

Thus uses the phrase  
'has been dissolved



Thus according to the section, the parties to the marriage, may marry again, if the following conditions are satisfied: (1) When the marriage has been dissolved and there is no right of appeal against the decree of court, or (2) If there is a right of appeal but the time has expired without filing an appeal, or (3) An appeal has been filed but has been dismissed.

The Marriage Laws (Amendment) Act, 1976 has omitted the proviso to Section 15 as a result of which parties can remarry before the expiry of one year. The unamended Section 15 laid down a minimum period of one year since the date of decree of divorce within which it was not lawful for the divorced persons to marry again. The prohibition has been done away with under the Amendment Act of 1976. The provisions of this section apply when marriages stand dissolved by a decree of divorce.

The Section has no application to the cases of marriages declared null and void under Sections 11 and 12 of the Act and parties to such marriage could remarry as early as per their sweet will. But the Supreme Court in its judgment in *Lata Kumari v. Vilas*, overruled the above view and held: " what Section 15 means when it uses the phrase ' has been dissolved by decree of divorce' is that where the relationship has been brought to an end by intervention of the court by a decree, this decree will include Sections 11, 12 and 13. If it is accepted that section will not apply to cases when a decree is passed under Sections 11 and 12 it will mean that as soon as a decree is passed the party aggrieved may appeal but the other party by remarriage would make the appeal infructuous." This in result would render the right to appeal provided in Section 28 of the Act nugatory. The above view expressed by the Supreme Court does not appear to be consistent to the provisions of

Section 15 which specifically refers to marriage dissolved by a decree of divorce but not to marriages in respect of which decree of nullity has been passed.

Had this been the intention of the legislature, marriages declared null and void could also have been included within the ambit of Section 15. In *Tejinder Kaur v. Gurmit Singh*, the court observed that though Section 15 in terms does not apply to a case of special leave to appeal to the Supreme Court, a spouse who has won in the High Court and got a decree of dissolution of marriage cannot by marrying immediately after the High Court's judgment take away the right of presenting an application for special leave to appeal from the other spouse. The successful party must wait for a reasonable time and make sure whether an application for special leave has been filed in the Supreme Court. Thus where a decree of dissolution is passed and is confirmed by the High Court and the husband remarries after one month of the High Courts' confirmation, he cannot be allowed to raise the plea that since he has remarried the special leave petition filed by the wife becomes infructuous. In the above two decisions the Supreme Court has not considered as to whether a remarriage during the pendency of the appeal, when there should be no marriage till the decision of appeal, would be void, voidable or valid. According to the view of the court such other marriage would not be void and in that event it would also not be either voidable or valid.

Hence such other marriage may be placed in the category of irregular marriages, which category does not exist under the Hindu Marriage Act. The Madhya Pradesh High Court in *Kadimbini v. Roshan Lal*, has declared that the <https://assignbuster.com/thus-uses-the-phrase-has-been-dissolved/>

remarriage during the pendency of appeal against the decree of divorce, would be invalid.

It further observed that the second marriage contracted by the respondent will not render the appeal pending before court, in fructuous.