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# COMPARISON OF ANCIENT AND MODERN HINDU JURISPRUDENCE OVER DIVORCE RIGHTS

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## ABSTRACT

Marriage dissolution has long been regarded as going against the will of God. Ancient Hindu law does not permit divorce because religious sanctions had heightened the nature and value of the institutional marriage, and it is considered as a sacred act or a holy *samskara*, or set of purifying ceremonies that every Hindu must perform. Up to day most of the Hindu villages that follow ancient customs still consider divorce sin. Many ancient sages have presented grounds for dissolution of marriage, which is addressed in this work. Whether or not women in ancient India had the same rights as males when it came to divorce is being discussed in this paper. In addition, the report emphasises whether there are any common grounds for divorce in both ancient and modern Hindu jurisprudence. It also takes into view whether or not the various *Smriti karas'* justifications of giving grounds are reasonable. The paper also compares and contrast the ancient and modern Hindu divorce grounds.

**Keywords:** Marriage, Ancient Law, Hindu Law, Divorce, Modern Grounds, Comparison.

## INTRODUCTION:

Personal Laws are one of the most distinctive aspects of the Indian legal system. They are religious regulations that control marriage, inheritance, divorce, and other aspects of people's lives.<sup>1</sup>

The Personal Laws provide stories about culture, behaviour, beliefs, and values, all of which are social constructs that impact people's perceptions of their ancestors and roots. Such social structures have legal legitimacy in India. India is a cosmopolitan culture, and different ethnic groups have their own set of laws. As a consequence of invasions and migrations, several religious groups such as Islam, Parsi, and Christians have made India their home over the years.

Marriage and sonship are two of the most unusual chapters in ancient Hindu law's *Litera Legis*. Marriage had already gained the hallowed status of a sacrament by the time of the *Rig-Veda*. The basic belief was that marriage was a must-have since it was the only way for a person to effectively fulfil his religious commitments.

The *smritis* takes a careful approach to the theme of marriage and provide a fascinating study. Many other *Smritikaras* and commentators, as well as *Manu*, elaborated on the subject. Marriage is the foundation of major legal rights and obligations, as well as the foundation of social structure. The importance and need of the marital institution are self-evident. Marriage is regarded as a *samskara* or sacrament in Hindu law.

Divorce on the other hand, is a contentious subject. Divorce is prohibited under Hindu law, with the exception of a few groups, primarily from the lower socioeconomic strata, where traditions and customs allow it; and there was strong opposition to any provision for divorce in the new legislation that was being drafted. Although some of the *Smriti Karas* did not address divorce in the usual sense, it is now thought that they did state that a woman might take a second spouse in certain conditions. *Narada* says "A lady may pick another husband from these five tragedies if her spouse is lost, dead, secluded from the world, impotent, or humiliated." However, the Hindu Marriage Act, 1955 allows for divorce for nine grounds listed in sub-Section 13(1), as well as two additional grounds listed in sub-Section 13(2). (1A). Both parties

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<sup>1</sup> Saldhana v Saldhana, (1930) AIR Bom 105 (India).

to the marriage have access to the grounds mentioned in the said act.<sup>2</sup>

## **HISTORICAL BACKGROUND:**

Hindu law has one of the longest histories of any legal system in the world. It was based on the same main sources for about 2,500 years, Sanskrit scriptures published between 500 BCE and 500 CE. These texts (*Dharmastras*) were regarded to be revealed and were considered to be a part of the *Veda*, which was everlasting and unchanging. The core texts were the focus of multiple comments from the seventh to the seventeenth century, in which each author harmonized the complete body of often contradicting *Dharmastras* into cohesive doctrines. In 1772, the British decided that Hindus would be subject to *Dharmastra* law in newly established Anglo-Indian courts of law. Nonetheless, the British justices' common law background, their lack of knowledge of Sanskrit, and their unfamiliarity with Hindu culture resulted in important advancements.

Since the dawn of Aryan culture, the British have referred to the pantheon people as Hindus because they dwelt on the banks of the Sindhu River. However, written history dates back to 500 B.C. 3 During this time, the general public had complete freedom in matters of personal law. The sages ruled over society during this time period. Religious leaders' laws not only referred to religious ceremonies and rites, but also served as an ethical and moral code.

The *Vedas*, which are considered divine law, gave Hindu rules their validity. *Vedas* were considered as the supreme law in ancient India. The sacred divine law held that the marriage union was indissoluble once the seven steps, which is commonly known as *Satpadi*, is completed. It cannot be declared invalid even in the absence of consummation. When the *Vedas* were spoken aloud, they were referred to as *Shruti*, and they were thought to direct people's behaviour. *Smriti*, which means "what is remembered," is another type of legislation that existed in ancient India.

Various authors in ancient India authored varied interpretations of the *Vedas*, which led the people of that period. Women had no or almost no rights in ancient Indian jurisprudence when it came to divorce, although there were several circumstances on which a woman may be separated from her husband but the rights are available for husband only. *Smriti* is also a sign for the number 18, which refers to 18 Indian academics who are credited with creating Dharma-

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<sup>2</sup> Prabhash Saxena v Ranjana Saxena, (2001) S.C.C OnLine Del 620 (India).

related *Smriti* writings. They are “Vishnu, Saunaka, Daksha, Parasara, Yama, Gautama, Devala, Harita, Apastamba, Satatapa, Vasishtha, Usana, Atri, Sankha-Likhita, Samvarta, Manu and Yajnavalkya”.

## **HINDU JURISPRUDENCE OVER DIVORCE:**

### **i) ATRI-SMRITI:**

Atri was a pro-feminist who is of the opinion that a wife should never be dissociated from her husband. The *Smriti kara* says:

“*Svayam-Vi- prati panna-va-yadiva-vipratarita [or Vipravadita]. Balan- naree-prabhuktava-chorabhukta-tathapiva-Natyajya-Dushi- ta-Naree-Nasyasthyago-Vidhiyate*”.

It signifies that a woman will not be divorced or abandoned by her husband if she elopes or runs away from home, does an immoral act, acts immorally, or is assaulted by kidnappers or robbers.<sup>3</sup> He appears to be a worshipper of women. He considers equal rights for both men and women because he had not provided any ground for a woman to get divorce from her husband as well. Apparently, in his lexicon, he does not have the term divorce.

### **ii) BRIHAD-YAMA-SMRITI:**

*Brihadharma* can be considered as a women right activist as he does not suggest divorce and believe that with good counselling, every relationship may be mended. He said that husband can divorce her wife only in one circumstance which is:

“*Garbhe-jate-paritya- go-nanyatha-yamabhashitam.*”

It means a woman can only get divorce when she has been having an extramarital affair with another man as it is considered as a breach of obligations, as Hindu marriage impose.<sup>4</sup> It is clearly seen how broad minded *Brihadharma* is, as he only imposes a rational ground for divorce. It is also inferable that women do not have the right to get divorce from her husband.

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<sup>3</sup> R Naga Raja Sarma, ‘*Ethics of Divorce in Ancient India*’ 41, International Journal of Ethics, (Apr 1931) 329, 331 < <https://www.jstor.org/stable/2377858>> (assessed 15 December 2021).

<sup>4</sup> R Naga Raja Sarma, ‘*Ethics of Divorce in Ancient India*’ 41, International Journal of Ethics, (Apr 1931) 329, 333 < <https://www.jstor.org/stable/2377858>> (assessed 15 December 2021).

**iii) BODHAYANA-SMRITI:**

*Bodhayana* takes a very unsatisfactory view regarding the position of women in terms of divorce. The writer said divorce can be granted under the following circumstances:

“*Aprajam-dasame-varshe-striprajam- dvadase - tyajet - Mritaprajam-panchadase-sadyastvapriyava- dineem*”

It means a wife can be divorced if;

- A) She continues to have female children, can be divorced after twelfth year.
- B) She had a miscarriage or her child got lost during the initial years of marriage, she can be divorced after fifteenth year.
- C) She is rude or full of anger and hatred, she can be divorced immediately.
- D) She has no problems, and she is eligible for divorce after ten years of marriage.<sup>5</sup>

An image of patriarchy is clearly visible in the writings of *Bodhayana*. According to him, marriage exists simply to fulfil our debts to our forebears and mothers, known as 'pitra,' and that the debt can only be discharged by bearing a male issue (child). The writer suggests no grounds for a woman to get divorce from her husband. The grounds like losing children after birth sounds vicious in the modern world. In the ground like the fourth one, no one is able to prove that the wife has any issue or not, and it is clearly seen that she had no say in this matter. According to him, wives are inferior to their male counterpart and can't question them and if they do so or be slightly rude, they will get divorce.

**iv) BRIHADDHARITA-SMRITI;**

A man can divorce his wife in the following circumstances, according to *Brihaddharita*:

“*Agnidam-Garadam- chandeem-Bhartrighneem-Lokaghatineem - Himsaviharam- vanitam-tyaktva-papam-na-vindati.*”

The grounds for divorce he gave includes:

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<sup>5</sup> R Naga Raja Sarma, 'Ethics of Divorce in Ancient India' 41, International Journal of Ethics, (Apr 1931) 329, 332 < <https://www.jstor.org/stable/2377858> > (assessed 15 December 2021).

- a) An attempt to kill the children or her husband,
- b) an attempt to burn down the house,
- c) if the wife is of harsher temper,
- d) if she indulges in an activity which is considered bad or spoil the chances of her husband with for other worldly affairs.<sup>6</sup>

He gave grounds that are a little different if we compare it with other writers All the grounds are logically and rationally correct. An attempt to kill children or husband will be considered as infanticide or murder which is not a thing to commit hence it is a rational ground. He, at a comparatively early age had anticipated various valid grounds for divorce.

#### v) GAUTAMA-SMRITI:

The writer suggests valid grounds for a woman to divorce her husband which are as follows:

- a) If a husband disappears, and no traces of him is found,
- b) if a husband died during the first few years of marriage,
- c) if a husband had become an ascetic or left worldly affairs,
- d) if a husband is found to be infertile or impotent,
- e) if a husband got indulged in inhuman conduct like drinking, stealing etc.<sup>7</sup>

All are reasonable grounds for divorce. The writer provides rights for the woman to get divorce which some other writers not interested to do so. One more thing to notice here is no grounds is there for a husband to get a divorce from his wife.

#### vi) DEVALA-SMRITI:

In ancient India, when the Mughal empire is extending and their techniques include invasion and looting of treasure and women. The writer is of a wider view that, if a woman got spoiled

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<sup>6</sup> R Naga Raja Sarma, 'Ethics of Divorce in Ancient India' 41, International Journal of Ethics, (Apr 1931) 329, 333-334 < <https://www.jstor.org/stable/2377858>> (assessed 15 December 2021).

<sup>7</sup> R Naga Raja Sarma, 'Ethics of Divorce in Ancient India' 41, International Journal of Ethics, (Apr 1931) 329, 335 < <https://www.jstor.org/stable/2377858>> (assessed 15 December 2021).

7 by the invader, the husband does not have any right to divorce his wife. He and Atri are both can be considered as pro women. He considers equal right for both man and women.<sup>8</sup>

### vii) Manu-Smriti:

Manu is known as a proponent of Hindu law. On the one hand, Manu granted women the same standing as males, stating that "the mother excels a thousand fathers in terms of honour". Manu suggests various ground for both the partners to get a decree of divorce which are as follows:

- a) A wife having a miscarriage after birth, can be divorced after tenth year of marriage.
- b) A childless wife can be divorced after eighth year of marriage.
- c) A wife indulging in immoral conduct or do what is unpleasant to her husband should be divorced immediately.
- d) A woman having only female children can be divorced after eleventh year of marriage.
- e) A wife who suffers from ailments like leprosy, abuses her household servants badly, or wastes her husband's money should be divorced.
- f) If a person deserts his wife, the wife must wait for eight years to get divorce.
- g) The woman can divorce her husband if he moves to a foreign place for the aim of studying or obtaining notoriety and does not return for a period of six years.
- h) If he goes on an erotic expedition and not returned for a duration of three years, he should be divorced.<sup>9</sup>

Although the author gives men and women equal rights to divorce, some of the justifications are ludicrous. He takes a step ahead among all writers. He considers the institution of marriage to be more important than an individual. As a result, compared to other writers who barely allow women any rights, his *Smriti* is rational in considering women as emotional beings with equal rights.<sup>8</sup>

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<sup>8</sup> R Naga Raja Sarma, 'Ethics of Divorce in Ancient India' 41, International Journal of Ethics, (Apr 1931) 329, 334-335 < <https://www.jstor.org/stable/2377858>> (assessed 15 December 2021).

<sup>9</sup> R Naga Raja Sarma, 'Ethics of Divorce in Ancient India' 41, International Journal of Ethics, (Apr 1931) 329, 335-336 < <https://www.jstor.org/stable/2377858>> (assessed 15 December 2021).

**viii) Vashisht-Smriti:**

The writer speaks of different form of divorce a husband can get which are as follows:

- a) When a wife is found to have engaged in wicked or immoral behaviour, she should be abandoned,
- b) attempts to kill her husband,
- c) attempts to take the life of her child,
- d) attempts to artificially abort the child,
- e) indulges in adultery.<sup>10</sup>

All grounds for divorce are valid. Infanticide is a crime in today's world. The writers suggest no grounds for a woman to get divorce from her husband. The grounds like killing of the husband or a child sounds positive.

**MODERN INDIAN LAWS FOR DIVORCE:****HINDU MARRIAGE ACT 1955:**

As the Hindu Code's draughtsman has borrowed exclusively from the English Matrimonial Cases and acts. English case law in so far as it is relevant, has a strong persuasive authority in the Indian courts.<sup>11</sup>

There are so many cases coming in various courts of India before 1955, which still comes but less in number, of people doing fraud in the name of marriage, so in 1955 Parliament has come up with the Hindu marriage act, which covers all the aspects of Hindu marriage and the provisions related to divorce was also introduced. The act was intended to secure the rights of both bride and groom in a marriage. Under the Hindu marriage act, following are the grounds for taking divorce:

- a) "Fault Ground under section 13(1),

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<sup>10</sup> R Naga Raja Sarma, 'Ethics of Divorce in Ancient India' 41, International Journal of Ethics, (Apr 1931) 329, 336 < <https://www.jstor.org/stable/2377858>> (assessed 15 December 2021).

<sup>11</sup> CHRISTA RAUTENBACH, DIVORCE LAW AND THE DISSOLUTION OF LIFE PARTNERSHIP 378 Juta (2014).

- b) Breakdown Ground under section 13(1A) (i), 13(1A) (ii),
- c) Divorce by Mutual Consent under section 13(B),
- d) Customary Divorce under section 29(2)."

### **A) The Fault Ground:**

Section 13(1) of the said act establishes nine reasons for divorce. Adultery, desertion, cruelty, insanity, leprosy, and venereal disease are some of them, others, such as conversion or renunciation of the world, are more commonly associated with Hinduism.

#### **i) DESERTION:**

Section 13(1) of the said Act defines desertion as follows:

*“The expression desertion means the desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party, and includes the wilful neglect of the petitioner by the other party to marriage, and its grammatical variations and cognate expressions shall be construed accordingly”.*

In the case of *S. Tamilarasi vs A. Ashokan*<sup>12</sup>, the respondent wife had left the matrimonial home with her daughter and had not returned for a span of more than two years. The husband had filed the decree of divorce on the ground of desertion and the court held that the wife deserted her husband without any proper justification and the husband had the right to get divorce.

The essentials of divorce in the case of desertion are a) Permanent abandoning of spouse (factum deserendi); b) the desire to stop cohabitation once and for all; c) no justifiable grounds; d) no permission of another spouse.<sup>13</sup>

#### **ii) ADULTERY:**

It is described as a ground for divorce, and is defined in Indian Penal Code<sup>14</sup> and Criminal Procedure Code.<sup>15</sup> It was held in the case of *Chanda Chhitar Lodha vs Mst. Nandu W/O Chanda*

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<sup>12</sup> *S. Tamilarasi v. A. Ashokan*, (2017) S.C.C OnLine Mad 1559 (India).

<sup>13</sup> PARMINDAR KAUR VIRDI, A COMPARATIVE STUDY OF THE GROUNDS FOR DIVORCE IN HINDU LAW AND ENGLISH LAW 88-98 (University of London 1966).

<sup>14</sup> Indian Penal Code, 1860, s 497.

<sup>15</sup> Code of Criminal Procedure, 1974, s 198 c 2 (India).

Lodha<sup>16</sup> that<sup>16</sup>:

“The word adultery like the word adulteration is derived from the Latin root through French, which originally meant ‘mixing, degrading, or counterfeiting’”.

It is described as two people having sexual relations, one of whom is married to a third person, if he or she is single, it is known as single adultery and where both are married, it is known as double adultery. It is in this sense that the Hindu Marriage Act, was understood in the above case.

### iii) CRUELTY:

There is no definite definition of cruelty because it is such a vast idea topic. Several incidents over the last century have demonstrated what cruelty looks like. Basically, what cruelty is can be inferred from the term itself i.e., one partner has treated the other with cruel behaviour. In the case of *A. Jayachandra vs Aneel Kaur*<sup>17</sup>, The Supreme Court ruled that the term "cruelty" refers to human conduct or behaviour related to marriage duties or obligations.

The case, *Russel vs Russel*<sup>18</sup> contains a general definition of 'cruelty', that says “any conduct that poses a danger to life, limb, or health - physical or mental, or causes reasonable apprehension of such danger, to constitute cruelty”.

In the case of *Balram Prajapati vs Susheela Bai*<sup>19</sup>, the petitioner in this instance filed a divorce petition against his wife based on mental cruelty. He established that her behaviour towards him and his parents was aggressive and unpredictable, and that she had made false complaints against her husband on numerous occasions. The court grants the divorce on the ground of cruelty. Cruelty not only considers against the petitioner, but it can also be considered against a family member of the petitioner like in the case of *Bhagwat vs Bhagwat*<sup>20</sup> in which, the husband attempted to strangle the wife's brother and his younger son. In the same way, the act or omission need not only be of the respondent like in the case of *Vinita Saxena vs Pankaj Pandit*<sup>21</sup>, the mother-in-law mistreated the wife, and the husband stood silently, unconcerned

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<sup>16</sup> Chanda Chhitar Lodha vs Mst. Nandu W/O Chanda Lodha, (1964) S.C.C OnLine MP 41 (India).

<sup>17</sup> A. Jayachandra v. Aneel Kaur, (2005) 2 S.C.C 22 (India).

<sup>18</sup> Russel vs Russel, (1924) AC 687.

<sup>19</sup> Balram Prajapati vs Susheela Bai, (2003) DMC 708 (India).

<sup>20</sup> Bhagwat vs Bhagwat, (1966) Mah LJ 83 (India).

<sup>21</sup> Vinita Saxena v. Pankaj Pandit, (2006) 3 S.C.C 778 (India).

about her. This action is considered as cruelty.

#### **iv) INSANITY:**

It means when the person is of unsound mind. The 2 requirements for getting divorce under this are, a) The respondent has been incurably insane; b) The petitioner cannot fairly expect to live with the respondent on a continuous or intermittent basis since the respondent suffers from a mental illness of such form and severity.

In the case of *Vinita Saxena vs Pankaj Pandit*<sup>22</sup>, the petitioner filed a divorce petition against the respondent, alleging that the respondent was suffering from a serious mental condition. This was revealed to her after her marriage. In this case, the court approves the divorce due to the husband's insanity.

#### **v) LEPROSY:**

If one spouse has been diagnosed with a virulent and incurable form of leprosy, the other spouse may seek a divorce.

*Swarajya Lakshmi vs G. G. Padma Rao*<sup>23</sup>, the husband requested a divorce based on the diagnosis of leprosy. With the expert's reports, he claimed that his wife has an incurable and aggressive form of leprosy. In this case, he is successful in obtaining the divorce on the ground of leprosy.

#### **vi) VENEREAL DISEASE:**

It includes a variety of contagious diseases that are widely acquired. Venereal sickness is a ground for the divorce under the said Act, and it must be in a communicable form.

In the case of *Mr 'X' vs HOSPITAL Z*<sup>24</sup>, the Court held that either the husband or the wife might divorce for venereal disease, and that a person who has contracted the disease has no right to marry even if he or she is not completely cured.

#### **vii) RENUNCIATION OF THE WORLD:**

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<sup>22</sup> Ibid.

<sup>23</sup> *Swarajya Lakshmi vs G. G. Padma Rao*, (1974) 2 S.C.R 97 (India).

<sup>24</sup> *Mr 'X' vs HOSPITAL Z*, (1998) 8 S.C.C 296 (India).

Section 13 (1), clause (vi), states that if one spouse has forsaken the world by joining a religious organisation, the other spouse may seek divorce. To trigger this clause, the following requirements must be met: a) The opposing party has given up the world; and b) the opposing party has joined a religious order. The law considers '*Sannyasa*' to be a civil death.

The foundation for divorce under this article appears to be that one can practise one's religion or believe, but it must not cause trouble or issue in one's marriage, and it must not bring hardship to the other partner. As a result, it can be inferred as a genuine divorce ground.

In the case of *Sital Das vs Sant Ram*<sup>25</sup>, the court said that;

“If a man or woman has renounced the world but comes home day by day and cohabits, then it can't be taken as a ground for divorce because they had not renounced the world”.

#### **viii) CONVERSION:**

It basically means, a partner has converted into a non- Hindu faith such as Islam, Christian, etc. Two conditions need to be followed are:

- “a) Respondent has ceased to be a Hindu,
- b) He/she has converted to another religion”.

In the *Teesta Chatteraj vs Union of India*<sup>26</sup>, The court found that changing one's faith is a valid reason for divorce, but if a partner has goaded the other partner to convert into another religion, he/she cannot claim divorce under the said act.

#### **B) BREAKDOWN GROUND:**

According to the statute, either partner to a marriage may claim for divorce on the following grounds:

- a) “No cohabitation for 1 year after passing the decree of judicial separation
- b) No cohabitation for a year after restitution of marital rights decree is issued”.

When the court determines, based on facts and discussions of resettlement or reconciliation

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<sup>25</sup> Sital Das vs Sant Ram, (1954) AIR SC 606 (India).

<sup>26</sup> Teesta Chatteraj vs Union of India, (2012) S.C.C OnLine Del 1949 (India).

between the parties, that there is no chance of the husband and wife, reuniting and that denial of a divorce judgement would simply prolong the couples' suffering, it might dissolve the marriage on this basis<sup>27</sup>.

### **C) DIVORCE BY MUTUAL CONSENT:**

The divorce by mutual consent must be provided to the court jointly under three specified requirements, according to section 13(b) of the stated act:

- a) "Partners have lived separately for a year,
- b) Partners are unable to live together,
- c) Partners have agreed that the marriage must be dissolved".

### **D) CUSTOMARY DIVORCE:**

In the case of P. Mariammal vs Padmanabhan<sup>28</sup> the court held that:

*"It is not mandatory for the spouses to come before the Court to seek divorce on the grounds recognised by custom".*

### **COMPARISON BETWEEN ANCIENT AND MODERN HINDU JURISPRUDENCE OVER DIVORCE RIGHTS:**

When two people can't live happily together, it's pointless to keep them bound by a married bond<sup>29</sup>.

If we compare the modern and ancient jurisprudence over divorce rights, we can easily infer that the rights of women vis-à-vis divorce is very limited or none. Men had the right to abandon their wives and women had no say in the matter; if she did so or disobeyed her husband's decision, she would be divorced on the absurd grounds of engaging in immoral conduct because there was no one to check; however, under today's modern laws, there is no such ground on which a partner can seek divorce. But it is also inferable that the position of women takes

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<sup>27</sup> Ashok v Rupa, (1996) (2) HLR 512 (India).

<sup>28</sup> P. Mariammal vs Padmanabhan, (2000) S.C.C OnLine Mad 521 (India).

<sup>29</sup> Law Commission, Irretrievable Breakdown of Marriage – Another Ground for Divorce (Law Com No 217 2009) 13 (India).

special place in the society and they also got respect during the time of *Manu's* era.

Divorce rules in the modern era provides equal grounds for the partners to seek redress. Women have greater grounds for divorce than males, and certain sections explicitly discriminate against men. It can be deduced from a number of sources, including Hindu personal law smritis and sutras, that the common thing among all is that women always remained on the verge of society.

The independent existence of a woman is not imaginable during the ancient era. A woman is viewed as a male-dominated creature, with her husband, father, or sibling dictating her life.

The problems with ancient Indian jurisprudence over divorce are illogical grounds of divorce which various *Smriti karas* has given and not giving equal right for women to participate in the process of divorce. Having miscarriage or having no child for some years is considered as a ground for divorce during the ancient era and it cannot stand the test of legality and ethics in today's world. The ground for divorce like having only female children, is against gender equality, and if we consider this as a ground of divorce in today's world, the husband will become an outcast in the society and stigma will get attached to him as well as his posterity.

Because we are talking about patriarchy or gender neutrality, one point worth mentioning is that no Smriti or Sutra ever mentions physical brutality, committed against wives during that time. Despite of the fact that domestic violence prevailed during the ancient era, no *Smriti kara* ever thought about providing a ground of cruelty for divorce for women against their husband. There are certain grounds provided by *Manu* like a wife indulging in immoral conduct or to do what is unpleasant to her husband, should be divorced, can be considered as tantamount to mental cruelty which is a valid ground for divorce up to now. It can be inferred that mental cruelty is a ground for divorce available at that time.

According to certain Smriti karas, adultery, including extramarital affairs, was a legal basis for divorce in ancient India. Others, like as *Atri*, however, did not recognise it as such. Today also adultery is considered as a valid ground for divorce. We can say that the writers of law at that time had taken a wider view related to this aspect.

Now the grounds like disappearing of the husband for a certain amount of time or to say 8 years, as mentioned by some *Smriti karas* is a valid ground for divorce for a woman during the ancient Hindu era. Desertion is a ground for divorce that still exists today, but the only difference is that in ancient times, only wives could get a divorce if their husband deserted

them, because women were not allowed to travel without a male companion or family member because they were considered immature and entities of men, whereas in modern times, both the partners are provided with the right to divorce in the event of desertion.

The grounds like attempting to take the child's life or the life of her husband is a reasonable ground for divorce, and it can also be considered as a ground of divorce, according to modern laws but the only difference is the right provided in the ancient era is only for man to divorce their wives, but what if a man has taken the life of his child.

Now talking about some other common grounds provided under both ancient and modern jurisprudence. One of the grounds provided by various *Smriti karas* is, if a husband had become an ascetic or left worldly affairs. The same ground is provided under HMA, under the heading "renunciation of the world". Other ground which Manu has provided, which is also bizarre, is leprosy. He noted that if a wife is suffering from disease like leprosy, should be divorced immediately. We can also see a specific provision under the HMA to get the divorce under two different headings "Leprosy" and "Venereal Disease". Here the difference noted is only husband can get the divorce from his wife under the said ground in ancient India. The ground like getting the divorce when the husband loses his life, in the initial years of the marriage still stands today.

'Impotency' as a ground for Divorce still stand today, under Hindu Marriage Act.<sup>30</sup> Some of the *Smriti karas* has given rights for women to get the divorce under the clause of being their husband are impotent.

Another problem besides irrational grounds with ancient Indian jurisprudence is that there is a lack of documentation to prove the true condition of law and order because numerous sources, such as Hindu personal law smritis and sutras, exist, and each source's legitimacy can be questioned.

## CONCLUSION:

In any matrimonial dispute, divorce is still the last resort. Indians, whether in the ancient era or in modern times, consider marriage as an eternal bond and see husband and wife as a pious entity. Marriage in India not only is considered as a relation between husband and wife, but also between families. Individuals have always come second to the sacredness of marriage, and

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<sup>30</sup> Hindu Marriage Act 1955, ss 12(1)(a) (India).

it is frequently difficult for the spouse to get away with it.

Whether we consider ancient jurisprudence or modern jurisprudence, one thing is clear that the importance of marriage remains constant. The difference only comes when we talk about the rights of women. Today women are provided with an umpteenth number of rights whether it is related to divorce or any other area. Some bizarre grounds provided by some *Smriti karas* can be considered against the institution of marriage and there is no one to check the legality at that time.

An image of Patriarchy is clearly visible when we see the grounds for divorce. Women are considered as an entity of men. They don't have any say in any matter but today, both men and women are getting equal rights in every aspect of life. Women are getting more autonomy nowadays. Gender equality is at its zenith.