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Analysis of ground of divorce under the Hindu marriage act

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Abstract

This legal article provides an in-depth analysis of the grounds of divorce under the Hindu Marriage Act, offering insights into the legal framework governing marital dissolution within Hindu marriages. By examining the statutory provisions and judicial interpretations, this article elucidates the various grounds on which divorce can be sought, including both fault-based and no-fault grounds. Additionally, it explores the significance of these grounds in the context of contemporary social dynamics and evolving judicial trends. Through this analysis, the article aims to contribute to a better understanding of divorce laws and their implications within the Hindu legal framework.

Keywords: Divorce, Hindu marriage act, contemporary social dynamics

Introduction

The Hindu Marriage Act of 1955 was the first to recognize divorce among Hindus. According to Manu, only the death of one of the partners may bring a marriage to an end. Any divorce that was not merely frowned upon, but also labelled and biased was strongly discouraged. The sole divorce law in British India was the Divorce Act of 1869, which allowed Christians to divorce each other in India. Apart from that, there was no legal framework in place in India for divorce. The Hindu Marriage Act was passed in 1955, and it included provisions on divorce. The term "divorce" is not defined in the statute as it merely refers to the termination of a marriage. Section 13 of the Act of 1955 provides the various grounds of divorce that will be the subject matter of discussion in the present article.

Concept of Divorce

As we know that in ancient India there no such type of concept exists. Manu announced that a spouse can't be delivered by her significant other either by deal or by deserting, suggesting that the conjugal tie can't be cut off in any case. but in modern India concept of divorce exist, Divorce put the marriage to end, It ceases all the mutual obligation of husband and wife, they are free to go there on way. This leads to end all bonds between them except concerning section 25 (maintenance and alimony) and section 26 (custody, maintenance, and education of children). There is available much ground on which husband and wife could take divorce.

Understanding Section 13 of the Hindu Marriage Act

While Clause 1 of Section 13 presents the general grounds of divorce that are available to both the parties involved in a broken marriage, Clause 1-A, introduced in the Act of 1955 by the Hindu Marriage (Amendment) Act, 1964, provides two further grounds for obtaining a divorce decree. Clause 2 of Section 13 specifically provides four grounds that can be availed for getting a divorce only by the wife. Divorce grounds can be viewed from two perspectives.

1. Marriage is an exclusive relationship, and if it is not, it is no longer considered marriage. Marriage also indicates that the parties would live in peace and trust with one another. Cruelty, or the threat of cruelty, undercuts this fundamental condition of marriage. The essential premise of marriage is that both parties will live together, however, if one party abandons the other, this premise is no longer valid. As a result, infidelity, abuse, and abandonment are all detrimental to a marriage's basis.

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- From a different perspective, the above acts are marital offences committed by one of the marriage partners. There is a semblance of crime here. Divorce is viewed in this light as a means of punishing the partner who has proved himself or herself unworthy of association. The guilt or offence theory of divorce which states that the offence must be one that is recognised as a basis for divorce is the consequence of the discussed perception.

General Ground of Divorce

There are seven general grounds as provided by Section 13(1) which can be availed by both the parties in a marriage in order to dissolve the same.

Adultery

Section 13(1) (i) deals with adultery as a ground for divorce that is available to both parties in a marriage. Adultery is defined as voluntary sexual activity outside of marriage. It is the petitioner's responsibility to show that there was a valid marriage and that the respondent had sexual relations with someone other than him or her. At the time of the act, the marriage must be intact.

Judiciary on adultery

- The Madras High Court had ruled in *Subbarama Reddiar vs Saraswathi Amma* (1996), that a single act of adultery is sufficient grounds for divorce or judicial separation. The unwritten taboos and laws of social decency in this nation, particularly in village regions, must necessarily be taken into account. Unless an excuse is given that is consistent with an innocent interpretation, the only conclusion that the court of law can draw from the fact that an unknown person was found alone with a young woman past midnight in her apartment, in an actual physical juxtaposition, is that the two have committed an act of adultery together.
- In *Joseph Shine vs Union of India* (2018), the Supreme Court declared that adultery is not a crime and repealed Section 497 of the Indian Penal Code, 1860. It has been noticed that two people may separate if one of them cheats, but attaching crime to infidelity is taking things too far. Adultery is a private problem, and how a couple handles it is a matter of extreme privacy. This lack of moral commitment in marriage, which damages the relationship, has been left to the couple's discretion. They have the option to proceed with the divorce if they so want.

Cruelty

Cruelty was not a valid reason for divorce prior to 1976. It served as justification for judicial separation. Cruelty is now a cause for divorce under the 1976 Amendment Act. According to the Oxford Dictionary, the term "cruelty" hasn't been defined, yet it's been used to describe human behaviour or conduct. It's how you act around or about marriage status responsibilities and obligations. It's a pattern of behaviour that is progressing in the other direction. Cruelty can be mental or physical, and it can be purposeful or inadvertent. Cruel treatment of the petitioner after the marriage has been solemnised as a ground for divorce. Cruelty can take many forms, including physical and emotional abuse. Physically abusing or injuring one's spouse qualifies as physical cruelty. It is difficult to decide

as to what constitutes mental cruelty. Cruelty is also an offence under Section 498A of the Indian Penal Code, 1860. Some of the essential elements that constitute cruelty have been presented hereunder:

- The alleged wrongdoing must be "grave and serious."
- It is unreasonable to expect the petitioner spouse to live with the other spouse.
- It has to be more serious than the "normal wear and tear of married life."

False charges of infidelity, dowry demands, an alcoholic, wife's incompetency, the partner's immoral lifestyle, incompatibility and violent partner are just a few examples of mental cruelty.

Judiciary on cruelty

- While deciding on the case of *Savitri Pandey vs Prem Chandra Pandey* (2002), the Supreme Court of India had observed that cruelty has not been defined under the Hindu Marriage Act, 1955, but it is considered in marital problems as conduct that endangers the petitioner's life with the respondent. Cruelty is defined as an act that endangers a person's life, limb, or health. Cruelty, for the Act, is that one spouse has handled the other and expressed such emotions against her or him as to have inflicted bodily damage, or to have created cheap anxiety of bodily injury, suffering, or to have wounded health. Cruelty may be both physical and emotional. Other spouse analogues' behaviour that creates mental agony or anxiety about the opposite spouse's marital situation is referred to as mental cruelty. Cruelty, therefore, presupposes the petitioner's approach with such cruelty as to elicit an accessible fear that it may be damaging or destructive to him/her.
- In the case of *Smt. Nirmala Manohar Jagesha vs. Manohar Shivram Jagesha* (1990), the Bombay High Court held that in a divorce case, "false, baseless, scandalous, malicious, and unproven allegations made in the written statement may amount to cruelty to the other party, and that party would be entitled to a divorce decree on that ground."
- While deciding the 2007 case of *Samar Ghosh vs Jaya Ghosh*, the Supreme Court of India had opined that when cruelty takes the form of harmful reproaches, complaints, accusations, or taunts, the general rule is that the whole marriage connection must be evaluated. This rule is especially important when the cruelty takes the form of injurious reproaches, complaints, accusations, or taunts. It is undesirable to consider judicial pronouncements to create certain categories of acts or conduct as having or lacking the nature or quality that renders them capable or incapable of amounting to cruelty in all circumstances. After all, it is the effect of the conduct, not its nature, that is of paramount importance in assessing a cruelty complaint.

Whether one spouse has been cruel to the other is largely an issue of fact, and precedent cases are of little, if any, significance. The court should consider the parties' physical and mental conditions, as well as their social status, and the impact of one spouse's personality and conduct on the mind of the other, weighing all incidents and quarrels between the spouses from that perspective. Further, the alleged conduct

must be examined in light of the complainant's capacity for endurance and the extent to which that capacity is known to the other spouse.

Desertion

The Indian Parliament explains in sub-section (1) of Section 13, Hindu Marriage Act, 1955 that "the expression 'desertion' means the desertion of the petitioner by the other party to the marriage without reasonable cause and the consent or against the wish of such party and includes the willful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly". In other words, desertion refers to one spouse's permanent absence or forsaking of the other for no apparent cause and without the agreement of the other. Justices R.P. Sethi and Y.K. Sabharwal of the Supreme Court of India while deciding on the case of Savitri Pandey vs Prem Chandra Pandey (2002) had viewed that there can be no desertion without previous cohabitation by the parties. Two key requirements must exist for the offence of desertion in the case of a deserting spouse:

1. The actuality of the break and
2. The willingness to finally stop cohabitation (*animus deserendi*).

Similarly, in the case of the deserted spouse, two components are required, namely,

1. The absence of agreement, and
2. The lack of a legal cause of action for the partner leaving the matrimonial house to fulfil the above-mentioned purpose.

Judiciary on desertion

1. The Supreme Court of India, while dealing with the case of Bipin Chander Jaisinghbhai Shah vs Prabhawati (1956), had observed that the offence of desertion is a path of behaviour that exists independently of its duration. However, as a ground for divorce, it must have existed for at least 3 years at the time before the presentation of the petition or, in the case of a cross-charge, of the answer. Desertion as a basis for divorce varies from the statutory grounds of adultery and cruelty in that the offence that gives rise to the motion of desertion isn't necessarily full, but rather inchoate until health is established. Desertion is persevering with the offence.
2. In a 2013 case of Mrs. Saraswathi Palaniappan vs Vinod Kumar Subbiah, Justice T Raja of the Madras High Court had observed that when a wife has miserably abandoned the matrimonial house, she cannot sue for recovery of conjugal rights, especially after a seven-year absence and having been found guilty of cruelty in the husband's favour.

Conversion

Section 13(1)(II) of the Hindu Marriage Act, 1955 provides that a divorce can be granted if one spouse ceases to be Hindu and converts to another faith without the consent of the other. A person's conversion to a non-Hindu faith, such as Parsis, Islam, Christianity, or Zoroastrianism, is known as 'ceasing to be Hindu'. If a person converts to Jainism, Buddhism, or Sikhism, he remains a Hindu since Sikhs,

Jains, and Buddhists are Hindus by faith and are covered within the ambit of the Hindu Marriage Act, 1955.

Judicial decisions recognizing conversion as a ground for divorce:

1. In light of the 2006 case of Suresh Babu vs Leela, the Kerala High Court had observed that the Hindu Marriage Act, 1955 does not grant any rights to a Hindu spouse who converted to another religion. He or she, on the other hand, exposes himself or herself to a divorce suit by the other spouse based on such conversion. Under Section 13(1) (ii) of the Hindu Marriage Act, 1955, the spouse who is still a Hindu has the right to seek dissolution of the marriage with the partner who has converted to another faith since the marriage. The right of a non-converting spouse to remain married is unassailable. The Act makes no provision for the non-converting spouse's right to convert. The Hindu Marriage Act, 1955 also does not mention that the conversion must be done without the permission of the other spouse for that spouse to file for divorce. If the other spouse consents, a conversion does not cease to be a conversion within the meaning of Section 13(1) (ii).
2. The Delhi High Court had observed in the case of Teesta Chatteraj vs Union of India (2012) that while conversion to another religion is a ground for divorce, a spouse may be denied divorce even if the other spouse has embraced some other religion if the former goaded the latter to such conversion.

Insanity

Section 13(iii) of the Hindu Marriage Act Before allows a petitioner to get a divorce or judicial separation if the respondent has been enduring mental anguish of such a nature and intensity that the petitioner cannot rationally be forced to live with the respondent. Insanity as a basis for divorce has two requirements.

1. The respondent was mentally ill for an indefinite period.
2. The respondent is suffering from a mental disease of such a nature or severity that it would be unreasonable for the petitioner to continue living with him or her.

Judiciary on insanity

1. The Supreme Court of India had declared in Ram Narayan v. Rameshwari (1988) that in cases of schizophrenia mental condition, the petitioner must prove not only the mental disorder but also that the petitioner could not fairly be expected to live with the respondent.
2. The Madhya Pradesh High Court had decided in the case of Smt. Alka Sharma v. Abhinesh Chandra Sharma (1991), that as the wife was frigid and nervous on the first evening of marriage and was found to be unable to work with domestic equipment, and fizzle to clarify the direction of peeing within the sight of all relatives, it was ruled that she was suffering from schizophrenia and that her spouse was entitled to a divorce.

Leprosy

In its findings, the Law Commission of India suggested that any legislation that discriminated against leprosy patients be repealed. India is also a signatory to a United Nations

resolution that advocates for the abolition of discrimination against leprosy patients. Section 13(iv) which had the provision of leprosy contained in it as a ground for divorce, has now been omitted by the Indian Parliament on 13th February 2019 with the passage of the Personal Law Amendment bill.

Venereal disease

Section 13(v) of the Hindu Marriage Act of 1955 establishes a reason for divorce in cases of infectious venereal disease. If one of the spouses has a sexually transmitted disease that is both incurable and transmissible, it might be used as a basis for divorce. The term “venereal illness” refers to a condition such as AIDS.

Judiciary on venereal disease

1. In *Smt. Mita Gupta vs. Prabir Kumar Gupta* (1988)^[9], the Calcutta High Court had opined that while the venereal disease is a cause of divorce, the partner who is responsible for the contagion may be denied relief even if the other partner suffers as much.
2. The Supreme Court had ruled in *Mr X v. Hospital Z* (1998) that either husband or wife might divorce on the grounds of venereal illness and that a person who has suffered from the disease cannot be claimed to have any right to marry even before marriage, as long as he is not healed of the condition.
3. The Madras High Court had viewed in the 2013 case of *P.Ravikumar: vs Malarvizhi @ S.Kokila* that any contagious infection caused by sexual intercourse is defined as a venereal disease under Section 13(v) of the Hindu Marriage Act, 1955. HIV is a sexually transmitted illness. As HIV had not been discovered in 1955, it was not included in the Act. However, because venereal disease in a communicable form is one of the grounds for divorce, any disease being venereal in a communicable form will also fall under the provisions of Section 13(v) of the Hindu Marriage Act, 1955, and thus it cannot be claimed that a petition cannot be filed on the basis that HIV positive is not included in Section 13(v) and thus divorce cannot be granted. It can very well be granted.

Renunciation

When one of the spouses decides to enter a holy order and renounces the world, the other spouse has the right to submit a divorce petition under Section 13(1) (vi) of the Hindu Marriage Act, 1955. Renunciation of the world by entering any religious order must be absolute. It is the equivalent of civil death, and it prevents a person from inheriting or exercising their right to divide.

In the case of *Sital Das v. Sant Ram* (1954)^[15], it was decided by the Supreme Court of India that someone is considered to have entered in a religious order if they participate in a few of the faith's ceremonies and rites. For example, if a man or woman joins a religious order but returns home on the same day itself and cohabits, it cannot be used as a basis for divorce since he has not forsaken the world.

Presumption of death

According to Section 13(1) (vii) of the Hindu Marriage Act, 1955, if a person has not been heard of as being alive for at least seven years by people who would naturally have

known of it if that party had not been living, that person is presumed to have died. According to the Indian Evidence Act of 1872, if a person has not been heard from in at least seven years, he or she is deemed dead. The petitioner may be granted a divorce on this basis. However, under ancient Indian Hindu law, a presumption of death is not the same as in contemporary law; twelve years must pass before a person is deemed to have died. The presumption of death under the Act of 1955 can be rebutted if a person has been missing for the last seven years owing to unusual circumstances, such as fleeing a murder accusation.

Judiciary on presumption of death as a ground of divorce

1. It was established by the Delhi High Court, in the case of *Nirmoo v. Nikkaram* (1968), that if a person presumes his or her spouse's death and marries another person without getting a divorce order, the spouse might contest the validity of the second marriage after his return.
2. The aforementioned law also overrides any existing custom that allows for remarriage after less than seven years, as in the case of *Parkash Chander v. Parmeshwari* (1989)^[13], where it was argued that the Karewa marriage customs allow for remarriage after the husband has not been heard from for two and a half years. The Punjab and Haryana High Court concluded that while the spouse cannot be deemed to be deceased until the issue is brought before the competent court, the seven-year timeframe under Section 108 of the Indian Evidence Act, 1872 cannot be reduced to merely 2-3 years.

Section 13(1A) of Hindu Marriage Act

A spouse can file for divorce if there has been no resumption of cohabitation between the pair after one year has passed from the day the judicial separation decision was issued. The term “resumption of cohabitation” simply refers to two people living together in a harmonious relationship. If there is no bar as defined in Section 23 of the Hindu Marriage Act, 1955 the court will grant a divorce order under Section 13(1A).

Restoring conjugal rights entails resuming marital obligations. If there has been no restoration of conjugal rights for one year following the issuance of a decree under Section 9 of the Act, either spouse may file for divorce. Before awarding a divorce order, for this reason, the court must be convinced that the petitioner is not barred from exercising this right under Section 23 of the aforementioned Act.

Judicial decisions explaining Section 13(1A) of the Act of 1955

In *Saroj Rani vs Sudarshan Kumar* (1984)^[19], it was held by the top Court that, where a husband obtained a decree for restitution of conjugal rights only to seek a divorce under Section 13(1A) (ii) of the Act and preventing the wife from performing her conjugal duties by driving her away from the house, it will constitute misconduct under Section 23(1)(a) of the Act. This is because the husband was taking advantage of his wrongs and thus he was not entitled to any relief.

In *Vishnu Dutt Sharma vs Manju Sharma* (2009)^[17], the Apex Court decided that based on a cursory reading of

Section 13 of the Act of 1955, the law does not provide for divorce on the grounds of irreversible dissolution of a marriage. In rare situations, however, the Court will grant a divorce to the marriage due to irreversible collapse.

The Supreme Court of India in *K. Srinivas Rao v. D.A. Deepa* (2013) ^[16] concluded that under the Hindu Marriage Act of 1955, the irreversible collapse of a marriage is not a cause for divorce. However, if a marriage is irretrievably broken owing to enmity caused by the activities of either the husband or the wife, or both, the courts have frequently considered the irreversible dissolution of marriage as a serious problem, resulting in marital separation, among other things. A marriage that has been dissolved for all intents and purposes cannot be reconstituted by court order if the parties are unable to do so.

Special grounds of divorce

Section 13(2) of the Hindu Marriage Act, 1955 provides four grounds for the wife to seek divorce from her husband. These grounds are explained hereunder.

Bigamy (Section 13(2) (i))

If a husband already has a wife before the Act of 1955 takes effect and then marries another woman after the Act takes effect, either of the two wives may file for divorce. The sole stipulation is that the divorce petition would be granted if the other wife was still alive when the petition was presented.

Rape, sodomy or bestiality (Section 13(2) (ii))

A wife can sue her husband for divorce if the latter has committed rape, sodomy, or bestiality since the marriage was solemnised. Section 375 of the Indian Penal Code, 1860 makes rape a criminal offence. A person who has carnal copulation with an individual of the same sex or an animal, or non-coital carnal copulation with an individual of the opposite sex, is committing sodomy. Bestiality refers to a human's sexual union with an animal that is contrary to nature's order.

Decree or order of maintenance (Section 13(2) (ii))

When a decree for the wife's support has been issued under Section 18 of the Hindu Adoptions and Maintenance Act, 1956, or when an order of maintenance has been issued against the husband under Section 125 of the Code of Criminal Procedure, 1973, if two requirements are met, the wife has the option of filing a divorce petition against her husband:

- a. The fact that she was living separately,
- b. She and her spouse have not cohabitated for at least one year following the issuance of the decree.

Marriage before attainment of the age of fifteen years (Section 13(2) (IV))

If the marriage was consummated before the woman reached the age of 15, she may file a divorce petition. When a child bride reaches puberty, she has the option of opting out of the marriage and requesting a court repudiation of the marriage after becoming 15 but before turning 18. To safeguard people who may have been pressured into marriage, courts enable minor brides to use this privilege.

Section 13B of the Hindu Marriage Act, 1955

Section 13B of the Hindu Marriage Act, 1955 provides divorce by mutual consent of the parties in a marriage. The parties to a marriage may file a petition for dissolution of marriage by a decree of mutual consent under Section 13B (1) of the Hindu Marriage Act, 1955 because they have been living separately for one year or more, have been unable to live together, and have mutually agreed that the marriage should be dissolved. On the motion of both parties, made not earlier than six months after the date of presentation of the petition referred to in subsection (1) of Section 13B, but not later than 18 months after the said date, the court shall pass a decree of divorce, declaring the marriage to be dissolved with effect from the date of the decree, after making necessary enquiries, if the marriage is dissolved with effect from the date of the decree. Section 13B (1) of the Hindu Marriage Act read with Section 13B (2) envisages a total waiting period of 1 ½ years from the date of separation to move the motion for a decree of divorce.

Justice Indira Banerjee while deciding on the recent case of *Amit Kumar v. Suman Beniwal* (2021) has made the following observations concerning Section 13B of the Hindu Marriage Act, 1955:

1. Section 13B of the Hindu Marriage Act, 1955, which provides for divorce by mutual consent and took effect on 27.5.1976, is not designed to damage the institution of marriage. Section 13B puts an end to collusive divorce processes between spouses, which are frequently undefended yet time-consuming due to the rigmarole of procedures. Where a marriage has irretrievably broken down and both spouses have amicably chosen to separate, Section 13B allows the parties to avoid and/or abbreviate needless confrontational litigation.
2. In its wisdom, the legislature devised Section 13B (2) of the Hindu Marriage Act, 1955, which provides for a six-month cooling period from the date of filing the divorce petition under Section 13B (1) if the parties change their minds and reconcile their issues. If the parties still want to divorce after six months and file a request, the Court must award a divorce decree pronouncing the marriage dissolved with effect from the date of the decree, after conducting any investigations, if deemed necessary.

Conclusion

Section 13 outlines the numerous grounds for divorce that the spouse may have. Wives have been given more reasons to file for divorce. In the case of divorce, the Hindu marriage legislation applies the blame theory, which implies that a marriage can be dissolved if one of the spouses is accountable or liable for a marital violation. A divorce is an option for the innocent spouse. As holy as marriage might be, divorce must be acknowledged in a civilised culture. Higher focus on individual liberty and choices has resulted in increased acceptance of divorcees in our nation, as well as a decrease in stigmatisation, which is a beneficial trend in society.

Under Section 13, Hindu Marriage Act, 1955, There are available much grounds of divorce on which both husband and wife can file a divorce petition. Under sub-clause (1) of section 13 of the Act, there are available 9 fault ground on which divorce can be taken. These grounds are such as desertion, adultery, cruelty, venereal disease, leprosy, insanity, and conversion. Under sub-clause (2) of section 13

of the Act, there are available four ground on which the wife alone can file a divorce petition. These grounds are such as husband having more than one wife living, rape or sodomy or bestiality, non-resumption of cohabitation after a decree of maintenance, repudiation of marriage. Under sub-clause (1A) of section 13 of the Act, Irretrievable Breakdown Ground also available for both husband and wife. Under sub-clause (2) of section 29 of the Act, the husband and wife can take divorce based on a custom prevailing in society. Divorce may be initiated at the end of 1 year of marriage. Two judgment procedures are required for divorce. One is when the petition is filed and the second is after a post of 6 months.

References

1. Paras Diwan, MODERN HINDU LAW, 24th ed. 2019, p. 134
2. 2002 SC 591
3. SC 176
4. Vidhya Viswanathan vs Kartik Balakrishnan (2014) 15 SCC 21.
5. 2002 SC 591
6. AIR 1991 Bom 259
7. (2010) 14 SCC 301
8. (1966) 2 MLJ 263
9. 1988 AIR 2260
10. 1991 (0) MPLJ 625
11. Paras Diwan, MODERN HINDU LAW, 24th ed. 2019, p. 169
12. AIR 2003 SC 664
13. AIR 1989 Cal 248
14. 188(2012) DLT 507
15. 1954 SC 606
16. (2013) 5 SCC 226
17. (2009) 6 SCC 379
18. Smt. Sureshta Devi vs Om Prakash, 1991 SCR (1) 274
19. AIR 1984 Bom 302
20. (2010) 4 SCC 393
21. P. Mariammal vs Padmanabhan, AIR 2001 Mad 350
22. AIR 1963 Raj 178