

CUSTOMARY DIVORCE UNDER HINDU MARRIAGE ACT: AN OBSOLETE PRACTICE

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Abstract

Customary divorce was retained in the Hindu Marriage Act in addition to statutory grounds contained in “Section 13” of HMA. “Section 29(2)” of HMA protects customary divorcees recognised in different communities. This research paper analyzes the relevance of customary divorce in the contemporary situation when society is moving ahead with the recognition of Uniform Civil Code. Customary divorce is a practice which differs from one community to another and creates a complex and confusing situation. Purpose of enactment of HMA was to achieve uniformity and certainty of hindu law and in 1955 inclusion of customary divorce was to give due recognition to diverse traditional practices. Initially under HMA divorce was recognised only on guilt or fault grounds and getting a divorce was a long and cumbersome process and it was convenient to get quick divorce by way of customary divorce without the involvement of the court. With passage of time grounds of divorce became liberalised and it was not very difficult to get divorce from the court of law. Though getting divorce from the court of law is not without challenges, now is the right time to bid goodbye to customary divorce to achieve uniformity in law and provide better protection to the rights of wife and innocent children.

Key Words: “HMA(Hindu Marriage Act), SMA (Special Marriage Act)”

Introduction

Hindu marriage is considered to be a Sacrament, and earlier it was considered to be indissoluble. In the year 1955 with the implementation of “Hindu Marriage Act”, divorce was given statutory recognition under section 13 of Hindu marriage act by which a hindu marriage can be dissolved during the lifetime of a person. In India for Hindus, divorce is a very difficult legal process and under Section 13 of HMA, divorce is given by involvement of the court, but still there is another class of divorces which are called customary divorces which were recognised in some communities before the passing of Hindu marriage act. These divorces are being saved by Section 29(2), of Hindu Marriage Act. The word customary divorce means dissolution of marriage by customs, which are followed by certain groups, communities or families without the involvement of the court. These customary divorces used to exist before codification of Hindu marriage Act and are still given protection under section 29(2) of the act. A sizable portion of Hindus from lower caste practised customary divorce and these are recognised by the courts also, the only important fact in the case of customary divorcees is to prove them with cogent evidence to claim the benefit of such divorces. These customary divorces are contrary to the enacted law and must not be against the public policy and should satisfy all the ingredients of an established custom.

Meaning of customary divorce

According to the HMA, 1956 section 3(a)¹ defines custom or usage, “which is any rule that has been continuously and uniformly observed for a long period of time and has gained legal status in any local area, tribal community or family and is not unreasonable or against public policy and has not been discontinued by the family”. The rights recognised by customs are expressly protected by section 29(2)² of the act which gives prevalence to custom over the statutory law if it satisfies the ingredient of “section 3(a)” of the act. Therefore, under Hindu marriage Act, there are two kinds of divorces recognised one is under section 13 and other is recognised under section 29(2) of the act. Therefore, there are two categories of divorces under HMA:

1. Statutory divorce
2. Customary divorce

Statutory divorce is obtained by intervention of the court and customary divorce is obtained as per the customary traditional practices.

Customary divorces are protected by section 3(a) and 29(2) of the act, which sometimes come in conflict with section 4 of the act. Section 4³ of the act gives priority to the laws codified under Act and in case of inconsistency between the earlier law and the codified law, codified law prevails over the earlier inconsistent law. Hindu marriage act has already laid down the law relating to divorce under “section 13” of Hindu marriage Act. Therefore, by application of section 4 earlier law or custom relating to divorce should cease to have effect, but section 29(2) has expressly given protection to customary divorces. Therefore, by virtue of section 29(2), 3(a) and 4 of the acts, statutory as well as customary both kinds of divorces have validity under the act. Therefore, marriages performed with due ceremonies under Hindu marriage act can be dissolved by both kinds of divorces, statutory as well as customary. Position of Custom under Hindu Marriage Act, 1955

Hindu Marriage Act gives due recognition to custom over the codified law expressly by statutory recognition. Various provisions dealing with supremacy of customary practices over codified law are covered under section 5 (dealing with conditions of valid marriage) section 7 (dealing with customary ceremony for a Hindu marriage) section 29 which gives validity to customary marriages and divorces. Therefore, in spite of codification of laws on Hindu marriage and divorces custom has not lost its sanctity even under the codified law and legislature has expressly given due recognition to these customary practices under the Act

In *Sanjana Kumari v. Vijay Kumar*⁴ Parties got married according to Hindu rites and ceremonies.

¹ Section 3 (a) the expressions “custom and usage signify any rule which, having been continuously and uniformly observed for a long time, has obtained the force of law among Hindus in any local area, tribe, community, group or family: Provided that the rule is certain and not unreasonable or opposed to public policy; and Provided further that in the case of a rule applicable only to a family it has not been discontinued by the family;”

² Section 29 (2) “Nothing contained in this Act shall be deemed to affect any right recognised by custom or conferred by any special enactment to obtain the dissolution of a Hindu marriage, whether solemnized before or after the commencement of this Act.”

³ 4. Overriding effect of Act.—“Save as otherwise expressly provided in this Act,— (a) any text rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act; (b) any other law in force immediately before the commencement of this Act shall cease to have effect in so far as it is inconsistent with any of the provisions contained in this Act..”

⁴ CRIMINAL APPEAL NO. 2905 OF 2023 SUPREME COURT OF INDIA

A customary divorce deed was executed between the parties in the presence of parents of the families and members of the gram Panchayat. The husband got married a second time, and the wife filed the complaint against the husband under section 12 of Domestic violence act, 2005. Judicial magistrate passed a favorable order for the wife and granted her maintenance. This order was challenged by the husband before the High Court on the basis that there is already a customary divorce which was executed between the parties. The Supreme Court asked the husband to prove the validity of customary divorce by cogent evidence and remitted the case to the court of competent jurisdiction to determine the validity of customary divorce. Court made the following observations: There is no doubt that Section 29(2) of the Hindu Marriage Act, 1955 provides that, “Nothing contained in this Act shall be deemed to affect any right recognised by custom or conferred by any special enactment to obtain the dissolution of a Hindu marriage, whether solemnized before or after the commencement of this Act”. When the couple has provided proof to establish a custom, the courts, in an attempt to analyze the effect of the above provision, has time and again held that the spouses may have valid divorce. This case establishes the relevancy of customary divorce under HMA by virtue of Section 29(2) of the Act.

In *Doddi App Rao (Dead) Per Lrs. v. General Manager, Telecom*⁵ Parties got married as per their custom and traditions and marriage lasted for two decades. After some time, the wife developed certain health issues and became incompetent to continue with the matrimonial relations. The petitioner husband divorced his wife according to the customary divorce practice, and after that husband married a second time. The petitioner husband and his first wife belong to the 'Setti Balija' community and he had got divorce from his first wife according to the customary practice observed in their community. Proceedings initiated against the husband for bigamy for violation of rule 21(2) of CCS (conduct) rules, 1964. The court upheld the validity of customary divorce from the first wife, restoring all service benefits. Court made the following observations: “Hindu Marriage Act provides the ground in which the parties to the marriage can obtain divorce, and they are provided in Section 13 of the Hindu Marriage Act. In Spite of making provisions and grounds for dissolution of marriage in Section 13 of the Hindu Marriage Act, still the Hindu Marriage Act recognises the divorce by custom. The said provision is contained in Section 29(2) of the said Act. The provision is based on the very principle of Hindu Law "HINDI MATTER" it means that the custom prevails over the statutory law provided the custom is ancient, continues and not against the public policy etc.”

In *State of MP v. Dunga Ji*⁶ one Dunga Ji filed appeal stating that marriage with his wife had been dissolved by customary divorce before the coming into force of “Madhya Pradesh ceiling on agricultural holdings act, 1960” and to determine the surplus land under the ceiling Act the property inherited by his wife from her mother after divorce cannot be treated to be a family property of Dunga Ji. Court held that Dunga Ji produced a fabricated document of customary divorce with a view to evade the provision of ceiling act 1960. Court stated that Hindu marriage can be dissolved according to Section 13 of the Hindu Marriage Act, 1955 and if customary divorce is claimed then it must be established by cogent evidence. In the present case, the plaintiff husband was not able to establish the existence of customary divorce.

In *Loya Padmaja @ Venkateswaramma vs Loya Veera Venkata Govindarajulu*⁷ Respondent husband filed the petition under section 11 of Hindu marriage to declare his marriage with the plaintiff wife as nullity.

⁵ 2000(1)ALD607

⁶ AIR 2019 SUPREME COURT 3665,”Swapanjali Sandeep Patil v. Sandeep Ananda Patil (2019) SCC Online SC 329; Subramani v. M. Chandralekha (2005) 9 SCC 407 and Yamanaji J. Jadhav v. Nirmala (2002) 2 SCC 637”

⁷ AIR 2000 ANDHRA PRADESH 284,

marriage with the plaintiff wife as nullity. He alleged that his wife was already married to some other person before getting married with him and this fact was not disclosed to him. The wife stated that she has already divorced by a customary divorce from her earlier husband before the caste elders much before her marriage with the respondent husband. Even the respondent husband married her, fully knowing that she was married to some other person. Both the parties to marriage lived together for more than 10 years. The Court upheld that customary divorce dissolving the marriage is recognised by “section 29(2) of Hindu Marriage Act” and stated that “Section 29(2)” provides protection to customary divorcees and provisions of Hindu marriage Act relating to divorce are not applicable to such customary divorcees.

*Gurdit Singh versus Angrej Kaur*⁸ is a Landmark case which highlights the relation between customary laws and codified legislative law. This case underscores the privilege enjoyed by the customary practices in personal laws in India, particularly among the Jat community of the Jalandhar district, Punjab. Validity of second marriage, known locally as “Chadar Andazi” was the challenged as well as the court also had to deal with the succession to the property after the death of the husband of such a second marriage. The court recognised the second marriage of Angrej Kaur, under the customary practice of “Chadar Andazi” and this case affirmed that custom permitted the divorced wife to remarry during the lifetime of her first husband, thereby entitling Angrej Kaur to inherit her second husband's property. Case gave due recognition to customary practices in Indian jurisprudence. This judgment promotes due respect for oral traditions and local customs within the formal legal framework.

*In Duleshwar Prasad Deshmukh versus Smt. Kirtilata Deshmukh*⁹ A customary divorce under the name “Chod Chhutti” was executed between the parties. The validity of such customary divorce was challenged on the basis of section 4 of Hindu Marriage Act, which provides that provisions of HMA would prevail and repeal all existing laws in the form of rule, custom or usage, which are inconsistent with the provisions of Act. Section 29(2) of the Act deals with savings which save the right to seek customary divorce after the enactment of Hindu marriage Act. The court in this case granted the divorce under section 13 of the Hindu Marriage Act on the basis of customary divorce in the form of “Chod Chhutti” followed by desertion of each other. Regarding Section 29(2) and Section 13 of HMA the court made the following observation:

“It is manifestly clear from plain reading of sub-section 2 of Section 29 of the Act of 1955, that a marriage can still be dissolved in accordance with the custom governing the parties or under any other law providing for the same. The operating words of sub-section (2) of section 29 of the Act of 1955 i.e. “nothing contained in this Act shall be deemed to affect any right recognised by custom” would lead to demonstrate that the provisions of the Act do not nullify the existence of any custom which confers a right on a party to obtain a dissolution of a Hindu marriage. Normally according to the Hindu Marriage Act, the dissolution of a marriage by the custom is not recognized but the saving clause of sub-section (2) of section 29 recognizes the customary divorce unless it is against the public policy. Result would be that a Hindu marriage may be dissolved either under Section 13 of the Act of 1955 or under any special enactment in accordance with the custom applicable

⁸ (1967 INSC 126)

⁹ FAM No. 145 of 2016 HIGH COURT OF CHHATTISGARH, BILASPUR

to the parties. Section 29(2) of the Act of 1955 does not disturb the practice of customary divorce occupied before the Act came into force. In other words the explanation carved out by sub section (2) of section 29 operates as an effect that there has been in fact customary divorce can be given effect to. For custom to have a colour of a rule of law, it is necessary for a party claiming it to plead and thereafter to prove such custom is ancient.”¹⁰

*Balwinder Singh versus Gurpal Kaur*¹¹ Parties got married according to Sikh rites and ceremonies and lived together for two years. The wife filed the petition under section 11 of Hindu marriage act for declaration of nullity of marriage as husband was already having a living spouse from the first marriage at the time of marriage with the petitioner. Husband stated that his marriage with the first wife was already dissolved by customary divorce and a deed of divorce was formulated between him and his previous wife, attested by notary public and signed by him, his father, his first wife, and her father. The court upheld the validity of customary divorce by execution of the deed of divorce. Court dismissed the appeal of the wife for grant of relief and held that:

“...that there does exist a custom amongst Sikh Jats of District Amritsar under which a marriage can be dissolved out of court preferably through a written instrument. The very fact that dissolution of marriage amongst Sikh Jats of that district has been taking place even after the enactment of the Act is in itself a strong proof of its recognition by the community concerned. It would show that despite the relief of dissolution of marriage by divorce being available under the Act, people still prefer to resort to customary law rather than seek redress in a court of law under the Act.”¹²

In *Nishan Singh versus state of Punjab*¹³ Writ petition has been filed by the parties to seek protection of law by providing police help and directing their relatives not to interfere with their life and liberty. Parties got married according to Anand Karaz rites and ceremonies. This was the second marriage of both the parties. The husband obtained Panchayati divorce from his first wife and the wife has also obtained divorce by mutual consent under section 13B of the HMA. Marital status of the husband was disputed as he just relied on Panchayati divorce and Panchayati divorce has no recognition in law. Therefore, the first marriage of the husband is subsisting as he has not taken divorce from the court of law and if he is taking a second wife, he is liable for bigamy. Court took the plea of section 4 of HMA stating that in view of section 4 of Hindu marriage act, all earlier custom and usages cease to have any effect and therefore Panchayati Raj divorce is not acceptable as valid divorce in the eyes of law. Court held that Hindu Marriage Act, 1955 is a complete Code which lays down conditions of valid marriage and procedure for divorce. In view of Section 4 of HMA provisions of codified law prevail over earlier customs and usages and all earlier customs and usages ceased to have effect after 1955 with the enactment of HMA. This case has not taken care of the opening words of Section 4 which states which give protection to the savings expressly provided in this Act and Section 29(2) provides savings to the custom to obtain divorce without the intervention of the court.

In *Smt. Krishna Veni versus union of India*¹⁴ One Krishna, was the second wife of a freedom fighter named Sardar Natha Singh,. Sardar Natha Singh received a pension from the central government. First wife of Sardar Natha Singh had divorced him and Krishna relied on the deed of divorce executed by the first wife and Sardar Natha Singh to apply for pension for widow under

¹⁰ Ibid

¹¹ 1984 SCC Online Del 201

¹² Ibid

¹³ 2021 SCC OnLine P&H 523

¹⁴ WPA No. 2346 of 2018, Calcutta High Court

the central government scheme. The government refused stating that divorce deed is not an acceptable form of divorce under the Hindu Marriage Act. The court reasoned that in the absence of a decree of divorce obtained from the court of law such customary divorce in the form of a deed of divorce is not acceptable. Krishna claimed the benefit under section 29(2) of Hindu Marriage Act, which gives protection to the customary divorces. The Court further held that to claim the protection under Section 29(2) of the Hindu Marriage Act a party has to establish the custom which the party relies on. And to obtain divorce the custom must be recognised by the community and party has to get a declaration from the civil court about the validity of the customary divorce. It was observed by the court, as:

“For Section 29(2) of the 1955 Act to be invoked, it has to be established by the party relying on a custom that the right of the party was recognized by custom, to obtain the dissolution of a Hindu marriage. In the present case, the petitioner did not approach the civil court for declaration regarding validity of the divorce deed. There was nothing to prevent the petitioner from approaching the competent civil court for such declaration. The burden and initial onus lie on the petitioner to prove the existence of a custom having the force of law, to be proved by evidence - oral or documentary - in order to attract the benefit of Section 29(2) of the Hindu Marriage Act.”¹⁵

In *Yamanaji H. Jadhav versus Nirmala*¹⁶, the wife had filed a suit for the declaration that the customary divorce deed executed by her was invalid in law as she was forced to sign the deed under force and coercion without the knowledge of the content of the deed. The Supreme court remitted the case to the trial court to tackle the problem of validity of customary divorce, Supreme Court stated that Hindu marriage is considered to be a sacrament and to rely on customary divorce it has to be proved with cogent evidence.

It is well established by courts in a series of cases where customary divorce prevails over general divorce law, therefore it must be proved and established. Burden of proof for such establishment lies on the person pleading for it¹⁷

*Swapnanjali Sandeep Patil v. Sandeep Ananda Patil*¹⁸ is a case under special marriage act where the wife filed the petition for declaration of her marriage to be nullity of her marriage stating that at the time of marriage between her and respondent husband, he had a living spouse and as per section 24 of Special Marriage Act read with Section 4 of the Act such marriage was void. In this case the respondent husband was unsuccessful in proving customary divorce with his first wife. In fact, the courts below had not framed an issue itself regarding the establishment of customary divorce. In the absence of such proof of valid customary divorce, the court granted the decree of nullity favouring the wife.

Harmonisation of conflict between Section 29(2) read with Section 3(a) and Section 4 of HMA

Customs are defined under section 3(a) and protected “under Section 29(2) of Hindu Marriage Act”. Section 4 of the act gives more importance to the provisions of the act over the earlier law, custom or usage and any law which is inconsistent with the codified law is to the extent of inconsistency is declared to be without any effect. Many times, Cases relating to customary

¹⁵ Ibid

¹⁶ (2002) 2 SCC 637,

¹⁷ Subramani v. M. Chandralekha, (2005) 9 SCC 407,

¹⁸ (2020) 17 SCC 510 I

divorce have come before the court raising the conflict between Section 4 and 29 (2) of Hindu Marriage Act.

In *P. Mariammal versus Padmanabhan*¹⁹ Madras High court in 2000 tried to resolve the difference between Section 4 and Section 29(2) of the HMA and stated that section 29(2) gives protection to customary divorces and provisions of HMA do not prevail over these customary practices. Parties are free to obtain customary divorce and they need not go to court to seek divorce. But custom must be a valid custom to satisfy all the essential ingredients.

Therefore, customary divorce cannot lose its sanctity after the implementation of Hindu Marriage Act, 1955.

In *Balwinder Singh versus Gurpal Kaur*²⁰ Delhi High Court upheld precedence of Section 29(2) and held that:

“...On a plain reading of this subsection it is manifest that a marriage may still be dissolved in accordance with a custom governing the parties or under any other law providing for the same. The opening words of this Subsection "Nothing contained in this Act shall be deemed to affect any right" leave no room for doubt that the provisions of the Act do not nullify that existence of any custom which confers a right on a party to obtain dissolution of a Hindu marriage. Thus, the validity of any customs recognising the right to dissolve a marriage is expressly saved by this subsection.”²¹

In *Rano Devi versus Rishi Kumar*,²² Parties dissolved their marriage by drafting a divorce deed as per their custom instead of seeking the divorce with the intervention of court. Jammu and Kashmir High Court upheld the supremacy of Section 29(2) which protects the right to obtain divorce in accordance with the custom. section start with non obstante clause and give precedence to this section over other parts of HMA. Therefore Section 29(2) take care of customary divorces and prevails over section 4 and 13 of HMA.

Thus, Section 29(2) of the Act does not change the position of a customary divorce which was existing before the Act came into force. A number of cases decided by the court show that people are still seeking customary divorces even after the passing of the Act which is strong proof of its acceptance by the particular community.

Challenges to the practice of customary divorce

In 1954 when the Hindu Code Bill was discussed in the parliament it was stated that the codification of law is in the best interest of the country and would provide certainty to law and will take care of the latest changes in Hindu society. Section 29(2) of HMA deals with customary divorces and these customs have to meet specific criteria of being ancient, continuous, certain and reasonable, and not against public policy. Though customary divorce is practised, it is not without challenge. There are following challenges:

- There is no universal Hindu custom of divorce and practice of customary divorce vary from community to community
- If a party relies on the customary divorce, then it must prove the existence and validity of the custom within their community through proper oral or documentary evidence

¹⁹ AIR 2001 MAD 350,

²⁰ 1984 SCC online Delhi 201

²¹ Ibid

²² (1981) 1 Divorce and Matrimonial Case 357,

- Though courts recognize customary divorces, when the customary divorce is disputed then parties need to get a declaration from the court regarding the existence and validity of the divorce.
- Customary divorce is a divorce which is out of court settlement and ancillary proceedings which are taken care by court like maintenance to wife and children, custody of children, settlement of joint property are needed to be settled properly.
- Getting a divorce from court of law is a long and cumbersome process as guilt grounds take a number of years to obtain the divorce, consent ground requires mutual consent of both the parties and “breakdown of marriage as a ground of divorce” is still not introduced in the HMA.

Conclusions and suggestions

Earlier divorce was not known to the general Hindu law, but it was practiced in certain communities, as recognized by custom and the courts upheld such custom when it was not opposed to public policy. It is not pertinent for the parties in any such case to go to court to obtain divorce on grounds recognised by custom. It would be an open option to the parties to dissolve the marriage out of court in accordance with such custom given that the custom must be a valid custom. These social customs and usages are continuously practiced and uniformly observed for a long period of time acquired force of law amongst certain communities. These are the customs which have been expressly saved by Sub-section (2) of Section 29. In the nutshell a Hindu marriage can be dissolved either under Section 13 of the Act or under any special enactment or in accordance with any custom applicable to the parties. However, in case the validity of a customary divorce is challenged before the court of law then the party claiming the validity of customary divorce has to obtain a decree of declaration from the court of law that the marriage is validly dissolved by a customary divorce. The burden of proof to establish the existence of customary divorce and its recognition by the law is on the party who relies on such customary divorce. If the party fails to satisfy the validity of the customary divorce, then such party is not entitled to recognition of customary divorce. There is another challenge to the customary divorce is that when a person remarried after obtaining a customary divorce and he has not taken a decree of declaration of customary divorce from the court of law then he may be punished for bigamy under section 494 IPC, 1860 in case court refuses to accept validity of customary divorce. It is therefore advisable to obtain a decree of declaration of divorce of marriage on the basis of customary divorce before getting remarried.

Customary divorce is deviation from the normal way where the parties obtain divorce with the intervention of the court therefore the courts have adopted a very cautious approach. Whenever the customary divorce is challenged, courts have adopted a very strict approach and asked for proof of such valid customary divorce to rely for relief sought in the case. If the custom does not fulfil the requirement of valid custom, then courts are reluctant to recognise such customary practices as if the custom is opposed to public policy, morality or against the purpose of Hindu law. Customary divorce are usually obtained through the intervention of panchayats at local level. If custom does not exist then panchayats are not allowed to take upon themselves the right to dissolve the marriage. Courts have used discretion to give or withhold “customary divorces depending upon facts and circumstances” of each case.

When HMA was enacted, its purpose was to bring uniformity and certainty of law for Hindus though custom was given its due recognition as it was a requirement of that particular time. In the contemporary time when discussions are going on for the implementation of Uniform Civil Code to bring uniformity in all personal laws in order to maintain equality in society and to fulfil the object and purpose of the Constitution. At this juncture giving recognition to diverse customary practices to obtain divorce is creating complexity and confusion in law. After seventy years of enactment of HMA society has undergone many changes and having such diverse laws which are uncodified relating to divorce need to be removed from statutory recognition as every time they are challenged, party pleading for it needs to get a declaration from the court about the existence and validity of the such customary divorce. Then comes the question of regulation of ancillary benefits attached with the marriage which needs to be settled at the time of divorce like maintenance of children and wife, custody of children , settlement of joint properties. In customary divorces these matters can be taken as casually and can affect the women adversely. These sensitive matters should be settled with the help of courts rather than by local agencies like panchayats.

Therefore, divorce is a very sensitive issue which should be settled by statutory divorce with the intervention of courts and there should be the same procedure for all Hindus irrespective of the caste and community they belong to. And at the same time freedom should be given to all castes and communities to observe their own customary practices but for validity of divorce, statutory conditions laid down under HMA are to be followed to maintain uniformity in law and remove any kind of confusion about the status of the marriage. This step will further check the social problems of bigamy, succession, maintenance and custody of children in case of divorce. HMA has undergone amendments in 1976 and the concept of divorce was liberalised with the inclusion of divorce by mutual consent and discussions are going on to introduce” irretrievable breakdown of marriage as a ground of divorce”. With these developments getting divorce from the court of law has not remained difficult. Time has come to say goodbye to the old traditional outdated practices of customary divorces to promote equality and justice in the society. There is a need to maintain uniformity of law as has happened in case of customary ceremonies recognised for valid hindu marriage under HMA and courts as well as legislature has tried to maintain uniformity of law by emphasizing about registration of marriages and law has been made in different states for compulsory registration of marriages. Similarly in case of customary divorce parties should be free to obtain it privately but to maintain uniformity, parties should seek it from the court of law or to get a declaration from the court about the existence and validity of customary divorce. Protecting arms of courts and legislature is a must in case of divorce as it is going to affect the status of parties and marriage is ultimately going to be dissolved for future time to come.