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## **DIVORCE UNDER THE HINDU MARRIAGE ACT, 1955**

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### **ABSTRACT**

As an Indian-born woman, we have always been familiar with the term "pati parmeshwar," which denotes that your husband is your god and that you should obey him without question or object. However, modern women do not subscribe to this traditional myth. India is a land of many diverse cultures and religions, and because each religion has its own unique customs and practices, so does the personal law that applies to it. India is a secular nation where a variety of religions are practised openly. Hinduism, Islam, and Christianity are the three main religions practised. As the name suggests, personal law is a body of rules that apply to matters pertaining to an individual's private life, such as marriage, adoption, and succession. The end of a marriage and the dissolution of a couple's rights and obligations under a marriage are known as divorce. A marriage cannot be seen as a good marriage, according to people of many religious backgrounds, if the foundation of the relationship is one of violence or terror. People consummate marriages in accordance with religious rituals and ceremonies, most of which are formally codified by personal laws.

## **I. Introduction**

Hindu marriage itself was seen from the beginning as a sacramental relationship between husband and wife that endures till death, signifying a holy tie that can never be broken. Once made, a sacred knot like that couldn't be undone. Hindus believed that splitting up married couples violated God's rule. They did not recognise divorce after the Hindu Marriage Act of 1955 was passed because they did not tolerate separation. Several sections discuss issues relevant to divorce and those related to it. According to Kautilya in Arthashastra, a legally valid marriage can end if both parties consent to it. Manu, on the other hand, believed that stopping was challenging. Marriage—a tie that not only brings two individuals together but also two families—is a seven-letter term in itself. The Hindu marriage, however, had never had a divorce before 1955. The traditional view holds that a marriage is not just a relationship or a link that lasts for the present but also extends into the future.

## **II. Divorce Theories**

The theories of divorce are as follows:

### **The Fault Theory**

The offence theory or guilt theory are other names for the divorce fault theory. As a result, it emphasises the idea that a marriage may end if one of the partners inside the married ties commits a crime against the innocent spouse. So, it is essential that the matrimonial ties contain both a guilty and an innocent partner. Only the innocent party has the right to file for a divorce remedy. The most striking aspect, though, is that if both parties are at fault, there is no way for them to get even if they are both at blame.

### **Mutual Consent Theory**

This viewpoint contends that since two people choose to marry one another of their own free will, they should also be allowed to leave on their own. In any event, it is strongly condemned that this approach will encourage immorality because it will lead to hurried divorces and parties would end their marriages regardless of whether there was a little personality conflict.

### **Irretrievable Breakdown Theory**

According to the irretrievable breakdown of marriage theory, a breakdown in the married connection results from such unfavourable circumstances that there is no realistic chance that the couples would remain together. The husband and wife are unable to coexist due to these critical and hard circumstances. Hence, we might conclude that, under certain situations, there is a stronger motive to live away from your spouse than the feelings of love, loyalty, and affection that should typically rule between a husband and wife.

### **III. Why is Divorce Common in Modern Society?**

Divorce rates have significantly increased in Indian society. Regarding these stereotypes of Indian society, there are a variety of causes for divorce, and at the same time, the dynamic approach of the society can be seen. The following are the primary causes of divorce:

#### **Indian Women's Independence**

For the sake of the so-called "family respect and standing in the community," women used to follow the standards of the society in which they lived without challenging them and with their heads down. Yet, as modernization, industrialization, and urbanisation accelerated, women began to pursue education and become more conscious of their social interactions.

#### **Lack of Communication in Marriage**

In successful marriages, communication is crucial. As a result, miscommunication between the two spouses would inevitably lead to arguments and confrontations. as a result, poor communication can occasionally lead to divorce.

#### **Affairs And Cheating**

Once a trust has been betrayed, it can never be rebuilt from scratch. So, divorce is inevitable when a faithful partner's confidence is betrayed by a cheater because it can never be earned back. A connection that would otherwise exist between the two people can be destroyed, destroyed, or doomed by cheating and having an extramarital affair. Even punishable provisions exist in India for cheating on your spouse.

## **Issues With the In-Laws**

When a girl leaves her family and joins a new one only to discover that her inlaws are abusing her and making life unbearable for her, it becomes very difficult for her. Due to the prevalence of such instances, the Indian Criminal Code also contains a statutory provision addressing it, Section 498A, which refers to the "husband or relative of the spouse of a woman subjecting her to cruelty." The woman is frequently coerced into bringing money from her father's house, and when she refuses or is unable to deliver such significant sums of money, the in-laws torture her to death. For this, Section 304B has harsh penalties which allow dowry deaths.

## **Issues With Procreation in Marriage**

Indian societies are set up in a way where society not only strongly persuades and affects the couple, but also determines when a couple should become parents. This puts a lot of strain on the relationship and, if the couples can't resolve the issue amicably, could lead to divorce.

## **IV. Applicable Laws Under The Hindu Marriage Act of 1955 Relating To Divorce**

As the needs of the Indian society changed, the concept of divorce also got codified under the Hindu Marriage Act, 1955. Thus, there are a number of sections that deal with divorce such as:

### **Section 10**

First off, judicial separation refers to a legal procedure that allows a married couple to formally separate even while they are still legally wed. Consequently, Section 10 of the Hindu Marriage Act of 1955 likewise emphasises this idea. Either spouse may file a petition asking for a judicial separation order on any of the grounds listed in Section 13's sub-section (1), as well as on behalf of the wife additionally on any of the grounds listed in Section 13's sub-section (2) of these grounds on which the request for separation had been made.

### **Section 13**

The fundamental section, Section 13, specifies the reasons for divorce in great detail. Adultery, brutality, desertion, conversion, insanity, leprosy, venereal disease, renunciation, and the assumption of death are among the justifications. So, the two legally married couples must divorce on the basis of these grounds. In cases where both 18 <https://blog.ipleaders.in/divorce->

under-hindu-marriage-act-1955 19 Ibid 12 parties agree that they cannot remain married and desire to end their marriage, Section 13(A) also allows for a divorce by mutual consent.

### **Grounds of Divorce Under Hindu Marriage Act:**

According to Section 13 of the Hindu Marriage Act, there are certain reasons for divorce. These reasons are therefore legally valid grounds for divorce, and if they exist, divorce is regrettably inevitable.

### **Adultery**

The definition of adultery in Section 13(1) (i). According to the law, adultery is defined as engaging in sexual activity with a partner who is not one's husband after the marriage has been solemnised and maintaining marital links. In India, adultery is a crime with a specific punishment outlined in Section 497 of the Indian Criminal Code. According to Section 497 of the Indian Criminal Code, engaging in sexual activity without the consent or coercion of the spouse with a person who is and whom he knows or has cause to believe to be the wife of another man does not constitute the crime of rape but rather the crime of adultery.

*In Joseph Shine v. Union of India*, the Supreme Court ruled that Section 497 of the Indian Penal Code and Section 198(2) of the Code of Criminal Procedure together constitute a legislative package to deal with the offence of adultery. As a result, the Supreme Court declared this legislative package to be unconstitutional and ordered its repeal.

*Sachindranath Chatterjee vs Sm. Nilima Chatterjee*, the case involved a legally married couple. After solominizing, the husband abandoned the woman at her house. Wife had to finish her studies in order to land a job in a different city at regular intervals of two to three months, he would see his wife. Later, he discovered that his wife had engaged in adultery, meaning that she had sex with her nephew and others. The marriage is dissolved after the complainant appeared in court with infidelity as the basis for his divorce request.

### **Cruelty**

In its simplest form, cruelty refers to the use of torture or other disproportionately cruel methods of treatment. Hence, Section 13(1)(ii) declares that even after a marriage has been solemnised, treating the petitioner cruelly may still be taken into account as a basis for

marriage. The law has specific measures for cruelty as well as being a criminal violation. The cruelty that a spouse or a husband's relative may exhibit towards a woman or a group of people is covered in Section 498A of the Indian Penal Code IPC.

*In the case of Krishna Sarvadhikary v. Alok Ranjan Sarvadhikary*, it was decided that the genuine purpose of one spouse to harm the other is a significant consideration, while in ambiguous situations the offending spouse's state of mind would also be important.

### **Desertion**

Simple definition: Desertion is the act of leaving someone behind. Hence, Section 10(ib) of the Hindu Marriage Act of 1955 had given it a definition. According to this, a divorce may be granted if the petitioner had been abandoned by the respondent for a continuous two years just before the petition was presented. Even if the spouse has left the house but continues to communicate with the petitioner by phone or email, this cannot be used as a basis for divorce or as evidence that desertion has not occurred. *In the case of Jyothi Pai v. P.N. Pratap Kumar Rai*, it was decided that the petitioner has the initial duty of showing their departure from society without a good reason.

### **Conversion**

The Hindu Marriage Act of 1955's Section 13(1)(ii) defined conversion as a basis for divorce. The fundamental purpose of the Hindu Marriage Act is undermined if one of the spouses in the marriage tie stops being a Hindu and adopts a different religion.

### **Insanity**

The word "insanity" is derived from the word "crazy," which refers to a state of mind that is not normal. So, a person cannot be regarded competent enough to bind themselves inside the married bonds if they are unable to understand the difference between right and wrong, to provide consent, or to approve or disapprove of what is happening around them.

*In the case of Ajitrai Shivprasad Mehta v. Bai Vasumati*, it was decided that in order to fully satisfy the court, the proof of unsoundness of mind must be established beyond a reasonable doubt.

## **Leprosy**

Mycobacterium leprae causes the chronic infectious disease known as leprosy, sometimes known as Hansen's disease. The disease mostly affects the skin, peripheral nerves, upper respiratory tract mucosal surfaces, and eyes. So, it had been stated in Section 13(1)(iv) that a person who has a spouse who has leprosy, a fatal, contagious, and incurable disease, may obtain a divorce on this basis.

*In the case of Annapurna Devi v. Nabakishor Singh*, it was decided that even though it is undisputed that the respondent has had leprosy for at least three years prior to filing for divorce, the onus of proof shifts to the petitioner to show that the disease is severe and incurable.

## **Veneral Disease**

The term "sexually transmitted disease" can also be used to refer to venereal disease. It is also a divorce reason under Section 13(1)(v). A petition for divorce may be submitted by one spouse if the other is afflicted with a severe, transferrable incurable illness. The diseases that are explicitly transferred, including AIDS, are classified as venereal diseases.

*In the case of Annapurna Devi v. Nabakishor Singh*, it was decided that when a woman is free from venereal disease, forcing her to engage in sexual activity is cruel on the side of the husband.

## **Renunciation**

If one spouse embraces religion or another belief and renounces all worldly interests, the other spouse may file for divorce in accordance with Section 13(1)(vi). Such a person so reaches a stage of Maslow's self-actualization and desires to be free of all worldly attachments, including the bond of marriage.

## **Presumption of Death**

An individual is deemed dead if they have not been seen or heard by those who are needed to have "normal knowledge" of them for a continuous period of seven years. If one spouse is eager to remarry, the other spouse must file for divorce. As mentioned in Section 13(1), this circumstance is also a basis for divorce (vii). It was decided in one of the cases that the

presumption of death under Section 108 of the Evidence Act should be drawn in circumstances where the husband's close relatives claim they haven't heard from him in seven years. This ruling can also be used as justification for divorce.

## **V. PROCEDURE OF DIVORCE**

The court where the divorce petition shall be filed should be presented is specified in Section 19 of the Hindu Marriage Act of 1955. It further emphasises the requirement that every petition filed under this Act be filed with the district court within the geographic boundaries of the initial ordinary civil jurisdiction. Hence, the petition may be submitted in :-

- where the marriage was officially celebrated.
- the address at the time of petition filing where the respondent is residing.
- where the two most recently shared a home.
- where the petitioner's wife most recently lived.

**The substance and verification of the petition are specified in Section 20.**

Every divorce petition submitted under the Hindu Marriage Act of 1955 must be carefully reviewed based on the circumstances of each case in order to determine whether or not relief is appropriate, according to Section 20 Subsection 1. According to Section 20 Subsection 2, the statements made in each petition filed pursuant to this Act shall be verified by the petitioner or by any other competent person in a manner prescribed by law for the verification of the complaints, and shall be admissible in evidence at any hearing.

## **VI. Grounds of Divorce Available for Wife**

The wife has additional specific rights, including: If the husband has more than one wife residing with him simultaneously,

- a. A wife may present an appeal for divorce under clause (I) of subsection (2) of section 13 of the Act if the husband has one or more surviving wives at the time this Act takes effect.
- b. The only restriction on a wife's right to file for divorce under this article is that the other



wife must be present at the time the petition is presented, regardless of any evidence that the petitioner was aware of the other wife's presence and that the husband was not cruel.

c. For instances covered by Section 13(2)(i) of the Act, postponement cannot be interpreted as mistakenly indicating approval of, interest in, or lack of concern for a wedding. The wife's entitlement to divorce under s.13(2)(i) is independent of how she behaved prior to the passage of the Act.

d. It is not necessary to provide direct evidence of the first wife's presence at the time the second marriage was consummated; rather, this fact may be inferred from other realities presented in the context.

e. A wife is eligible to have a petition for divorce filed against her by her husband on the grounds of rape, sodomy, or bestiality under Section 13(2)(ii) of the Act. In addition, rape is a crime that is defined in Section 375 of the Indian Criminal Code.

f. A person commits sodomy if they engage in sexual activity with another person of a different sex, a creature, or engage in non-coital carnal copulation with them.

## **VII. Conclusion**

Believe that marriage is a sacred institution. There was no legal foundation for divorce Hindus after the Hindu Marriage Act of 1955. Divorce was a taboo topic in the Indian community at the time. The women were the silent victims of such a rigorous structure. the current circumstance and both the environment and society have altered. The law now provides a way to leave a miserable forced institution by getting a divorce through a court decision. The true beneficiaries of such a clause are women who are currently not required to subtly bear the abuse or cruelty that their spouses have inflicted against them. The largest concern, however, is that the marriage system will be completely stopped as a result of how the judiciary is handling cases where irretrievable marriages end in divorce.

Every philosophy has benefits and drawbacks. Their applicability varies based on the situation. Therefore, it is crucial for our nation's parliamentarians to approach this subject in a very sensitive manner after carefully weighing its potential repercussions.