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**MADHYA PRADESH STATE JUDICIAL ACADEMY
HIGH COURT OF M.P., JABALPUR**

**REFERENCE MATERIAL
ON**

FAMILY LAWS

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fglnw fookg vf/kfu; e]1955 fookg & , d l ldkj dh ifo=rk

पुरुषोत्तम विष्णु नामजोशी

i kDdFku&

ekuuh; U; k; kf/ki fr Jheku nhi d feJk egkn; us fn- 21-05-2001 ftyk
vf/koDrk l [k] tcyij ea fglnw fookg vf/kfue; ds varxr fookg foPNn fo"K; ij Hkk";
ea vfHk; Dr fopkj] ml dh iLrnh , oa l k/k&l rkspr Hkk"kk' शैली से सभागृह में पधारे
Jkrkvka dks ea=ek/k vekfgr½ dj fn; k FkA gj , d Jkrk oDrk ds l kfk l ejl gks x; k FkA
A bl h ij .kk l sifjr gkdj ; g ys[k fy[kk tk jgk gA

/kkjk 7 fglnw fookg vf/kfu; e bl i d kj g&

/kkjk 7 fglnw fookg ds fy, deZdkM&

¼1½ fglnw fookg ml ds lk{kdkjka ea l sfdl h Hkh : f<xr jhfr; ka vksj deZdkM ds
vuq kj vuqBkfi r fd; k tk l dsxkA

¼2½ tgka fd , d h jhfr; ka vksj deZdkM ds varxr l l r in h ¼vFkkzr vfxu ds
l e{k oj vksj o/kw }kjk l a Dr l kr in pykuk½ vkrh gks ogka fookg i wZ
vksj vkc) dj rc gkrk gS tc l kroka in py fy; k tkrk gA

l l r in h&

mijkDr iko/kku Lo; eD Li"V gS A /kkjk crkrh gS fd l l r in h dh U; ure Hkh
आवश्यकता नहीं है। जब पक्षकारों के बीच रूढ़िगत विवाह का प्रचलन हो तो उस रूढ़िगत
0; ogkj l s fookg dks l EiUu fd; k tk l drk gS A fglnw/ka ds chp tks tkfr&mi tkfr; ka gS
os viuh viuh : f<xr lk) fr l s fookg l EiUu dj l drs gS o , d k fookg oSk ekuk x; k
gS A yfdu /kkjk 7 ¼2½ ea ; g ckr Li"V : lk l s vkbZ gS fd : f<+ds varxr ; fn l l r in h
vkrh gks rks l kroka in oj&o/kw }kjk i wZ dj yus ij gh fookg i wZ gks dj oj&o/kw
i fr&i Ruh dh l fFkr ; k , d s l Ecu/kka dh i fr"Bk i klr djrs gA vksj rc ge o/kw dks i Ruh
, oa oj dks i fr dg dj l Eckf/kr djrs gA bl i d kj os oj&o/kw i fr&i Ruh curs gA tc
l l r in h i wZ gks tkrh gS rks o/kw ftl dgyxks= dh gS ml dk xks= ifjofrZr gkdj i fr ds
xks= vksj vksj pkfjd : lk l s /kkj .k djrh gA pfid xks= HkkfRd oLrq ugha gS vr% fookg

पश्चात अब स्त्री का गोत्र पति का गोत्र मान लिया जाता है। मनु स्मृति में अध्याय आठ श्लोक 227 में यही कहा गया है यथा

स्वगात्राद् भ्रश्यते नारी—विवाहात्सप्तमें पदे ।।

fof/kd nf"V l } bl izdkj l Iri nh dk vfxu dks l k{kh j [kdj i w kZ djuk fookg dh i w kZrk gkrh gS A ; gh ckr /kkjk 7 vfhkO; Dr djrh gA

vf/kfu; e dh /kkjk 7 ds vuq kj fglu w fookg ds fy, tks deBkM gS og x'á l w के अनुसार विवाह होम में प्रदीप्त अग्नि को आज्य (घी) आहुति पांच बार देने के पश्चात (1) पाणिग्रहण (2) लाजा होम (3) अग्नि प्रदक्षिणा (4) अश्मारोहण (5) सप्तां न् 1/6 1/2 /kpkfn n'kU ; g i keq; l s fof/k gkrs gS A

vfxu l k{kh&

l Iri nh vfxu dks l k{kh j [kdj djuk gkrh gA i pegkHkr Hkfe] ty] vfxu] ok; q vkj vkdk'k ; s gekjs thou ds vx gS A l r nyl hnl th dgrs gA fNrh] ty i kod] xxu l ehjk@ i pjfpr ; g v/ke 'kjhjk tks l kr in oj&o/kw pyrs gS os vfxu dks प्रदक्षिणा (फेरे) करके चलते है। कल्पना करें कि आप मंदिर में है ईश्वर का मुँह पश्चिम की vkj gkxk o vki dk egg i wZ dh vkjA rc vki tks inf{k.kk i kjEHk djrs gS og ck; a gkFk से चल कर याने उत्तर दिशा में मुड़ कर एd Qjk i kjEHk djæA os s gh ; g fØ; k gkrh gA fookg gkæ dk eq; mnns ; ; g gSfd bl o/kw dks ifrxg Lo: lk Lohdkjk tk jgk gS ml s Hkk; kRo i klr gks vkj x'áfxu fl) gks bl fy, fookg gkæ fd; k tkrk gA fookg gkæ ds l e; LFkfMyknh dR; fd; k tkrk gS tks l Iri nh dh i wZ rs kjh gA bl ds vuq kj tgka vfxu LFkfi r dh gS ml ds i kj vekuka tgka Hkxoku dh efrz gS ml ds i kl 1/2 l hy&cV/Vk gkS ईशान्य दिशा की ओर मुट्ठीभर चावल की धारी हो उस पर सजा हुआ कलश स्थापित किया tkos , d vfxugkæ 1/2 LFkfMy 1/2 ds mRrj dh vkj dN njh ij i wZ dh if'pe rd ?kærs gg l kr i qt 1/2 w/Bh&w/Bh Hkj dh <jh 1/2 pkoy ds j [ks tkrS gA ckyppy ea ge pkoy ge ya yfdu gkuk v{kr 1/2 v{k; 1/2 pkfg; A ftl dk {kr u gvk gkA , s k djds vfxugkæ i kjEHk gkrk gA oj &o/kw ogka Øe'k% ck, nk, a cBrs gA

oj vfxu dh vkj eg i dz dh vkj djds cBxk o/kw if'pe l s vkdj mRrj cktw l s
vkrsgg oj ds nk, agkFk dh vkj cBxhA

vfxu gke ea tks ikFkZuk dh tkrh gs ml dk l kj l fksi ; sgsfd gs vfxu ne gekjs
vk; q; dk j{k.k djuk LokLFk j [kuk Hkjij vUukfn dh mRi fRr gk} , s h ikFkZuk dh tkrh
gA bl idkj vfxu dh LFkki uk djds vc oBkfgd fØ; kadyki %jLe% iwkZ djuk gkrh gA
अग्नि को वैश्वानर-अन्नवता कहा गया है।

l l r i n h i k j b l k g k r s l e ; o j & o / k w , d n i j s d s l k f k v k x s i h n s p y r s g s v f x u
i n f { k . k k d j r s g g p y u k g k r k g A p k o y d h i R ; d < j h i j o / k w u s v i u k n k a k i j j [k u k
g s m l h i d k j o j u s H k h , s k g h d j u k g A , s k d j r s d j r s l k r k a < f j ; k a i j i j j [k d s
l l r i n h i w k z d j u k g A

fglunw fookg & vk'k; , oa mnns ; &

fglunw fookg vkLFkk dk , d l idkj gA eq"; xHKZ ea tc okl djrk gs rc l seR; q
rd ds tks l ksyg l idkj gs ml ea d s ; g Hkh , d l idkj gs idfr us tho ek= dks okLrk
nh gs yfdu ml se; kfnr djus grq gea l idkfjr fd; k tkrk gs rkfd ge Hkx l s l a e
dh vkj vxt j gkA vr% ; g l idkj Hkx foykl dk l idkj u gkdj /kkfeZ Lo: lk
प्रदान किया है। जिससे हम आत्मानुशासित हों। विवाह पश्चात भी भोगेच्छा को संयमित करने
grq io&or&jtLoyk voLFkk ds ek;/e l s fu;fer fd;k x;k gs rhu __.k
(ऋशि-पितृ-यज्ञ) में से पितृऋण से मुक्ति हेतु यह संस्कार है। भोग विवाह का उद्देश्य कभी
Hkh ugha ekuk x;k gs A fookg i dz euq; vi us 0; fDrRo dh fprk djrk gs yfdu fookg
पश्चात सही अर्थों में पत्नी, परिवारजन के प्रकारांतर से समाज से जुड कर रागद्वेष रहित हो
tkrk gA bl hfy, jFkQhYM dk dguk gsfd fglunwka dh fookg i Fkk l qkn gA bl ea LokFkZ
de l koHkKokn vf/kd gA QMfjd fi udV dk dguk gs ; g ca'ku Vwus ds fy, ugha gkrk
fglunwka ea fookg foPNn vkdk'k dq por& vi okn&gA %bl hfy, /kkjk 23 ds vrxt
U; k; ky; ka dks ey feyki grq u dny foLrkfjr vf/kdkj fn, gA vfi r q dRrD; Hkh
vkjki r fd; k gA l okPp U; k; ky; dk , d fu.kz , oa ml ij , d ys[k bl h if=dk ea

सप्तपदी के सात श्लोक—

fglunwfookg l Ldkj ea oji {k ds fi rk vi us i e ds fy, ^nbf i «; k =Á. kki kdj .k grq Hkwr /keZ ÁtkRi knu fl f) }jk^ vFkk r ekuo ij nørk rFk fi r` __.k ds fQVkus ds fy, l dYi djrs gS bl h i djk dU; ki {k ds fi rk dU; k ds fy; s ; g l dYi djrs gS fd ejh dU; k ifr ds l kFk /keZ iztkRi knu x'á ifjxg , oa /keZ ds vkpj .k ds fy, vf/kdkj i klr ho इस उद्देश्य से विवाह संस्कार कर रहा हूँ।

सप्तपदी के सात भूलोक मूल रूप से संस्कृत में हैं उन्हें नािपस i Lnr fd; k tk jgk gs तत्पश्चात् उसका हिन्दी अर्थ दिया जा रहा है।

¼1½ bi , di nh Hko l k ekeuprk Hko i e kflonkogS dgLrs l r q t j n” V; %AA

¼2½ Át f}i nh Hko l k ekeuprk Hko i e kflonkogS dgLrs l r q t j n” V; %A

¼3½ jk; Li kSkk; f=i nh Hko l k ekeuprk Hko i e kflonkogS dgLrs l r q t j n” V; %AA

¼4½ ek ; ks Hk0; k; pr di nh Hko l k ekeuprk Hko i e kflonkogS dgLrs l r q t j n” V; %AA

¼5½ iztkH; % i pi nh Hko l k ekeuprk Hko i e kflonkogS dgLrs l r q t j n” V; %AA

¼6½ __r d; % "kV i nh Hko l k ekeuprk Hko i e kflonkogS dgLrs l r q t j n” V; %AA

¼7½ l [kk l Ir i nh Hko l k ekeuprk Hko i e kflonkogS dgLrs l r q t j n” V; %AA

in ku Øeku d kj vFkZ bl i djk gS

¼1½ gs o/kj reus ejs l kFk i Fke in j [kk rc ejk vkj r egjk l [; ¼1 kFk½ gks x; k bl fy, r e vc vlu i nkrk gkuk] ejs vu dny 0; ogkj djuk , oa gea i e kfn i klr gkA ¼fi r` __.k l se fDr gks l d½

1/2½ हे वधू, तमने मेरे साथ दूसरा पद रखा तुम मुझे बल-शक्ति की वृद्धि करने में
I gk; d gks o i kfn dh i kflr gkA

1/3½ ne ej s I kFk rhu i x pyh ne ep s /ku of) ea I gk; d gkA

1/4½ ne ej s I kFk pkFkk i x j [kk bl fy, I qk of) ea I gk; d gkA

1/5½ ne ej s I kFk i kp dne pyh gk I rfr 1/fo }ku&vuq kkfl r½ dks of) djus
okyh gkA

1/6½ neus ej s I kFk NBk dne j [kk vr% I Hkh __rpk ea i klr gkus okys
I qk&Hkks&vkun i klr gksr jgA

1/7½ ne ej s I kFk I kr in 1/4 I rin½ pyh bl fy, ej s vks rfgkjs chp fe=or
Hkko 1/4i fr dk ckll x ugha jgsxk½ n<+gkA

bl izkj i fke in vlu grq ni jk in cy grq rhl jk /kuof) grq pkFkk
सुख वृद्धि हेतु पांचवा पग वंशवृद्धि हेतु छठा पग समस्त ऋतु सुखों के लिए एवं सातवां पग
fe=or I म्बन्धों (की आशा) के लिए है। (आशा इसलिए की बिचारी पत्नी और क्या अपेक्षा
djxh½A

vr ea i Ruh dgrh gS fd ^thoi Ruh iztk fons ^ vFkkzr ejk i fr 'krk; q gks
तथा वंशवृद्धि हेतु संतती उत्पन्न हो ऐसी इच्छा मैं करती हूँ। ध्यान रहे सप्तपदी पश्चात वर
dks i fr , oa o/kw dks i Ruh ds : lk ea I kK nh xbz gA

, d I dyudrkz dk dFku I Irinh dk I kjl fks ea bl izkj gA ekU; A
यहां सौ वर्षों तक सुखपूर्वक रहो, यश को प्राप्त करो, धन-धान्य से परिपूर्ण रहो, मेरा और
rfgkjk dHkh fcNkg us gkA ; gk; jgdj I koHkE thou; ki u djks vFkkzr 'kkar vks I ef)
dks i klr gksvka bl ?kj ea vi us I; kjs cPpka ds I kFk Qyka Qyka vks ?kj ds dke dkt dh
vks rfgkjk /; ku jgA 1/4bl izkj i Ruh dk I I jky vkuk dkjxg ea vkuk ugha gA½

I Irinh ea tks mnxkj mPpkfjr gksr gS ml I s Li "V gkrk gS fd vc vkRek
i.k.k , d gS 'kj hj nks gA nksuka ds eu ea , d ni js ds i fr exydkeuk gkA ukjh ifronk

और पुरुष एक पत्नीव्रत हो। प्रत्येक बुद्धिमती, भाग्यवान स्त्री को ऐसे अजीवन संगी पर अवश्य
gh xol gkxkA

वास्तव में सप्तपदी का स्वरूप आकाश के स्पतऋषिया ds l kFk dYi ukRed gA
वर-वधू सप्तपदी पश्चात खुले में आकर आकाश की ओर देखकर घोषित करते हैं कि हे ध्रुव
u{k= tS s vki fLFkj gS oS s gh ge ifjokj ea l nk ds fy, fLFkj gkA gs l rhekrk v: rkrh
आपकी ही भांति हम भी मन-वचन और शरीर से एक दूसरे से tM+ tk, A gekjk vki l h
संयोग आकाश, पृथ्वी, समस्त ब्रहमाण्ड और इन सब पर्वतों की भांति अचल है।

l Iri nh ds i wZ oj&o/kw ds gkFk , d l kFk ckak fn, tkrs gS vksj muds oL=ka
dks Hkh feyk dj xkB yxk nh tkrh gA bl dks xffkca/ku dgrs gA bl dk vfhki k; ; g gS
fd oj&o/kw nksuka 'kj hj l s , d gks x, rFkk , d nil js ds fy, l nk ds l kFkh Hkh cu x,
gS A ; g i kfFkr fd; k tkrk gS fd oj&o/kw dk l Ecu/k banz vksj bank.kh] foHkkol q vksj Lokgk]
l ke rFkk jkfg.kh] uy rFkk ne; rh] oSJo.k vksj Hknk] ofLk"B rFkk v: rkrh , oa y{eh
नारायण जैसे जोड़ी के रूप में विशिष्टता पाएं। संध्या समय सप्तऋषियों के दर्शन कराएं
tkrs gA

l eki u&

bl h if=dk ea fookg foPNn dh fMØh nsus ds i wZ esy feyki grq U; k; ky;
{kjk iz Ru djus ds fo"k; ea ys[k fy[kk gS og dpy fof/k ds i ko/kku l s l EcfU/kr gS
ySdu , s esy feyki dk D; k egRo gS ml dh lk"BHkie l e>us grq ; s ys[k T; knk i Hkkoh
jgxxk ftl l s Kkr gkxk fd , d L=h vi uk l oLo R; kx dj ds ; gka rd fookg i wZ dk uke
rd R; kx dj ek; ds l s ifr ds ?kj vkrh gS o i wZ l ei Zk ds l kFk i Ruh ds : lk ea thou
fcrkuk pkgrh gS o bl fy, l Iri nh ds ek/; e l s i Ruh l s ifr us vi s{kk, a dh gS mUga
vfxu nørk dks l k{kj j [kdj og fuHkkuk Hkh pkgrh gS rc bu l c ckrka dk fparu gea Hkh
djuk gS fd fookg foPNn dh fMØh ikfjr djus ds i wZ Hkj l d iz Ru gks fd fookg
foPNn u gks i koA l Iri nh dk vFkZ Hkkouk o mnas ; ; fn l e> ea vk tkos rks ge ; g
fuf'pr : lk l s dg i k, Wk fd ; g fn[kkok ugha gS vkMæj ugha gS u i k[kM gS u gh vdk

विश्वास। ये बातें तो वे हैं जो एक दूसरे से अपेक्षित हैं जिन्हें शास्त्रोक्त रूप से प्रस्तुत किया
tkrk gS A dkbz Hkh /keZ i fK] tkfr gks ; k fjokt : <h ; k i j a j k j gh gks i fØ ; k fhkuu gks
l drh gS y{k , d gh gS fd i fr&i Ruh dk l Ecu/k dby Hkksx foykl dk ; k l rrrh mRi Uu
djus dk gh ugha gA vfi r q l ekt /keZ fuHkkuk gS o l ekt dks 0; fFkr vuq kfkLkr rFkk
mRrjkRrj l q l dr djus dk Hkh gA L=h o iq "k fookg l l dkj ds ek/; e l s l [kk l [kh
का दर्जा प्राप्त करते हैं। आशा है लेख है उल्लेखित बातें मेल मिलाप करने की प्रक्रिया में
HkkoukRed : lk l s Hkh i Hkkoh fl) gks rFkk esy feyki gsrq tc l EcfU?kr i fr&i Ruh vki ds
pCj ea vk, rks mlga l Irinh dk vk'k; crk;k tk l dA HkkoukRed nf"V l s l e>k; k
tk l dA

l nfhkr xjFk &

1/2 fookg l l dkj & fl)" वर शास्त्री चित्राव (2) गृहस्थ गीता—संकलक प्रेमलता (3) हिन्दू
ykw }kj k eYyk , oa xSM+ 1/4 Legal and Constitutional History of India by
Ramajoh (5) The Laws of Manu by G- Bhuler and F. Maxmuller. 1/6 Jh
inekdj x.kk nkey} i ol ys[k vf/kdkjh e-iz mPp U; k; ky;] tcyig ds l kFk
ea= . kKA

dk; 'kq ea=h dj . R's kq nkl h] HksT; 'kq ekrk 'k; us'kq j #kkA
/kekupdy {ke; k /kfj =h] tMxq; erf} i frorkukeAA

dk; l ea l ykgdkj] xglFkdke eankl h vuq i] Hkksu ds l e; ekrk vuq l k]

शयन में पत्नी तथा धर्म कर्म में सदा अनुकूल एवं पृथ्वी अनुरूप क्षमाशील है यह स्त्री। ये
i frork L=h ds Ng xqk gA



HINDU MARRIAGE & AGE

V.K. Shrivastava
D.J. Durg

A particular Matrimonial relationship, having statutory status between a man and a woman is commonly called Marriage, which is the origin of a family. Since ancient days certain conditions are continuing for marriage and after fulfillment of those conditions only a marriage tie is given recognition in Society. Before coming into force of the Hindu Marriage Act 1956 a Hindu marriage could be solemnized in accordance with the customary rites or under Special Marriage Act 1954.

After coming into force of the Hindu Marriage Act 1956 a Hindu Marriage may be solemnized in accordance with the provisions contained therein or in accordance with the provisions of the special Marriage Act. 1954.

Hindu Marriage Act 1956, Section 5 (iii) as amended by Act 2 of 1978 has laid down that a marriage between any two Hindus may be solemnized if the bridegroom has completed the age of twenty one years and the bride is of the age of eighteen years at the time of marriage.

Most important feature of this condition is that the violation of this condition does not make the marriage void although the violation is punishable under section 18 of the Act.

Under Special Marriage Act 1954 as per section 4 (c) a marriage between any two person may be solemnized if at the time of marriage the male has completed the age of twenty one years and the female has completed the age of Eighteen years. As per section 24(I)(i) it is clear that if condition specified above is violated then the marriage shall be null and void.

When under both these enactments, age restrictions are the same, then it is necessary to avoid the ambiguity that the marriage solemnized under Hindu Marriage Act

in violation to age restriction must be declared null and void.

Under Article 14 and 15 (1) of our Indian Constitution man and woman are treated at par but under above provisions different age has been fixed for woman and man for entering into married life on the ground that woman attains maturity earlier than male.

Minimum age for bride and bridegroom has been fixed to save the children and immature boys and girls but ignoring the fact that still in our society a man of sixty can marry a girl of teen age.

I am of the view that different scale age for man and woman as prevalent now should be abolished and minimum age for both be kept alike and some age difference should be fixed for those who are interested in marrying in their old age so that woman, who are compelled, oppressed or forced under influence of money, power or threat to marry old persons.

•

vi uk gh nks"k fookg foPNn vf/kdkj dks fufefr ugha dj rk [/kkjk 23 ¼1½ d]
fglunw fookg vf/kfu; e]

I ks मंजू पुरुषोत्तम नामजोशी

vfr- निदेशक- T; kfr

ekuuh; U; k; klf/ki fr egln; Jheku I h-ds प्रसाद साहेब ने अतिरिक्त जिला न्यायाधीशों के प्रशिक्षण
oxl ea fglunw fookg vf/kfu; e ij , d 0; k[; ku fn; k Fkk ml ea I okpp U; k; ky; }kjk , d v/ru
U; k; n"टांत के आधार से विश्लेषक. kkrRed 0; k[; k dh FkhA mu fopkja Is ifjr gkdj I ks eatw
नामजोशी ने यह लेख लिखा है । विचारों में जो स्वाभाविकता है तथा अंतःकरण की जो उदहृष्टता
उपस्थित की है वह क्यों कर उत्पन्न हुई यह बात बताने की क्या संपादक को आवश्यकता है ।

I i knD

fookg I ca/ka dks Vw/us I s cpkus ds fy; s ekuuh; I okpp U; k; ky; }kjk
i kfjr , d egROI wKz fu.kz ftl I s I Hkh obkfgd fooknka dks fui Vkus okys U; k; ky; k
को एक नया मार्ग दर्शन है, जो कि केवल कानूनी खाना पूर्ति नहीं है अपितु इन विवादों
dks fujkdj.k djrs I e; obkfgd I ca/ka ds I ca/k ea ekuuh; I kekftd vl; nkf; Roka
dk fopkj djuk Hkh gA

ekuuh; I okpp U; k; ky; }kjk ghjkpnz Jhrfuokl euxkodj fo:) I pankl
fl foy vihy I a 1473@1999 fu.kz fnukd 20&3&2001 ¼1½ vij/k fu.kz tuzy
¼mPpre U; k; ky; ½ 465 □ (2001) 4 "ब्र 125 में यह सिद्धांत प्रतिपादित किया है कि
fglnq fookg vf/k- 1955] /kkjk 13 ¼1&d½ 1] 10 vksj 23 ¼1½ d ds vrxr ifr }kjk
viuh iRuh o i qh dk Hkj.k i ksk.k djus I s budkj djus rFkk I ca/ka ds chip vksj
vf/kd vyxko i jk djds : [kku fn[kkuk ftl I s lkuZeyu vl Hko gks tko\$, d k
djds vihykFkhZ ifr us fookg fo"K; d nksk fd; k g\$ vksj fookg foPNndk vurnksk i klr
djds ds fy; } mDr nksk dk ykHk i klr djus dk Hkh ml us iz Ru fd; k gA , d vl;
n"Vkr ¼2001½ 4 SC. 250 prunkl fo- deyknoh dk Hkh I nHkz bl h fo"K; ij fn; k
tk I drk gA

ifr dk tkjrk dh n'kk ea jguk , d pkyw jgus okyk vijk/k gA og ml U; kf; d lkFkd dj.k dh fMØh ¼/¼kjk 10 ¼1½ fglwfookg vf/k- 1955½ ds ikfjr gks tkus मात्र से निश्चलीकृत या विनष्ट नहीं gks tkrk tks ifr iRuh ds dfri; mu drD; ka vkj vk/; rkvka dks tks muds fookg l s l af/kr g\$ doy fuyfEcr djrh gS A fookg ds बंधन को यकायक तोड़ नहीं देती। ऐसी दशा में उच्च न्यायालय ने अपीलार्थी पति को fookg foPNn dh fMØh dk vuqrk\$ n\$us l s budkj djds l gh fu.kz; fn; k gA ¼fu.kz; dk pj.k 18-02-21½ vihykFkhz ifr dh vihy [kpa l fgr ekuuh; l okPPk U; k; ky; us fujLr dh gA

ekuuh; l okPPk U; k; ky; us vi us bl fu.kz; ea , d egRoiwKz fof/k ds i ko/kku dh 0; k[; k dh gA rdudh dh jhfr l s U; kf; d lkFkddj.k dh fMØh ds 1 o"Kz ds vñj nksuka lk{kkk ea dkbz l gokl dk i uj kjEHk ugha g\$vk gS bl h vk/kkj ij ifr us /kkjk 13 ¼1½ fglwfookg vf/kfu; e ds rgr fookg foPNn ds fy; s vkonu i Lrqr fd; kA

i R; Fkhz iRuh us fookg foPNn ds vkonu lk= dk ifrokn fd; k ml ea vl; बातों के अलावा यह भी आधार लिया कि अपीलार्थी पति ने भरण –पोषण के आदेश का i ky ugha fd; k u Hkj.k i k\$ k. k fn; kA bl h vk/kkj ij fookg foPNn dk vkonu lk= fujLr fd; k tkoA fookg foPNn dk vuqrk\$ i klr djus ds fy; s vi us Lo; a ds nk\$ k dk og ykHk mBkus dk iz Ru dj jgk gA

bl i R; Fkhz iRuh ds ifrokn ij fopkj jdus ds ckn dukWd mPp U; k; ky; us , e-, e-, - uEdj 1436@1988 ea fnukad 10&4&1995 dks fu.kz; fn; kA iRuh }kj k mBk; s ifrokn dks Lohdkj fd; k , oa ifr vihykFkhz dk fookg foPNn ds vkonu lk= dks निरस्त किया । इसी आदेश के विरुद्ध अपीलार्थी पति ने विशेष इजाजत से अपील l okPp U; k; ky; ds l e{k i Lrqr dh A

bl fu.kz; ea eq[; : lk l s /kkjk 13 ¼1d½ ds fuokpu ij vkj /kkjk 10 rFk 23 (1) क के प्रावधानों पर प्रकाश डाला है । धारा 13 विवाह विच्छेद व धाज्क 10 U; kf; d पृथककरण के प्रावधान तो स्पष्ट ही है लेकिन विशेष बल धारा 23 (1) क के प्रावधानों पर

fn; k gS D; kf d fookg

+ fopNn dk U; kf; d lKfddj.k ; k nKEi R; vf/kdkjka dh i qEFkki uk ds vkn's k nrs l e; fdu ckrka ij fopkj djuk gS ; g ns[kus dk dRkD; ; k nKEi R; vf/kdkjka dh पुर्नस्थापना के आदेश देते समय किन बातों पर विचार करना है यह देखने का कर्त्तव्य U; k; ky; dk gA /kkjk 23 1/2 d ds i ko/kku fuEu gA

23 1/2 d- dk; bkgf; ka ea fMØh %& ; fn bl vf/kfu; e ds v/khu gkus okyh fdl h dk; bkgf e; pkgf ml ea i frj {kk dh xbz gk ; k ugh U; k; ky; dk l ek/kku gk tk, fd&

1/2 vuq'ks'k vuqRr djus ds vk/kkjka ea l s dkbZ u dkbZ vk/kkj fo | eku gS vk\$ vth'nkj mu ekeyka dks NkMØj] ftuea muds }kjk /kkjk 5 ds [k.M 1/2 ds mi [kM 1/2] mi [kM 1/4] ; k mi [kM 1/2] ea fofufnZ "V vk/kkj ij vuq'ks'k pkgk x; k gS vuq'ks'k ds iz kstu l s vi us gh n'ks'k ; k fu; kX; rk dk fdl h izdkj Qk; nk ugha mBk jgk ; k mBk jgh g\$ vk\$ -----

bl izdkj fglu'w fookg vf/kfu; e ds rgr mi jkDr /kkjk ds rgr i kfjr dh tkus okyh fMØh nus ds i dZ nkos ds l dZk ea U; k; ky; ds l ek/kku dh ckr dgh gA bl l ek/kku ds fy; s n'ks'k dk ykHk yus dh l{kdkjka dh uh; r dks i gpkuuk vko' ; d gA

/kkjk 23 fglu'w fookg vf/kfu; e dh Hk'kk gh ; g nf'kr djrh gS fd ; g vf/kfu; e ds v/khu i R; d dk; bkgf dks fu; f=r djrh gA ; g drD; U; k; ky; ij Mkyk x; k gS fd og ekas x; s vuq'ks'k dh fMØh rHkh djs tc bl mi /kkjk ea mYys[kr 'kr' ij h gk\$ vU; Fkk ugha A

vi hykFkhZ i fr us i Ruh o i e-h dk Hkj.k i k\$ "k.k dks nus l s budkj dj /kkjk 23 ds rgr n'ks'k i wZ dk; Z fd; k gS rFkk vc fookg fopNn dk vuq'ks'k ekædj og vi us Lo; a ds n'ks'k dk ykHk mBk jgk gA fu.kZ dk pj.k 13 dk mYys[k bl izdkj gS A eYyk ds fglu'w ykll ea 1/70a l d dj.k ds l k"B 12 1/2 dgk x; k gS A

^l gokl dk vFkZ gS i fr&i Ruh ds : lk ea l kFk&l kFk jgukA og i Ruh ds i fr i fr ds : lk ea dk; Z djus okys i fr l s vk\$ i fr ds i fr i Ruh ds : lk ea dk; Z djus okyh i Ruh

I sfeydj curk gSftl ea iRuh ifr ds ifr xfg.kh ds drD; ka dk ikyu djrh gS vkj
ifr viuh iRuh dh os h I hky djrk gS ts h fdl h ifr dks djuh pkfg, A I gokl
आवश्यक रूप से इस बात पर निर्भर नहीं करता कि क्या पति और पत्नी के बीच में
I gokl ¼l EHkks½ gkrk gS ; k ughA ; fn jfr ØhMk gkrh gS rks og , d cgr gh I q<+
I k{; g& ; g fu'pk; d I k{; gk I drk gSfd os I gokl dj jgs gS fdlrq bl dk vFkZ
; g ugha gSfd pfd os eFku ugha dj jgs bl fy, I gokl ugha dj jgA I gokl I s
doy fuokl I s fHku dN foi fkr gA bl dk ; g vFkZ gkuk pkfg, fd ifr vkj iRuh
us ifr vkj iRuh ds : lk ea thou 0; rhr djuk i k h dk dj fn; k gS vkj ifr vkj iRuh
ds : lk ea viuh gS I ; r vkj fLFkr dks mlugkaus I hky fy; k gA^

/kkjk 13 ¼1&d½ c /kkjk 23 ¼1½ d i ko/kkuka dks ; fn I kFk&l kFk lk<k tkos rks tks
परिस्थिति सामने आती है वे ये है— आवेदक के पास, केवल यह दर्शित कर देने से कि
आवेदन पत्र में बताये गये रूप से चाहे गये अनुतोश का समर्थन करने वाले अक/कज gS rc
Hkh ml js lk{kdkj ds fo:) fookg dh fMØh dk vuqksk ikr djus dk dkbZ fufgr
vf/kdkj ugha gks tkrk A

; g ckr /; ku nus ; kx; gS fd ifr&iRuh ds chp dk I cark ekuoh; thou
I s gA ekuoh; thou yhd ij ; k dkuu }kjk vfHkdfkr fd; s rkj rjhds I s ugha
pyrk A ; g Hkh /; ku ea j [kuk gSfd fookg ds lk{kdkj ka ds chp ds I cark dks LFkk; h
: lk I s foPNn djus dh vkond dh i kFkZuk dks Lohdkj djus I s igys ml I cark dh
i fo=rk dks cuk; s j [kus dk gjd iz kl fd; k tkuk pkfg; A bl dk egRo u doy nks
0; fDr; ka ; k muds cPpka ds fy, s gS oju I ekt ds fy; s Hkh gA

fookg foPNn dh fMØh nuk gS ; k ugha ; k iR; d idj.k ds rF; ka vkj
परिस्थितियों पर निर्भर करता हैं। ऐसी दशा में इस तरह के नाजुक वैवाहिक विवादों के
idj.kka ea I eku : lk I s ykxw gkaus okyk dkbZ I keku; fl) kar cukuk cgr gh [krjukd
o nq[knk; h gkxkA bl idkj vf/kfu; e dk mnas; vkj iz kstu ifr&iRuh ds chp ds
obkfgd I cark dks cuk; s j [kuk gS , s I carkka dks rkm+ nus dks i kBI kgu nuk ugha A

bl i d k j f o o k g f o " k ; d f o o k n k a e a v u r k s k l f u f ' p r d j u s d s f y ; s v o s k r k v k s v u f r d r k d k s f d l h 0 ; f D r d s l g k j s d s : l e a i k r l k f g r u g h a f d ; k t k l d r k A

1981 f g l n w y k w f j i k v & k " B 331 n g y h m P p U ; k ; k y ; u s d g k g s f d & India's divorce law is founded on the concept of the matrimonial offence. Before a marriage can be dissolved, the complaining spouse has to prove that the other spouse is guilty of cruelty, true, cruelty is not a crime (Now defined under S. 498 A of the I.P.C.) but the offending spouse has nevertheless to be found guilty. Though in some jurisdictions the term "guilty of cruelty" is used instead of "treated with cruelty". The concept of guilt is the underlying assumption in the divorce law for breaking an indissoluble union against the will of the offending spouse. On grant of the relief, each party must forfeit the status of matrimony, one voluntarily, the other involuntarily. But the guilty party cannot take advantage of its own wrong.

, d v l ; n " V k r e u e k g u f o - कौलाश कुमारी 1984 जे- ds 59&63 e a o g h a c k r a v l ; : l k l s c r k b z x b z g s t k s o r z e k u f u . k z d h n f " V l s m Y y f [k r g a f t l d k [k y k l k v k x s f d ; k g &

n k s k ; k f u ; k k ; r k ' k c n d k H k n u h p s v l ; n " V k r k a e a H k h c r k ; k g s m l e a d g k x ; k g s f d &

The conduct alleged has to be something more than a mere disinclination to agree to an offer of reunion; it must be misconduct serious enough to justify denial of the relief to which the husband or the wife is otherwise entitled ; *Ramkali Vs. Gopaldas, 1971 ILR Del 6 (FB), Gajna Devi Vs. Purushottam, 1977 Del 178, Dharmendra Vs. Usha, 1977 SC 2218.*

l o k P p U ; k ; k y ; d s g h j k p a n z f o :) l u n k d s b l f u . k z d s d k j . k d b z U ; k ; n " V k r v k o g j : Y M g k s x , g s o u ; k f l) k r i f r i k f n r g y k g s f t l d k f o L r k j d j d s c r k ; k x ; k g s f d v i u s g h n k s k ; k f u ; k k ; r k d k y k h k y u s d k o k L r f o d v F z D ; k g a d n v l ; n " V k r t k s v H k h r d v f L r R o e a F k s b l i d k j g &

The word 'wrong' has been explained in so many judgments.

Wrong is, technically speaking, an injury, & whether in a given set of facts & circumstances it constitutes a wrong or not will depend upon the nature of the case. Non-cohabitation, in a petition for judl separation, may not be a wrong but nonrestitution of conjugal rights in a petition for restitution of conjugal rights would be a wrong where the Court is satisfied on the lack of bonafide on the part of the party seeking relief on the ground of non cohabitation after the decree was passed. In judicial separation proceedings, the DH may thwart the attempts of the JD to resume cohabitation because he is backed by an authority of law to do so, but in a case for restitution of conjugal rights such a thwarting would be a wrong disentitling the party to seek divorce by taking advantage of his own wrong: *Man Mohan v Kailash Kumari 1984 JK 59-63*. (Please go through the whole judgment)

1. A wrong to someone is wrong to everyone: *Sunil Batra 1980 SC 1579-1600*.
2. Two wrongs never make a right: 1974 SC 31 para 17.
3. Wrong within the meaning of S. 23(1)(a), Hindu Marriage Act: The conduct alleged has to be something more than a mere disinclination to agree to an offer of reunion; it must be misconduct serious enough to justify denial of the relief to which the husband or the wife is otherwise entitled: *Ram Kali v Gopal Das 1971 ILR Del 6 FB*, *Gajna, Devi v Purushottam 1977 Del 178*, *Dharmendra v Usha 1977 SC 2218*; *Meera v Rajinder 1986 Del 136-8*. The expression 'petitioner' is not in any way taking advantage of his or her own wrong occurring in cl (a) of S. 23 (1) of the Act does not apply to taking advantage of the statutory right to obtain dissolution of marriage which has been conferred on him by S. 13 (1 A). In such a case a party is not taking advantage of his own wrong, but of the legal right following the passing of the decree & the failure of the parties to comply with the decree : *KS Lalithamma v NS Hiriyanniah 1983 Kar-63-6*; see *Geeta v GVRKS, Rao 1983 AP 111-4*.
4. Non payment of alimony by the husband to the wife is undoubtedly a "wrong", but the expression "the petitioner..... is not in any way taking advantage of his or her own wrong" in S. 23 (1) (a), HM Act must mean such a wrong of which the petitioner can take & is seeking to take advantage in order to obtain a decree or order favourable to him or her. If a husband has suffered a decree for judicial separation at the instance of the wife & does not pay the alimony payable to the wife & then files 'a petition for divorce against the wife u/s 13 (1 A), he would be acquiring no advantage whatsoever in obtaining such a decree, if he is otherwise entitled thereto, on the score of non-payment of alimony. If such alimony or maintenance is ordered to be paid under the provisions of the HAM Act, 1956 or

the Cr PC, & the husband does not comply with the order, the same may under certain circumstances secure an advantage to the wife in obtaining a decree for divorce u/s 13(2)(iii). But no advantage can or does accrue to a husband for his failure to pay any alimony or maintenance to the wife in obtaining a decree for divorce against the wife u/s 13(1A) &, therefore, the husband cannot be said to be in any way taking advantage of such non-payment within the meaning of 5 23(1) (a) in prosecuting his petition for divorce u/s 13(1 A).

A husband, against whom a wife has obtained a decree for judicial separation is no longer under any obligation to cohabit with the wife & therefore, his failure to do so would constitute no “wrong” within the meaning of S. 23(1) (a) to disentitle him from a ‘decree for divorce u/s 13 (1A) : *Sumitra v Gobinda* 1988 Cal 192 FB per AM Bhattacharjee & Ghosh JJ, Das Ghosh J contra. overruled by the judgment in Harachand’s case 2001 ANJ 465 (SC) *Bal mani vs Jayantilal* AIR 1979 Gujarat not approved virtually overruled *Dharmendra Kumar vs Usha Kumar* 1974 (4) (SCC) 12 discussed and distinguished.

Attention can be drawn to one more citation reported in **(2001) 4 SCC 250, *Chetan Das Vs. Kamala Devi*** in which it is said that the provisions of Section 13 (1) (i-b) and 23(1) (a) (b) & (e) cannot be used as a formula to gain relief of divorce automatically in case of irretrievable breakdown of marriage. When party seeking divorce is found in course of Judicial Proceedings to have committed matrimonial offence (in this case adultery) and has been unable to establish any allegation against the spouse a decree of divorce on the ground of irretrievable breakdown of marriage cannot be granted. Erring party cannot be permitted to break the marital bond by taking advantage of his own wrong. In this case there was an offer by spouse who filed petition for divorce on the ground of desertion to live with respondent. The husband had earlier persuaded wife to live with him on the promise of good behaviour but had continued an adulterous relationship and wife had left him, the husband’s offer before the Supreme Court that he has still prepared to keep his wife not sincere and did not deserve to be seriously considered.

इस प्रकार धारा 23 (1) क हिन्दू विवाह अधिनियम के प्रावधानों पर कोई भी आदेश

देने के पूर्व न्यायाधीश को गंभीरता से विचार करना है । इसके साथ ही धारा 23 (2) (3) में
 feyki ds i ko/kkuka ij Hkh dkbz fMØh ; k vknश धारा 23 (1) क के तहत देने के पूर्व करना
 gS D; kf d esy&feyki dh ifØ; k Hkh doy vks pkfj drk ugha gS vfi r q bl ds fy; s
 bžkunkjh l s l dkjkRed iz kl djuk gA ?kj rkmuk vkl ku gS tkMuk dfBu gA ifr
 पत्नी के संबंधों पर विचार करते समय उनका परिवार, परिवेश, l keftd nkf; Ro ij Hkh
 विचार करना आवश्यक है । सबसे महत्वपूर्ण है यदि पति-पत्नी के बच्चे भी हो तो उन बच्चों
 ij i Mus okys i Hko ij Hkh fopkj djuk gA

ifr i Ruh ds >xMka fooknka o dyg l s l cl s T; knk i Hkfor o mi fkr cPps gkrs
 gS cr% cPpka ds fgr dY; k.k Hkfo"; ds ifr Hkh ifr i Ruh dks l pr djus dk nkf; Ro
 esyfeyki ds l e; U; k; ky; dk gS A l kjh ckrka ij esy feyki ds l e; l exl : lk l s
 fopkj djuk pkfg; s bl ds cktin Hkh ; fn esy feyki dk iz kl l Qy ugha gkrk rks
 fookg fopNn vfire mik; rks gS gh yfdu /kkjk 23 1/2 d ds rgr dkbz Hkh ifr i Ruh
 vi us gh }kjk fd; s x; s nksk dk ykHk U; k; ky; dks ek/; e cuk dj u ys ; g /; ku nus dk
 कार्य हम न्यायाधीशगणों का ही है इसे अच्छी तरह से समझना है तथा प्रकरण की परिस्थिति
 ij fopkj djds fu.kz nus gA

HINDU MARRIAGE ACT, SECTIONS 13 (1-A) (1), 10 AND 23 (1) (A):-

2001 (1) A.N.J. (SC) 465=(2001) 4 SCC 125 HIRACHAND VS. SUNANDA

Appellant not only commits the matrimonial wrong in refusing to maintain his wife and further strange the relation creating acrimony rendering any rapprochement impossible but also tries to take advantage of the said ‘wrong’ for getting the relief of divorce. Living in adultery on the part of husband is a continuing matrimonial offence. It 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 and does not snap the matrimonial ties. High Court was right in declining the relief of a decree of divorce to the appellant.

Paragraph 18 of the judgment is reproduced:-

Now we come to the crucial question which specifically arises for determination the case; whether refusal to pay alimony by the appellant is a ‘wrong within the meaning of Section 23 (1) (a) of the Act so as to disentitle the appellant to the relief of divorce. The answer to the question, as noted earlier, depend on the facts and circumstances of the

case and no general principle or straight jacket formula can be laid down for the purpose. We have already held that even after the decree for judicial separation was passed by the Court on the petition presented by the wife it was expected that both the spouses will make sincere efforts for a conciliation and cohabitation with each other, which means that the husband should behave as a dutiful husband and the wife should behave as a devoted wife. In the present case the respondent has not only failed to make any such attempt but has also refused to pay the small amount of Rs. 100 as maintenance for the wife and has been marking time for expiry of the statutory period of one year after the decree of judicial separation so that he may easily get a decree of divorce. In the circumstance it can reasonably be said that he not only commits the matrimonial wrong in refusing to maintain his wife and further estrange the relation creating acrimony rendering any rapprochement impossible but also tries to take advantage of the said 'wrong' for getting the relief of divorce. Such conduct in committing a default cannot in the facts and circumstances of the case be brushed aside as not a matter of sufficient importance to disentitle him to get a decree of divorce under section 13 (1-A).

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- A. Hindu Marriage Act, 1955-Ss. 13(1-A and 23 (1) (a)-Divorce under S. 13 (1-A), held, can be granted only if conditions stipulated in S. 23 (1) (a) are satisfied- Therefore if court finds that a person is attempting to take advantage of his own "wrong", in terms of S. 23 (1) (a), for the purpose of gaining the relief of divorce, the court is bound to refuse such relief-Where respondent wife had obtained a decree of judicial separation on ground of husband's adultery and court had also ordered husband to pay maintenance to wife and daughter, held on facts, not paying maintenance and continuing to live in adultery were "wrongs" committed by husband for the purpose of S. 23 (1) (a)-High Court rightly dismissed appellant husband's petition for divorce under S. 13 (1-A)
- B. Hindu Marriage Act, 1955- S. 13 (1-A) - Purpose of sub-section (1-A), held, is to expand the right to apply for divorce, not to make the grant of divorce mandatory,

merely on proof that there was no cohabitation or restitution of conjugal rights for the requisite period.

- C. Hindu Marriage Act, 1955- Ss. 13 (1-A) and 23 (1) (a)- Held, the two sections read together indicate that a petitioner seeking divorce under S. 13 (1-A) (i) does not have any vested right to the relief of divorce.
- D. Hindu Marriage Act, 1955- Ss. 13 and 13 (1-A) - Divorce-Held, before divorce is granted every attempt should be made to maintain the sanctity of the marital relationship between the parties as that relationship is important not only for the individuals concerned and their children, but also for society at large.
- E. Hindu Marriage Act, 1955- S. 10- Judicial separation-Held, provision clearly provides that decree of judicial separation is not final and may even be rescinded-Effect of decree is that certain marital rights and obligations are suspended-In their place rights and duties prescribed in the decree are substituted.
- F. Hindu Marriage Act, 1955-S. 10-Judicial separation-Decree of, held, does not sever or dissolve the bond of marriage, but rather provides an opportunity to the spouses for reconciliation and readjustment - It would, therefore, be wrong to infer that under S. 10 (2) the petitioners has a be vested right to a decree of divorce, even if he has made no attempt at reconciliation or has behaved in a manner to actively prevent it.
- G. Hindu Marriage Act, 1955-Generally-Purpose of, held, is to maintain marital relationship, not to encourage the break-up of such relationships.
- H. Hindu Marriage Act, 1955-Ss. 10 and 13(i)(1)-view that matrimonial offence of adultery would be deemed to be exhausted once a decree of judicial separation is passed, is not correct. The judges are requested to go through Chetan Dass Vs. Kamala Devi (2001) 4 SCC 250 which is also being published separately. Copy of the letter No. D.O. No 26(2) 2000 coord. received from Joint Secretary National Human Rights commission, Sardar Patel Shawan, Sansad Marg, New Delhi 110001 is being published for general information. The Judges may purchase the said book. This institution has found the book useful for judges,

NOTE :- It is requested to go through the case law in ***Manmohan Vs. Kailash Kumari, AIR 1984 J & K 59 (63)***. That will make the law clear. There were divergent

views on this subject. Now the Supreme Court has settled the matter finally



Ikfr&i fRu ds chp esy feyki & U; k; ky; dh Hkrfedk

i q "kkRre fo". kq uketk' kh

ifr&ifRu ds chp esy feyki vksj og Hkh rhl js lk{k vfo'kskdj U; k; ky; }kjk cMk ifo= dke gA os s ifr&iRuh ds chp fdl h Hkh ckr ea rrih; lk{k us gLr{ki dHkh Hkh ugha djuk pkfg; s A bl fy; s fd , d dph ds nks Qy gkrs gA pkgs fn[kus ea os nks OkM+fn[krs gka yfdu dkbz Hkh rhl jk 0; fDr chp ea vk, xk rks og dkxt tS k dV tk, xkA yfdu /; ku j [kuk vki rks dph ds nks ikrka dks tkM+us okys uV&ckV gks ftl dkj.k ds h ds : lk ea nks ikrka , d cus jg l drs gA

/kkjk 23 1/3 1/2 fglunw fookg vf/kfu; e ds i ko/kku rks dgrs gS fd U; k; ky; dks chp ea rks i M+uk gh i M+uk A i M+uk Hkh pkfg; A fglunw fof/k ds vuq kj fookg , d l fonk ugha gS vfi r q L=h&i q "k ds chp शारीरिक व मानसिक सम्बन्धों का मिलन भी है । अतः tgka ekufi d vk/kkj l s ifr&iRuh ds cph vyxko dh l hkkouk c<+ tkrh gS og nksuka ea l s dkbz , d lk{k U; k; ky; ea fookg foPNn dh l gk; rk ekæus grq vk tkrk gS ogka ij U; k; ky; dk idj.k ds i kj Hkd l e; l s idj.k ds vfire fujkdj.k rd ; g drk; gS fd og lk{kdkjka ds chp esy feyki vj d k fU l y's ku 1/2 dk iz Ru l Øh; : lk l s l dkj kRed n fVdks k vi ukrs gq djA , d k ugha gk l drk fd fookg foPNn ds idj.k ea vfire Nkj ij tc rdz l u s dk vol j vk, xk rks ge , d h vks pkfj drk dk fuokz djA ; g dYi uk fd ifr iRuh cM+ gk शयार होते हैं भ्रामक है। (मैं अपने अनुभव से सही कह रहा हूँ) वे होशियार हो या नहीं v f/kdk k ekeys ea os ugha gkrs bl hfy, U; k; ky; ea vkrs gk gekjk dr; gS fd muds chp ea esy feyki gks tkos , oa l keatL; LFkfi r gka vr% l e; l e; ij U; k; ky; us vfire {k.k rd ; gka rd fd fu.kz ds idz {k.k rd 4&6 ; fuV+ dh i idj.k ds fujkdj.k dh 1/2 fprk u djrs l keatL; LFkfi r djuk pkfg; s A , d k gk tkrk gS rks eku yuk fd 4&6 ; fuV+ geus mu nksuka dks esy feyki ds mi y{k ea k k dkeukvka l fgr l knj l i Hk/ ds : lk+ea ns fn, A

lk{kdkj tc vkrs gS rks esy feyki ds fy, U; k; ky; }kjk iz Ru djuk vkl ku gks tkrk gS A esy feyki grq fdl h dkj.k lk{kdkj ugha vkrs gS rks mlga cykus grq v' ksk iz Ru gkuk gh pkfg; s A esy feyki ds fy, U; k; ky; Lo; a us iz Ru djuk चाहिये तथा आवश्यक हो तो पक्षकारों के निवेदन पर l keatL; grq fdl h vU; 0; fDr dks Hkh , d k funk fn; k tk l drk gA , d idj.k] vkj-ugh-, l -, y-

vlluki nkz fo- vkj- l kbldpkj 1981 % flyed% , l -l h-l h- 71 %72% ds idj.k ea l okpp U; k; ky; us idj.k ds ifr iRuh dks , d l kfk fd l h l kfk d edku ea jgus grq dgk o mpp U; k; ky; ds sevānīvūt nīyāyādhīsh evā pti ptnī kē nīyoktā kē mārgdārshn mē prbōdhn kē līe bhī kha । **रमेशचंद्र वि- iæyrk 1979 , e-i-h , y-tsll" B 248** ea Hkh ; gh ckr crkbz gSA

vf/kfu; e dh /kkjk 23 ½) mē yeh shbd hē ki "nīyāyāly-----, d k djuk l lko gks lk{kdkjka ds chp esy feyki djkus dk iwkl iz kl djā vioknkRed iko/kku ijnd ea fn, gSA bl idkj iwkl %every% iz Ru %endeavour) shbd kā svyā kā apnā mahlv hē। arthāt nīyāyāly dks , d k drkD; l k k x; k gSfd og iwkl% iz Ru djā fd esy feyki gks l dA

yeh esā bhī nhī hē ki tūthīy pksh kō mel mlāp hētū nīdēshīt (sāndarbhīt) kīyā hō v uskā yeh vfhker gks fd esy feyki l lko ugha gS rks og vfhker ek= gS U; k; ky; ml vk/kkj l s ek= fu.kz ugha nsxk vfi rql; k; ky; Lo; a dh , d k l rksk djuk gA

idj.k ea , d lk{k }kj k iLrqr fookg foPNn ds idj.k ea dHkh dHkh nī jk lk{k , d lk{kh; gks tkrk gS rks bl dk ; g vfkz ugha gSfd esy feyki dk iz Ru gkuk gh ugha gA , d k flFkr ea Hkh nī js lk{k dī nīyāyāly mē upsthit hōnē kē līe shaktī kī jā skatī hē ।

dHkh dHkh /ks[kk gks tkrk gSfd ifroknh vuq flFkr gsrk gS o , d lk{kh; fMØh gks tkrh gA yfdu U; k; ky; us ns[kuk pkfg; s fd l eul dk fuokg l kekl; , oa i at h d r Mkd }kj k fd; k x; k gS ; k ugha tks vfuokry hē। ek pshīy hō jānē kē pshāt bhī āpssī tālmel mel mlāp hētū ānupsthit lk{kdkj dh ml flFkr i p% l fuf'pr djkbz tk l drh gA , d k vkHkl rd ugha gsrk fd , d lk{kh; idj.k ea , d k ugha gks l drkA y{; esy feyki dk gsrk gA /; ku jgs /kkjk 23 ¼½ ds vr xr fookg foPNn dh fMØh dh udy Hkh lk{kdkjka dks fu% ky'd nsuk gS vr% , d lk{kh; lk{kdkj ds irs ij Hkh fMØh dh udy Hksth tkuk pkfg; A , d k l kekl; o i at h d r Mkd }kj k U; k; ky; ds 0; ; l s fd; k tk l drk gA ftl l s , d lk{kh; lk{kdkj dks ; g Kkr gks l ds fd , d k idj.k ml ds fo:) , d lk{kh; gks x; k Fkk o fMØh gpz FkhA

vktdy ; g cgr l kekl; gSfd Nydi V&>B&Qj c }kj k l eul dk fuokg gkuk crk fn; k tkrk gS bl fy, Hkh t: jh gSfd idj.k ds yfcr gkus ds dky [kM ea vki l h esy&feyki dks nī js lk{k dks cyk; k tk l dA , d k djuk vuqpr o U; k; ky; ds vf/kdkfjrk ds ckā ugha gksxk fd oknh@i kFkhz l s 'ki Fk lk= cyk; k tkos o dgk tkos fd 'ki Fk lk= ij ; g crk, a fd ifri kFkhz@i froknh dk tks irk nkos ea fy[kk gA og l gh gSA ; g Hkh fd; k tk l drk gSfd ifri kFkhz i Ruh gS rks ml ds

ek; ds dk irk i kFkhz i fr l s yd j o ek; ds ds irs ij l eul Hkstk tk l dA i fri kFkhz i fr gS rks ml ds fir k dk irk yd j ml ds fir k us fuokl LFkku ij l eul Hkstk tk l dA mnns; rks; gh gS uk fd i fri kFkhz dks fookg foPNn dk l puk lk= i klr gkA bl h izkj i fri kFkhz tks , d lk{kh; gS dks fMØh dh udy Hkstrs l e; Hkh ; gh i fØ; k vi ukuk pkfg; s rkd l fuf' pr gks l ds fd foi {k dks ¼nit j s lk{k dks fMØh dh udy fuf' pr : lk l sfey x; h FkhA , d k djus l s Hkfo"; ea nit jk fookg dj yuk vFkok rRl e ck/kkva dh cgy; rk l scpk tk l dsxA

/kkjk 23¼2½ 23¼3½ o 23¼4½ fglunw fookg vf/kfu; e ds i ko/kku Rofjr l nHkz grq; gka fn, tk jgs gA

/; ku jgs fd 0; ogkj i fØ; k l fgrk ds vkn's k 32 , - fu- 1 ¼4½ l gi Bhr vkn's k 32&, ¼1½ ¼3½ ds rgr fglunw fookg vf/kfu; e ds fy, ykxw ugha gkrs gA

vi {kk ; s Hkh gS fd nkos ds l kFk i fr i Ruh dk fookg fo" k; d tkm/s l s Qk/s ; k vU; l e; dk Qk/s gks A rkd Hkfo"; ea xyr 0; fDr dks [kMk dj izdj.k fujkdr u gks l dA U; k; ky; ka us , d s ekeyka ea jk thuka ds l e; ; k l k{; fyic) djrs l e; muds igpku fplg fy[k yuk pkfg, , oa l kf{k; ka ds glrk{kj Hkh ys yuk pkfg; s A

Rofjr l nHkz grq/kkjk 23 ¼2½ ¼3½ , oa ¼4½ ds i ko/kku uhrs fn, gA

/kkjk 23 ¼2½ bl vf/kfu; e ds v/khu dkbz vuq'k'k vuqRr djus ds fy, vxd j gkus ds i nZ ; g U; k; ky; dk i Fker% drD; gksx fd og , d h gj n'kk e) tgka fd ekeys dh izdr vkj i fjLFkfr; ka l s l ær jgrs gq , d k djuk l lko gks lk{kdkjka ds chp esy&feyki djkus dk i wkl iz kl djA

ijUrq bl mi/kkjk dh dkbz ckr fdl h , d h dk; bkgha dks ykxw ugha gksx ftl ea /kkjk 13 dh mi/kkjk ¼1½ ds [kM ¼iii½ [kM ¼iii½ [kM ¼iv½ [kM ¼v½ [kM ¼vii½ ; k [kM ¼viii½ ea fofunZV vk/kkka ea l s fdl h vk/kkj ij vuq'k'k pkgk x; k gA

/kkjk 23 ¼3½ , d k esy feyki djkus ea U; k; ky; dh l gk; rk ds iz kstu ds fy, U; k; ky;] ; fn lk{kdkj , d k pkg's rks ; k ; fn U; k; ky; , d k djuk U; k; l ær vkj mfpr l e>a rkj dk; bkgh; ka dks 15 fnu ds vuf/kd dh ; fDr; fDr dkykof/k ds fy, LFkfxr dj l dsx vkj ml ekeys ds lk{kdkjka }kjk bl fufeRr ukfer fdl h 0; fDr dks ; k ; fn lk{kdkj dkbz ukfer djus ea vl Qy jgrs gA rks U; k; ky; }kkjk ukनिदेशित किसी व्यक्ति को इन निदेशों के साथ निर्देशित कर सकेगा कि वह न्यायालय dks bl ckjs ea fj i kVZ ns fd esy&feyki dj; k tk l drk gS ; k ugha rFkk dj; k fn; k x; k gS ; k ugha vkj U; k; ky; dk; bkgh dk fui vkjk djus ea , d h fj i kVZ dks l E; d : lk l s /; ku ea j [ksxA

/kkjk 23 ¼4½ , d s gj ekeys eñ ftl ea fookg dk fo?kVu fookg&foPNn }kjk gkrk gS fMØh
i kfjr djus okyk U; k; ky; gj lk{kdkj dks ml dh i fr eñir nxxkA

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**LEGAL STATUS OF SECOND MARRIAGE IF A HINDU MARRIES SECOND
TIME AFTER GETTING AN EX PARTE DECREE FOR DIVORCE AND THE
DECREE IS SET ASIDE LATER ON**

**Judicial Officers
District Dhar**

Section 15 of the Hindu Marriage Act provides time limit where after either party to a marriage gets a right to remarry again.

Prior to Marriage Laws (Amendment) Act, 1976, the proviso to section 15 of the Hindu Marriage Act required the parties to a marriage, which has been dissolved by a decree of divorce to wait for a minimum period of one year from the date of the decree in the Court of first instance.

By the Marriage Laws (Amendment) Act, 1976 the proviso was deleted.

Section 15 of the Hindu Marriage Act as is stands today reads as under:

“When a marriage has been dissolved by a decree of divorce and either there is no right of appeal against the decree or, if the time for appealing has expired without an appeal having been presented or an appeal has been present but has been dismissed, it shall be lawful for either party to the marriage to marry again.”

Therefore, in view of the amended provisions of Section 15 of the Hindu Marriage Act, parties whose marriage is dissolved by a decree of divorce can contract marriage soon after the period of appeal has expired without an appeal having been presented or if an appeal has been presented it has been dismissed.

In the case of *Lata Kamat v. Vilas*, AIR 1989 SC 1477 it has been held that if before expiry of period of limitation for filing appeal or during pendency of appeal filed by the wife against the decree of divorce, husband contracts second marriage, the appeal filed by the wife does not become infructuous. If the ex parte decree is set aside, the marriage petition would automatically stand restored at the stage prior to that which it stood when the proceeding got intercepted by the ex parte decree. But in this case the

effect of setting aside of ex parte decree on second marriage was not considered.

In the case of *Rajeshwari v. Jugal Kishore, 1994 JJJ 397 ex parte* decree of divorce was passed in favour of husband on 30.04.1983. The wife filed an application under O. 9 R. 13 CPC on 11.07.1983. It was alleged by the wife that she had never received any summons. The trial court rejected the application for setting aside ex parte decree of divorce on 05.04.1984 and thereafter the husband performed second marriage on 20.04.1984, i.e within the time limit prescribed under section 15 of the Act for filing appeal.

Since the husband had remarried just within 15 days of the said order dated 05.04.1984 the Hon'ble High Court of M.P. held that the second marriage is illegal since it was performed within the period of filing of appeal under Section 15 of the Act. The judgment also does not say that the effect of setting aside of second marriage would be that of nullity.

In *Smt. Lila Gupta v. Laxmi Narayan, AIR 1978 SC 1351* it has been held that a marriage contracted in contravention of or violation of Section 15 is not void but merely invalid not affecting the core of marriage and the parties are subject to a binding tie of wedlock flowing from the marriage. Even though the provision is prohibiting certain things to be done, that by itself is not sufficient to treat the marriage contracted in contravention of it as void. Examining the matter in all possible angles and keeping in view the fact that the scheme of the Act provides for treating certain marriages void and simultaneously some marriages, which are made punishable, yet not void and no consequences having been provided for in respect of the marriage in contravention of Section 15 of Hindu Marriage Act. It cannot be said that such marriage would be void. As the marriage is not void, the woman cannot be denied the status of wife.

Though aforesaid decision of the Apex Court was passed on the basic ground of the proviso of Section 15 of Hindu Marriage Act, as was there before the Marriage Laws (Amendment) Act, 1976. The Act of 1976 has repealed the proviso to Section 15. However, the principle of the case is relevant and applicable in toto to the present provision of Section 15 of Hindu Marriage Act.

In the case of *S.P. Shrivastava v. Prem Lata*, AIR 1980 All 336 ex parte decree for divorce was passed in favour of husband on 02.06.1973 and the wife had filed an application for setting aside the ex parte decree on 15.04.1976 on the ground that she had never refused summons on divorce petition and she came to know of the decree only on 15.04.1976. The husband contracted second marriage on 14.04.1976. Relying upon the decision of Hon'ble the Supreme Court in *Smt. Lila Gupta's case* (supra) it was held that since no appeal was filed within the period allowed for filing appeal and the remarriage took place after 34 months, the second marriage cannot be said to be void. If there was no bar in remarrying on the date the second marriage was contracted, the marriage cannot be struck down. It has been further held that if the application for setting aside the ex parte decree was filed after the marriage had been contracted, the application for setting aside the ex parte decree cannot be put on higher footing than that of an appeal. If there was no bar on the date the second marriage was contracted that marriage cannot be struck down.

In the matter of *Sadan Kumar v. Indira Bai*, 1997 (1) MPLJ 124 it has been observed:

“There was nothing in Section 15 of the Act to make marriage a nullity. The reason for this was an incapacity for second marriage for a certain period does not have the effect of treating the former marriage as subsisting. It is clear that the second marriage on the date when it was performed was absolutely legal and valid. The result of setting aside the ex parte decree may lead to an anomalous situation if the first marriage is subsisting and the second marriage on the date of performance was not illegal or nullity. Unfortunately nothing can be done.”

On the basis of the above legal position and keeping in view the provisions of Section 15 of the Hindu Marriage Act it can be concluded that the party in whose favour ex parte decree for divorce is granted, marries second time, the second marriage is not void even if such an ex parte decree is set aside later on and the woman cannot be denied the status of wife for all purposes.

