

Ad. Deepak M. Tiwari

Advocate, High Court & Subordinate Courts

PRACTICE NOTE — FAMILY LAW

The Hindu Marriage Act, 1955 — Key Points

Solemnisation, validity, matrimonial reliefs and the divorce process under the HMA, 1955 (as amended) — read with the Family Courts Act, 1984

APPLIES TO

Hindus, Buddhists, Jains, Sikhs by religion; and any person domiciled in India who is not Muslim, Christian, Parsi or Jew, unless shown otherwise (S.2)

IN FORCE FROM

18 May 1955

MINIMUM AGE

Bridegroom 21 yrs / Bride 18 yrs (S.5(iii))

KEY AMENDMENT

Marriage Laws (Amendment) Act, 1976 — added mutual consent divorce (S.13B)

JURISDICTION

Family Court (where constituted) / District Court (S.19, Family Courts Act 1984)

APPEAL PERIOD

90 days from the decree (S.28)

CONDITIONS FOR A VALID HINDU MARRIAGE — S.5 & S.7

SECTION 5 — CONDITIONS

- **Monogamy:** neither party has a living spouse at the time of marriage.
- **Sound mind:** capable of valid consent; not suffering from a mental disorder unfit for marriage and procreation of children; not subject to recurrent insanity.
- **Age:** bridegroom has completed 21 years, bride 18 years.
- **Prohibited relationship:** parties are not within the prohibited degrees, unless custom or usage permits.
- **Sapinda relationship:** parties are not sapindas of each other, unless custom or usage permits.

SECTION 7 — CEREMONIES

- A Hindu marriage may be solemnised in accordance with the customary rites and ceremonies of either party.
- Where such rites include the **saptapadi** (seven steps taken jointly before the sacred fire), the marriage becomes complete and binding on completion of the seventh step.
- No civil ceremony is prescribed — validity turns on customary rites actually performed, not on registration.

VOID & VOIDABLE MARRIAGES — S.11 & S.12

VOID MARRIAGES — S.11

- Void **ab initio** (from the very beginning) if it contravenes S.5(i) bigamy, S.5(iv) prohibited relationship, or S.5(v) sapinda relationship.
- Either party may present a petition for a decree of nullity — but the marriage is void even without such a decree.
- No limitation period; can be raised at any time, including collaterally.

VOIDABLE MARRIAGES — S.12

- Valid until annulled by a decree of nullity, on grounds: non-consummation due to impotence; contravention of S.5(ii) unsoundness of mind; consent obtained by force or fraud; or respondent pregnant by another person at the time of marriage.
- Petition on the ground of force/fraud must be filed within 1 year of discovery; on pre-marriage pregnancy, within 1 year of marriage, and marital intercourse must not have continued with knowledge (S.12(2)).

Void marriages under S.11 confer no matrimonial status; voidable marriages under S.12 are valid marriages until a competent court annuls them.

PROCESS CHART — CONTESTED MATRIMONIAL PROCEEDINGS



GROUND FOR DIVORCE & JUDICIAL SEPARATION — S.13

GROUND	AVAILABLE TO	SECTION
Voluntary sexual intercourse outside marriage (adultery)	Either spouse	S.13(1)(i)
Cruelty	Either spouse	S.13(1)(ia)
Desertion for a continuous period of 2+ years	Either spouse	S.13(1)(ib)
Conversion to another religion, ceasing to be Hindu	Either spouse	S.13(1)(ii)
Incurable unsoundness of mind / persistent mental disorder	Either spouse	S.13(1)(iii)
Virulent and incurable leprosy (omitted by 2019 amendment)	— repealed —	formerly S. 13(1)(iv)
Venereal disease in a communicable form	Either spouse	S.13(1)(v)
Renunciation of the world (entering a religious order)	Either spouse	S.13(1)(vi)

Not heard of as alive for 7+ years	Either spouse	S.13(1)(vii)
No resumption of cohabitation for 1+ year after judicial separation decree, or no restitution of conjugal rights for 1+ year after that decree	Either spouse	S.13(1A)
Husband remarried before commencement of the Act (pre-1955 marriages)	Wife only	S.13(2)(i)
Husband guilty of rape, sodomy or bestiality	Wife only	S.13(2)(ii)
Maintenance decree/order passed in wife's favour under S.18, Hindu Adoptions & Maintenance Act, 1956, or S.144, BNSS 2023 (successor to S.125 CrPC), and cohabitation not resumed for 1+ year	Wife only	S.13(2)(iii)
Repudiation of marriage after attaining 15 but before 18 years (child marriage)	Wife only	S.13(2)(iv)

"Irretrievable breakdown of marriage" is **not** an independent statutory ground under S.13 — only the Supreme Court, under Article 142, has granted divorce on this basis in appropriate cases; District/Family Courts and High Courts cannot.

RESTITUTION OF CONJUGAL RIGHTS (S.9) & JUDICIAL SEPARATION (S.10)

RESTITUTION — S.9

- Where either spouse has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may petition for restitution of conjugal rights.
- Burden of proving "reasonable excuse" for withdrawal lies on the spouse who withdrew.
- Non-compliance with a restitution decree for 1+ year becomes an independent ground for divorce (S.13(1A)(ii)).

JUDICIAL SEPARATION — S.10

- Either party may petition for judicial separation on any ground available under S.13(1) (and, for the wife, S.13(2)).
- Parties remain legally married but are relieved of the obligation to cohabit; a stepping stone often used before seeking divorce.
- Non-resumption of cohabitation for 1+ year after the decree becomes a ground for divorce (S.13(1A)(i)).

ANCILLARY RELIEFS — S.24 TO S.27

Maintenance Pendente Lite (S.24)

Interim maintenance and litigation expenses during pendency of proceedings, for a spouse without sufficient independent income.

Permanent Alimony (S.25)

Payable as a gross sum or periodical payment, available to either spouse regardless of whether the marriage is held void, voidable, or dissolved; may be varied or rescinded on a material change of circumstances.

Custody of Children (S.26)

Court may pass interim orders and provisions for custody, maintenance and education of minor children, consistent with their wishes wherever possible; may be varied even after the main decree.

Disposal of Property (S.27)

Court may deal with property presented at or about the time of marriage, jointly belonging to both husband and wife, in the same proceeding.

LEGITIMACY OF CHILDREN & REGISTRATION — S.16 & S.8

LEGITIMACY OF CHILDREN — S.16

- Children born of a marriage later declared void or annulled as voidable are deemed **legitimate**, whether the decree is passed before or after the child's birth, notwithstanding the nullity.
- Such children have rights only in the property of their parents, not of any other relation, unless they would otherwise be entitled by virtue of being legitimate.
- This section does not itself validate a void/voidable marriage — it protects only the children's status.

REGISTRATION OF MARRIAGE — S.8

- State Governments may make rules for registration of Hindu marriages; a Hindu Marriage Register may be kept for the purpose.
- Registration is **facilitative evidence**, not a condition of validity — an unregistered marriage solemnised per S.7 remains valid.
- Following *Seema v. Ashwani Kumar* (2006), the Supreme Court directed States to make registration of marriages of their residents compulsory, largely to curb bigamy and ease proof.

PRACTICE NOTES

Jurisdiction & Forum Shopping

Check S.19 carefully — petitions filed in a forum without proper jurisdiction are liable to be returned/dismissed; residence of the petitioner alone (without the S.19 exceptions) is not sufficient.

Bar on Remarriage — S.15

Advise clients in writing that remarriage before expiry of the appeal period (or before disposal of a filed appeal) risks the second marriage being void and exposes the party to prosecution for bigamy.

Read With Allied Laws

Maintenance may alternatively/additionally be sought under S.144, BNSS 2023 (successor to S.125 CrPC) or the Protection of Women from Domestic Violence Act, 2005 — advise on the most advantageous and non-duplicative remedy.

Irretrievable Breakdown — Practice Caution

Not a ground before District/Family Courts or High Courts. Only the Supreme Court has invoked Article 142 to grant such divorces on facts before it — do not plead it as a standalone ground in subordinate courts.

For internal practice reference only — this note highlights select, frequently used provisions and does not cover every section or proviso. Cross-check exact section text, applicable state amendments/rules, and the latest High Court/Supreme Court rulings before relying in proceedings. Prepared 24 July 2026.

Primary sources: Hindu Marriage Act, 1955 (indiacode.nic.in); *Amardeep Singh v. Harveen Kaur* (2017) 8 SCC 746; *Shilpa Sailesh v. Varun Sreenivasan* (2023) SC (Article 142, mutual consent divorce); *Seema v. Ashwani Kumar* (2006) 2 SCC 578 (registration of marriages).