

## DESERTION: A CASE STUDY ON SAVITRI PANDEY V. PREMCHAND PANDEY

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### ABSTRACT

“Heartbreak is a loss. Divorce is a piece of paper.”- — Taylor Jenkins Reid

Given India's regard for its culture and social principles, it's no surprise that it has the lowest divorce rate. But it's even more astonishing to learn that India has the lowest divorce rate of any country on the planet. According to statistics, only one out of every 100 Indian weddings ends in divorce, which is really low when compared to the United States, where 50 percent of marriages result in divorce. In India, the divorce rate was considerably lower in the past decade, with only 7.40 marriages cancelled out of 1,000. In comparison to metropolitan India, the rate of divorce in Indian rural is much lower. Marriage is a sacramental ceremony in Hinduism, not a contract, consequently divorce was not permitted prior to the drafting of the Hindu Marriage Act in 1955<sup>2</sup>. Men and women are now equally able to seek divorce as a result of the codification of this law. The Hindu Marriage Act 1955 governs Hindus, Buddhists, Sikhs, and Jains; The Divorce Act 1869<sup>3</sup> governs Christians; The Parsi Marriage and Divorce Act 1936<sup>4</sup> governs Parsis; The Dissolution of Muslim Marriages Act 1939<sup>5</sup> governs Muslims; and The Special Marriage Act 1954<sup>6</sup> governs interfaith marriages.

According to many recent divorce statistics studies, the divorce rate in the U.s. is approximately 50%, with over half of all weddings ending in divorce. In an international survey of areas with the greatest divorce rates, the United States ranks 12th, with a divorce rate of 49 percent, which is as near to 50 percent as you can go. Despite the fact that numerous sources appear to agree on the country's split rate of marriage and divorce, there is growing controversy concerning the authenticity of the figures. According to some scholars,

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<sup>2</sup> <https://indiacode.nic.in/handle/123456789/1560?locale=en> (visited 26 march 2022)

<sup>3</sup> [https://www.indiacode.nic.in/handle/123456789/2280?sam\\_handle=123456789/1362](https://www.indiacode.nic.in/handle/123456789/2280?sam_handle=123456789/1362) (visited 26 march 2022)

<sup>4</sup> [https://www.indiacode.nic.in/handle/123456789/2476?view\\_type=search&sam\\_handle=123456789/1362](https://www.indiacode.nic.in/handle/123456789/2476?view_type=search&sam_handle=123456789/1362) (visited 26 march 2022)

<sup>5</sup> [https://www.indiacode.nic.in/handle/123456789/2404?sam\\_handle=123456789/1362](https://www.indiacode.nic.in/handle/123456789/2404?sam_handle=123456789/1362) (visited 26 march 2022)

<sup>6</sup> [https://www.indiacode.nic.in/handle/123456789/1387?sam\\_handle=123456789/1362](https://www.indiacode.nic.in/handle/123456789/1387?sam_handle=123456789/1362) (visited 26 march 2022)

the 50% figure is simply incorrect and based on faulty math.<sup>7</sup>The research goal in this paper is to demonstrate desertion as a ground of divorce through a case study on Savitri Pandey V. Premchand Pandey.

**KEYWORDS: Divorce, Desertion, Marriage, Cruelty, Animus Deserendi**

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<sup>7</sup> <https://www.latestlaws.com/did-you-know/divorce-fact-sheet-india-stands-world#:~:text=Statistics%20shows%20that%20only%201,of%201%2C000%20marriages%20were%20annulled.>  
(visited 26 march 2022)

## INTRODUCTION

“Divorce is an institution only a few weeks later in origin than marriage.” – Voltaire

Divorce is among the most dreadful and agonising experiences in a person's life, second only to the dying of a partner in life. Divorce is the final end of a marriage, ending the legal obligations and responsibilities of marriage and breaking the bonds that bind a couple together. Divorce is one of the most difficult things a family can go through. Until recently, the word "divorce" was unimaginable. People even postponed their long-term marriages to keep a strategic distance from divorce. This is no longer the situation. The divorce rate among spouses is increasing at an alarming rate all across the world. “Desertion is not the withdrawal from a place, but from a state of things.”<sup>8</sup>

Marriage is held in high regard as a spiritual and a social institution<sup>9</sup>. In the past, it was thought that this particular contract could only be terminated if one of the spouses committed an act that jeopardised the institution's importance. The fault-based theory of marriage was built on this premise. In terms of maintaining this holy union, society chastises the guilty spouse and denies him the right to divorce, limiting the right to petition for divorce to the spouse who has clean hands. The judicial system has attempted to understand the law's ambiguity and intricacies in order to provide justice to the innocent party.

Desertion is one of the ground of divorce. Desertion is a cause for divorce in Hindu law, according to clause 13 (1) (ib) of the Hindu Marriage Act, 1955<sup>10</sup>. The clause stipulates that the party must have deserted the petitioner for a continuous, that is, unbroken period of not less than two years immediately following the filing of the petition.

It can thus be deduced that the clause requires two basic requirements to be met in order to make desertion a ground for divorce: first, such desertion or separation must be for a continuous period of at least 2 years; and second, such period of 2 years must be in direct continuity with the time of filing the petition. To achieve a divorce on this basis, it must be demonstrated that the other party abandoned the petitioner for a duration of at least of not less than two years immediately prior to the filing of the petition, without justifiable excuse or against the petitioner's wishes. However, before issuing a divorce judgement on this basis, the

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<sup>8</sup> Pulford v. P ulford (1947) 1 All E.R . 32

<sup>9</sup> Dr. G. Kameswari, “Divorce and Judicial Separation -Need for a Uniform and Progressive Law’ All India Reporter (2002) at 97.

<sup>10</sup> <https://indiacode.nic.in/handle/123456789/1560?locale=en> (visited on 30 march 2022)

court must be suitably impressed that the defendant had animus deserendi, or an intention to desert, and the circumstances and purpose of the desertion must be probed for that purpose. The animus deserendi would be absent if there was a valid reason.<sup>11</sup>

The Bombay High Court held in Prabhakar Govindrao Bokade v. Mangala Prabhakar Bokade<sup>12</sup> that the term "desertion" does not have an exhaustive definition, and that the facts and circumstances of each case must be considered in order to determine whether desertion is made out within the context of section 13(1)(ib) of the Act<sup>13</sup>.

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<sup>11</sup> <https://samarthagrawalbooks.com/2021/08/11/desertion-as-a-ground-of-divorce/> (visited on 30 march 2022)

<sup>12</sup> <https://www.casemine.com/judgement/in/56e12972607dba3896621237> (visited on 30 march 2022)

<sup>13</sup> Hindu marriage act,1955.

## FACTS

The marriage was solemnised between the parties on 6.5.1987. The appellant was married to the respondent until June 21, 1987. According to the Appellant, the parties have never married. After 1987, the parties began to live apart. According to the appellant, her parents spent 80k on their wedding festivities. They also gave various ornaments and other valuables in addition to the money. The responder wanted such information. The respondent also sought a television, a refrigerator, and other ornaments, as well as 10,000 in cash. In the first week of June, the appellant's father paid 10,000. However, he was unable to meet the Respondent's further demands after that. Because the appellants' parents, along with his parents, were unable to meet the respondents' expectations. The respondent's parents began torturing the Appellant. The respondent's attitude had angered the appellant, therefore he and his family filed a petition under Section 13 of the Act. The appellant sought a divorce decision dissolving the marriage as well as other relief such as lifelong alimony.

Later in court, the appellant claimed that the respondent was having an unlawful relationship with a woman from Gaya, Bihar. It was further claimed that the respondent had also solemnised her marriage with her. The respondent flatly refuted all of these charges. He further claimed that the appellant was exploiting her own mistakes.

When this was presented before the family court, it was determined that there was no issue about the claimed desertion. As a result, it has been established that the respondent abandoned the appellant, and he is consequently entitled to divorce. The case was appealed to the High Court, which found no proof of the wife being treated cruelly by her husband. The High Court cited the family court's ruling, finding that there was no evidence to support the claim that the petitioner had been abandoned.

For the purpose of upholding the Family Court's judgement and decree, Shri Dinesh Kumar Garg, the learned legal adviser appearing for the appellant, argued that because the appellant got married with one Sudhakar Pandey after the decree of divorce, and a child is said to have been born from the second marriage, it would be in the interests of justice and the parties if the marriage between them was dissolved by a decree of divorce.

## ARGUMENTS ADVANCED ON BEHALF OF THE PETITIONER

- According to the appellant, her parents spent 80,000 Rupees on their wedding ceremony. They also gave various ornaments and other valuables in addition to the money. The responder wanted such information. The respondent also sought a television, a refrigerator, and other items, as well as 10,000 in cash. During the first week of June, the appellant's father paid 10,000. However, he was not able to meet the Respondent's further demands after that.
- Because the appellants' parents, along with his parents, were unable to meet the respondents' expectations. The respondent's parents began torturing the Appellant. The respondent's attitude had angered the appellant, therefore he and his family filed a petition under Section 13 of the Act<sup>14</sup>. The appellant sought a divorce decision dissolving the marriage as well as other relief such as lifelong alimony<sup>15</sup>.
- Later in court, the appellant claimed that the respondent was having an unlawful relationship with a woman from Gaya, Bihar. It was further claimed that the respondent had also solemnised her marriage with her. The reply flatly refuted all of these charges.

## ARGUMENTS ADVANCED ON BEHALF OF RESPONDENT

- The respondent refuted the claims presented in the petition, claiming that the appellant-wife was taking full advantage of her own mistakes.
- On 19.1.1997, the respondent-husband filed an appeal against the verdict and decree. Because no stay was allowed, the appellant married for the second time on 29.5.1997, admittedly while the appeal was pending in the High Court.
- Whether the respondent has treated her appellant wife with cruelty or not.

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<sup>14</sup> <https://indiacode.nic.in/handle/123456789/1560?locale=en> (visited on 2 april 2022)

<sup>15</sup> <https://blog.ipleaders.in/alimony-laws/> (visited on 2 april 2022)

## PRINCIPLES OF LAW ARGUED

- Cruel treatment of the petitioner is a basis for divorce under Section 13(1)(ia)<sup>16</sup> of the Act. Cruelty is not defined in the Act, but it is considered in matrimonial cases as conduct that endangers the petitioner's life with the respondent. Cruelty is defined as acts that endanger life, limb, or health. Cruelty, for the purposes of the Act, is defined as when one spouse has treated the other in such a way and expressed such attitudes against her or him that he or she has suffered bodily injury, or has created reasonable fear of bodily injury, suffering, or has harmed health.
- In the lack of pleading and proof, no divorce order could be given on the grounds of desertion. Even in the lack of a specific question, learned counsel for the appellant argued that the parties had made claims and there was sufficient material for the Family Court to return a judgement of desertion having been proven. Regardless of the fact that no specific issue was raised or insisted on being framed, we have chosen to analyse this element of the case in light of the experienced counsel's representations.
- In *Bipinchandra Jaisinghbhai Shah v. Prabhavati*<sup>17</sup>, this Court held that if a spouse loses the other in a condition of transient feelings, such as rage or disgust, without intending to stop cohabitation permanently, it does not amount to desertion.
- It is not always necessary for one spouse to leave the company of the other to prove desertion in a matrimonial case; desertion can be proven while both spouses are living in the same house. Desertion is not the same as the parties to a marriage living separately. Desertion can also be beneficial, as evidenced by the surrounding circumstances. It is important to remember that the determination of desertion is based on inferences taken from the contents and circumstances of the particular.
- The goal of the marriage is to foster the survival of the race by allowing authorised indulgence in desires for production of offspring, hence cohabitation by the partners is a requirement of a legal marriage. In other words, there could be no desertion until the parties have already cohabitated.
- This theory is based on the well-established legal position in married proceedings that no one can abandon unless they intentionally or wilfully bring the current condition of cohabitation to an end.

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<sup>16</sup> <https://indiacode.nic.in/handle/123456789/1560?locale=en> (Visited 4 april 2022)

<sup>17</sup> AIR 1957 SC 176 <https://www.lawinsider.in/judgment/bipin-chander-jaisinghbhai-shah-vs-prabhawati> (Visited 4 april 2022)

## **OBITER DICTUM OF THE COURT**

Both the trial court and the High Court in this case ruled that the wife had failed to prove the respondent's charges of cruelty based on the circumstances. Concurring factual findings reached by the courts cannot be overturned by this Court in the exercise of its powers under Article 136 of the Indian Constitution. Otherwise, the allegations made in the petition, as well as the evidence presented in support thereof, clearly show that the allegations, even if found to be true, would only demonstrate the appellant's sensitivity to the respondent's conduct, which cannot be described as anything more than ordinary wear and tear of family life.

In this instance, the appellant claimed that the parties had not cohabitated after their marriage. She didn't give a cause or blame the respondent for the non-resumption of cohabitation. The appellant did not allow the defendant to have cohabitation in order to consummate the marriage, according to the pleadings and facts presented in the case. The appellant never authorised a particular state of marriage position to emerge in the absence of cohabitation between the parties. The appellant was not entitled to a divorce on the grounds of desertion in this case because there was no cohabitation or consummation of the marriage.

## **RATIO DECIDENDI OF THE COURT**

At this point, we'd like to point out that the time limit for submitting an appeal under Section 28(4) appears to be insufficient, facilitating the dissolution of marriages by unscrupulous litigant spouses. The Act's powers are normally used by the District Court in a large country like ours, and the first appeal must be lodged in the High Court. If the distance, geographical conditions, financial situation of the parties, and time required for submitting a standard appeal are considered, the 30-day timeframe specified for filing the appeal is clearly insufficient and inadequate. In the lack of an appeal, the other side can solemnise the wedding and try to stifle the other party's right to appeal, as seems to have happened in this case. We believe that a minimum of 90 days should be set aside for filing an appeal against any judgement or decree issued under the Act, and that any marriage performed during that time should be considered null and void. In this sense, appropriate legislation must be enacted. We direct the Registry to submit a copy of our ruling to the Ministry of Law and Justice for any action it deems appropriate in this matter.



## JURISPRUDENTIAL VALUE OF THE JUDGEMENT

- At this point, we'd like to point out that the time limit for submitting an appeal under Section 28(4)<sup>18</sup> appears to be insufficient, facilitating the dissolution of marriages by unscrupulous litigant spouses. The Act's powers are normally used by the District Court in a large country like ours, and the first appeal must be lodged in the High Court. If the distance, geographical conditions, financial situation of the parties, and time required for submitting a standard appeal are considered, the 30-day timeframe specified for filing the appeal is clearly insufficient and inadequate. In the lack of an appeal, the other side can solemnise the wedding and try to stifle the other party's right to appeal, as seems to have happened in this case. We believe that a minimum of 90 days should be set aside for filing an appeal against any judgement or decree issued under the Act, and that any marriage performed during that time should be considered null and void. In this sense, appropriate legislation must be enacted. We direct the Registry to submit a copy of our ruling to the Ministry of Law and Justice for any action it deems appropriate in this matter.
- It is not necessarily required for one spouse to leave the company of the other to prove desertion in a matrimonial case; desertion can be proven while both spouses are living under the same roof.
- "But it is established that the respondent had deserted the petitioner, so the petitioner would acquire or is entitled to a judgement of divorce," the Court said. "We also find no evidence that the wife has been treated with cruelty by the husband," the Division Bench of the High Court concluded after reviewing the material presented in the case. We further believe that there is no proof that petitioner has been deserted.

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<sup>18</sup> <https://indiacode.nic.in/handle/123456789/1560?locale=en> (Visited 5 APRIL 2022)

## APPLICATION OF LAW IN CONTEMPORARY TIMES

In *Bipinchandra Jaisinghbhai Shah v. Prabhavati*<sup>19</sup>, the court decided that if a spouse abandons the other in a condition of transient feelings, such as rage or disgust, without intending to stop cohabitation permanently, it is not considered desertion. "For the office of desertion, there must be two necessary criteria in so far as the deserting spouse is concerned, namely (1) the factum of separation, and (2) the desire to bring cohabitation permanently to an end," it went on to say (*animus deserendi*). Similarly, in the case of the deserted spouse, two criteria are required: (1) the absence of agreement, and (2) the absence of action that would reasonably lead to the spouse leaving the conjugal house with the aforementioned aim.

Following the decision in *Bipinchandra's* case (*supra*), this Court reaffirmed the legal position in *Lachman Utamchand Kirpalani v. Meena alias Mota*<sup>20</sup>, holding that desertion is defined as the intentional permanent forsaking and abandonment of one spouse by the other without the consent of the other and without reasonable cause.

In *Ms. Jorden Diengdeh v. S.S. Chopra*<sup>21</sup>, this Court advocated for a total reform of marriage law and the creation of an unified law that would apply to all persons, regardless of religion or caste. "It appears important to introduce irreversible collapse of marriage and mutual consent as grounds of divorce in all circumstances," the Court said. The continuation of a marriage that has so thoroughly and clearly broken down serves no purpose or benefit. We believe the moment has come for the legislature to step in and establish a consistent code of marriage and divorce, as well as a legal means of escaping the unfortunate circumstances wherein partners like the present have found themselves.

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<sup>19</sup> AIR 1957 SC 176

<sup>20</sup> AIR 1964 SC 40

<sup>21</sup> AIR 1985 SC 935

## CONCLUSION

In recent years, the petitioner has combined the claims of adultery and desertion to ensure that the divorce is granted. However, courts have ruled that if adultery is not proven, the desertion petition is also dismissed. There hasn't been any provision made for spouses who honestly feel the other is having an affair and leave the marital house. Desertion is not inherently cruel, but it can be difficult to distinguish between the two, particularly in the case of constructive desertion. The incompatible appeals of cruelty and desertion are always defeated because both must be shown separately. The question before divorce is whether a divorce should be sought. During the divorce process, support must be offered to one or both partners so that they do not mistreat each other in front of the law and make their children captives. After a legal divorce has been finalised, the advocate's responsibility is to assist the client in transitioning from ex-partner to single individual. Fisher points out that divorce can be thought of as a three-part process. When a couple realises their romance is over, they go through an enthusiastic divorce. Separating from bed and board is followed by physical divorce. Although desertion might be deemed a fault-based reason for divorce, there are ways for the guilty spouse to get across the law and deny the deserted spouse justice. There are two possible remedies to this issue: either enact new legislation that addresses these potential for abuse, or advance toward the concept of irreversible breakup of marriage, which eliminates the need for another deserting spouse to take advantage of the legal option of desertion.