences for non registration to also be provided for – Law Comm 211th Report (2008) enactment of Marriage and Divorce Registration Restitution of Conjugal Rights ( Section 9 )

#### 10. Kailashwati v Ayudhia Parkash, 1977

Punj HC – Wife – husband – teachers – after marriage – wife transferred to husband city – 8/9 months – back to her city (transfer) – according to husband transfer deliberate – wife willing to join husband on holidays – husband financially well off – Court -> concept of marriage cannot be reduced to a weekend marriage – right to setup matrimonial home of husband – few riders/limitation by Court – husband must establish matrimonial home – while claiming society of the wife must act in good faith, not merely to spite his wife – where demand mala fide wife may refuse to return

11. Swaraj Garg v KM Garg, 1978 – Wife headmistress – Husband job in Delhi – no house of his own – wife visited and stayed with husband for some months on different occasions, but she did not return to him after 2 Feb 65 – husband filed petition of RCR – at time of marriage parties did not discuss location of matrimonial home – Their Lordship did not agree with Kailashwati case that wife must always resign job – No warrant in Hindu law that exclusive privilege of husband to choose matrimonial home – Art 14 Equality before law and equal protection of law to both husband and wife – any law giving exclusive rights contrary to Art 14 – present case is breakdown of marriage

## 12. Saroj Rani v Sudarshan Kumar, 1984

2 Daughters – turned appellant out of house – shortly after one daughter died – wife filed RCR in court – even after 1 year of RCR restitution did not happen – .....

Judicial Separation [ Sec 10 & 13(1A) ]

Divorce [Sec 13(1), 13(2), 13(1A), 13A, 13B]

Theories of Divorce

Grounds of Divorce with particular emphasis on Cruelty, Desertion, Option of Puberty, Breakdown, Mutual Consent, Irretrievable Breakdown, 71st report of Law Commission

## 13. N. G. Dastane vs S Dastane, 1975

Irretrievable breakdown of marriage – a reasonable apprehension in the minds of one spouse that it would be harmful to live with the other is crucial – if conduct bad or unlawful then impact on spouse need not be considered – cruelty proved when conduct proved or admitted – Intention is not a necessary element in cruelty – relief cannot be denied on ground of no willful ill-treatment

## 14. Samar Ghosh vs Jaya Ghosh, 2007

Irretrievable breakdown of marriage amounts to cruelty- 22 yr old marriage – mental cruelty must be considered(England) – no comprehensive defn of mental cruelty – new type of cruelty – Appellants living apart from 16. 5 years – matrimonial bond ruptured beyond repair because of mental cruelty by respondent wife – appellant by pass surgery -> wife no call – parties have



no sentiments or feelings for each other – Clear irretrievable breakdown of marriage

15. Bipinchandra Jaisinghbai Shah vs Prabhavati, 1957

to constitute desertion its important to prove that deserting spouse persisted in the intention to desert throughout the statutory period of two years – no desertion without animus deserendi – husb – england – business – wife intimate with friend – on demanding expl – wife left to parents place 4 attending marriage -didn't return – later when wife was going to return – husb sent telegram to F-i-L “ must not send Prabha” – wife said it was petitioner who made life difficult – denied illegitimate intimacy – Apex court observed – desertion may be defined as permanent forsaking or abandonment of 1 spouse w/o reasonable cause w/o consent of other spouse – physical act of departure not= desertion – abandonment of house (factum of separation) along with intent to desert(animus deserendi) important to constitute desertion –

abandonment by mere anger, delusion, w/o cohabitation to cease permanently will not amount to desertion – necessary to prove that deserting spouse intended to desert throughout the statutory period of 2yrs.

16. Dharmendra Kumar vs Usha Kumar, 1977

wife granted decree of restitution – later she passed a decree of divorce on account of no cohabitation – husb complained that wife prevented him from complying to the decree – he sent several (registered) letters to inviting her but she refused to do so – she prevented rest of conjugal right – cannot take advantage of one's own wrong

17. T Srinivasan v T Varalakshmi, 1991

Husb obtained decree of conjugal rights not to act in obedience but to keep the wife deprived of her right to perform her conjugal duties – she made a demand to join the house but he drove her away – act of husb -> misconduct – uncondonable for the purpose of S23(1)(a) – rightly denied relief under S13(1A)

18. Hirachand Srinivas Managaonkar v Sunanda, 2001

Wife obtained decree of judicial separation from husband on grounds of adultery – court ordered husb to pay maintenance to wife and daughter – appellant did not even pay one installment & continued to live in adultery – on the other hand he filed a petition for divorce under S13(1-A)(i) HMA, under the ground of no resumption of cohabitation for a period of 1 year on which decree for judicial separation was passed – appellant held that any wrong committed by him would not be applicable in such a situation – dismissing husbands appeal apex court observed and held -> contention that right conferred by S13(1A) is absolute & unqualified is fallacious – object of subsec 1A was merely to enlarge the right to apply for divorce – not to make it compulsory ->

After decree for judicial separation was passed duty of both spouses to do their part for cohabitation – husb dutiful husb – wife devoted wife – so failure to pay maintenance to wife – failed to act as husb thereby he committed a wrong with the meaning of S23 – under section 13(1-A) rw S23(1)(a) the petitioner does not have a vested right for getting the relief of a decree of divorce against the other party merely on showing that the ground in

support of the relief sought exists – living in adultery on part of husband is a continuing matrimonial offence – offence does not get frozen or wiped out merely on passing of a decree for judicial separation which merely suspends certain duties and obligations of the spouses in connection with their marriage – does not snap matrimonial tie – decree of judicial separation does not sever the bond of marriage merely provides opp for reconciliation and readjustment

#### 19. Sureshta Devi v Om Prakash, 1991

Issue HC:- mutual consent to prevail till divorce is granted?? or till filing of 1st petition??- Apex Court – if one of the party withdraws consent it would be withdrawal of consent – wife claimed her consent under pressure – not allowed to meet with her relations – filing of petition with mutual consent does not amount to making decree of divorce – waiting period 6 to 18 months – obviously intended for reflection/retrospection – in transition period one of the parties may have a second thought and decide not to proceed with the petition – spouse may not be party to joint motion under sub sec (2) of S13B. Nothing in the section which says change of mind should be by both the parties and not only by one party – mutual consent to the divorce is sine qua non(essential) for passing a decree of divorce under S13B – Mutual Consent to prevail till the divorce is granted

#### Maintenance

HMA, 1955 S24, S25

HAMA, 1956, S18

CrPC, 1973 S125

## 20. Amar Kanta Sen v Sovana Sen, 1960

Under Hindu Law, a wife who was found unchaste was only entitled to a bare or starving allowance – but when she is earning a living and is not helpless her right to even bare subsistence disappears – dissolution of marriage on grounds of adultery – appl of maintenance by wife – respectable family – intent to lead chaste life – not to marry again – dedicate life towards son – pursue music – appl to be considered under S25 HMA, in HMA like obligation is also on wife to maintain husband –

## 21. Padmja Sharma v Ratan Lal Sharma, 2000

as much an obligation of the father to maintain a minor child as that of the mother – if both working then both bound to contribute in proportion – wife got decree of divorce (cruelty) – 2 children – filed maintenance S26, Rs2575 pm for both children + 1585 as admission fee and 5000 as cost of litigation – wife salary 3100 – husb sal 6233. 40/5850 – wife awarded maintenance by Family Court of 500pm for both children and 1000 as cost of litigation – Apex court Rs 3000/- pm for each of the children ratio 2(H): 1(W) – this amount in addition to Rs 250 pm per child as granted by Family Court under S125 CrPC

Adoption , HAMA 1956

## 22. Brijendra vs State of MP, 2008

Girl Mishri Bai crippled – married for village custom sake to Padam Singh – husb left her – no divorce/dissolution – parents gave her 32 acres of land – 1970 Mishri Bai adopted a son Brajendra Singh – Padam Singh died in year 1974 – SDO issued notice to Mishri Bai on ceiling of holding on agriculture land = 5 acres – Mishri Bai filed a reply that Brajendra Singh adopted son –

joint family entitled to 54 acres of land – Will giving all property to Brajendra Singh – shortly breathed her last – Married woman cannot adopt without consent of husband – Apex Court gave no judgement – State Govt to decide according to law – recommended giving land to Brajendra so to set a healthy tradition of service – relevant section 8 HAMA, 8(c) HAMA

### Minority & Guardianship

The Hindu Minority and Guardianship Act, 1956

23. Githa Hariharan v Reserve Bank of India, 1999

Constitutional Validity of S6(a) of HMGA challenged being violative of Art 14 & Art 15 – parents of minor applied for a relief bonds in name of their minor son from RBI signifying mother as the guardian- bank refused – asked parents to produce certificate of guardianship from competent authority in favor of mother or an application form signed by father – aggrieved mother filed suit in court – Court observed that words in S6(a) ” the father and after him the mother” – do give an impression that the mother can act as the natural guardian only after the life time of the father – however word after does not necessarily mean after the life time of a father but in the absence -> absence due to distance, indifference, mutual understanding, physical, mental incapacity – predominant consideration in all cases to be welfare of child – Instead of striking down S6(a) as unconstitutional Court chose to construe a different meaning.

### Sources and Schools of Muslim Law

Nikah – Solemnization of Marriage – conditions for validity, classification and types; Dower; Maintenance Divorce – (a) Extra Judicial – Talak, Khula,

Mubarat (b) Judicial – The dissolution of Muslim Marriage Act, 1939

Acknowledgement of Paternity, Wakfs and Endowments

24. Mt Ghulam Kubra Bibli v Mohd Shafi Mohd Din, 1940

No valid marriage if consent of major girl not obtained for marriage – other formalities (adult witnesses) also necessary – girl 17 years given in marriage – no adult witness to testify the consent of the girl – Mullah read the nikah at the instance of the girl's grandfather – denied any one was sent to girl to get her consent – one witness (2 more later produced) vaguely deposed that he was witness to the nikah but did not give details – grandfather had impression age of majority was 18yrs

25. Chand Patel v Bismillah Begum, 2008

unlawful conjunction (with wife's sister during her lifetime) renders a marriage irregular and not void – irregular marriage continues to subsist till terminated in accordance with law and wife/children entitled to maintenance under 125 CrPC – Bismillah Begum filed maintenance for her and her daughter – Chand Patel married to her elder sister Mashaq Bee – appellant with consent of 1st wife married her – appellant lived with both wives under one roof – relationship deteriorate bw appellant and respondent 1 – neglect – prayed for maintenance rs1000/- per month each for daughter and herself – Revisional Court held personal law of Muslims could not come in the way of S125 CrPC – Apex Court held if marriage void then 125 CrPC does not apply but if irregular then 125 CrPC applies – decree of nullity from very inception since personal law of Muslims to S11 & 12 of HMA, S11 defines void marriages (S5 (i),(iv),(v) – inception) – S12 HMA defines voidable marriages – marriage not

void ipso jure from its inception but decree reqd to declare marriage void –  
under Muslim law a distinction bw void & irregular marriages – Mullas  
principles of Mohd Law para 260 to 264 – bar of unlawful conjunction declares  
a marriage irregular and not void

#### 26. Saiyid Rashid Ahmad v Mt Anisa Khatun, 1932

Suit over Property of Ghyasuddin Mohd(died on 1920) – appellants claim to  
be offsprings of him Talak actually pronounced under compulsion or in jest is  
valid and effective – after triple talak husband lived with divorced wife  
without observing the proper procedure of remarriage – legitimacy of  
children of such marriage also arose in the case – Privy council held that –  
talak either revocable(raja) or irrevocable(bain) – bain operates as an  
immediate and complete talak bain (a)ahsan(best) – one pronouncement  
followed by abstinence from sexual intercourse for iddat (b)hasan(good) 3  
times during successive intervals of purity (c)bidaat(sinful) 3 times shorter or  
maybe even immediate pronouncements (d)bidaat(sinful) once by words  
showing divorce will be immediately revocable

#### 27. Shamim Ara v State of UP, 2002

talak in order to be effective has to be pronounced – a mere plea taken in  
the written statement of a divorce having been pronounced sometime in the  
past cannot itself be treated as effectuating talaq on the date of the delivery  
of the copy of the written statement to the wife – case of maintenance –  
talaq has to be proved and has to be for a reasonable cause

#### 28. Masroor Ahmed v Delhi 2008

Also triple talaq to be regarded as one revocable talaq – Not neccessary that

talaq is pronounced in front of wife but should be communicated to her at the earliest – petitioner – dowry demands – wife turned away from home – Husb filed RCR – wife back to matrimonial home from court itself – she later came to know that husb had already given her talaq one pronouncement following lapse of iddat period – she filed a rape case against him because it was misrepresented to her that he was her husband – second nikah had also been performed with him – Apex court held talaq pronounced has no validity as it was never communicated to her and pronounced in anger, no attempt at reconciliation – Held three pronouncements to be regarded as one revocable talaq – As per holy book (i) talaq must be for reasonable cause (ii) attempt to reconciliation (2 arbitrators – 1 fr W , 1fr H) – pronouncement of talaq does not ipso facto amount to dissolution of marriage – communication to wife at earliest (reasonable time) – 2nd Nikah was not necessary and has no effect –

#### 29. Ghulam Sakina v Falak Sher Allah Baksh, 1950

Consummation of marriage before puberty does not deprive minor girl of her right to repudiate marriage, but if consummation occurs after age of puberty then she cannot repudiate the marriage – marriage of girl solemnized before puberty – she wanted to repudiate the marriage after attaining the age of majority – husb held marriage had been consummated – asked for a medical exam to prove virgo intacta as claimed by her- girl refused – held by court consummation of marriage before age of puberty does not deprive the right to minor of her right to repudiate the marriage, but if consummation happens after marriage she cannot repudiate the marriage – in this case she was married long before she was 15 when she filed for dissolution she was



14 according to birth entry and 17 according to medical testimony adultery and subsequent marriage – Court held Polygamy an institution to be tolerated and not encouraged (husb's plea – muslim law allows 4 wives) – held husbands second wife amounting to cruelty – relief granted to wife

### 32. Danial Latifi vs Union of India

Constitutional validity of 1986 Muslim Women (protection of rights on divorce) Act, 1986 challenged – Liability of husb arising to divorced Muslim wife under S3(1)(a) of 1986 Act is not confined to the Iddat period – a reasonable and fair provision extending beyond the iddat period must be made by the husband within the iddat period, reasonable and fair provision include her residence, her food, her clothes, and other articles – Act of 1986 actually codified the law as stated in Shah Bano Case – Act replaces the scheme provided under the CrPC (S125). This being the position the act cannot be deemed to be held unconstitutional

### 33. Noor Saba Khatoon v Mohd Quasim, 1997

Both under personal law and statutory law (125 CrPC) obligation of a Muslim father having sufficient means to maintain his minor children, unable to maintain themselves, till \*they attain majority and in case of females till the time they get married is absolute notwithstanding the fact that minor children are living with the divorced wife. S3(1)(b) of 1986 act does not in any way effect the rights of the minor children of divorced father to claim maintenance under S125 CrPC till majority or able to maintain themselves (females/marriage).