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“GROUNDS FOR DIVORCE UNDER THE HINDU LAW: ADULTERY AND CRUELTY”

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ABSTRACT

The purpose of this study is to explore the reasons for divorce under Hindu law, focusing on adultery and cruelty. This study employs a descriptive and analytical research methodology, with all data gathered from a variety of sources, including research databases, Scopus indexed journals, papers, legal provisions, judgements, published materials, online websites, and blogs published by various research organizations. According to the two sources of Hindu law, Arthashastra a union should be unauthorized and can end if both parties wish it to; Manusmriti claims that the only way to end a marriage is for one of the partners to die. Nevertheless, the research findings call attention to the fact that divorce is permissible in a variety of conditions, as described further in the study, under Hindu law as per the Hindu Marriage Act, which was enacted in 1955. This dissertation examined the grounds for divorce under the categories of adultery and cruelty.

Key words: Hindu law, Grounds for divorce, Adultery, Cruelty, The Hindu Marriage Act 1955, Divorce, Marriage.

INTRODUCTION

Marriage is a concept that establishes a relationship between a male and a female in the form of a husband and wife, respectively. It is a socially and legally recognised partnership, typically between a man and a woman, that is governed by laws, regulations, conventions, beliefs, and attitudes that outline the partners' obligations and grant status to their kids (if any). According to the hindu law, marriage is a religious sacrament in which a man and a woman are bound in a permanent relationship for the physical, social and spiritual need of dharma, procreation and sexual pleasure¹.

Divorce was not a notion that existed in ancient times as a part of the institution of marriage. They viewed marriage as a holy institution. Manu asserts that a husband and wife are inseparable and their marital bond cannot be severed. Subsequently, the idea of divorce entered the scene several years later and became commonplace as a way to dissolve a marriage. The Arthashastra states that a marriage can cease if both parties want to do so and that it should be an unauthorized union. Manu, however,

¹ Khan Sarim M., (2020) Nature of Hindu Marriage under the Hindu Law.

rejects the idea of the disintegration. Manu asserts that the demise of either partner is the only way to dissolve a marriage. The Hindu Marriage Act of 1955 introduced the clause relating to the idea of divorce. Divorce is referred to as the dissolution of a marriage in the Hindu Marriage Act. The marriage or married connection must be protected from all harm for the reasons outlined by law in the benefit of society. Only grave circumstances allow for divorce; all other circumstances provide an option, thereby this paper will study the grounds for divorce under the hindu law.

RESEARCH OBJECTIVES

1. To understand the grounds for divorce in the hindu law.
2. To analyze the provisions governing divorce in the ambit of adultery and cruelty.
3. To study relevant cases regarding grounds for divorce

RESEARCH QUESTION

This research focuses on the grounds for divorce in the hindu law, how laws have evolved over time which has subsequently proffered one to take control of their rights in matters as significant as marriage and divorce. Therefore the research question for this study is - *“To what extent has the hindu law evolved in the matter of divorce, governing provisions of adultery and cruelty as valid grounds?”*

RESEARCH METHODOLOGY

This research study has used a descriptive and analytical research design. The researcher has used secondary data gathered from various sources such as research databases, scopus indexed journals, papers, legal provisions, judgements, published materials, online websites and blogs published by numerous research organizations. The researcher has incorporated several grounds for divorce in the first stage of its main discussion; in the later stage studied the provisions governing divorce under adultery and cruelty, and how the hindu law embodies these provisions with relevant cases. Later the researcher has explored current scenarios of how the society perceives divorce laws and given possible suggestions for improvements in existing notions.

LIMITATIONS OF THE STUDY

The main findings rely on previous studies and no primary research was conducted due to lack of scope. The conclusions derived in this study are based on secondary research which can make the estimates less reliable since not all research papers have particularly focused on the topic covered for this study, this paper is precisely based on secondary resources only. The researcher has not included all kinds of grounds of divorce, has only focused on cruelty and adultery and has displayed the relevance of the two.

DISCUSSION

Grounds for divorce in the hindu law

Divorce as a concept was introduced in the Hindu Marriage Act 1955, which describes several theories that have evolved over time. These common theories² form the basis of how a married couple dissolves their marriage.

1. **Fault Theory** - According to this notion, a marriage may be dissolved if one spouse is held accountable for a marital offense committed against the other. Only the blameless spouse may apply for this remedy. This theory's one flaw is that neither spouse may file for divorce if both parties are at fault.
2. **Mutual Consent** - According to this view, the divorce can be approved by both parties. The divorce process can be started if both spouses agree to dissolve the marriage. Nevertheless, a lot of philosophers disagree with this view, arguing that it promotes fast divorce and is morally repugnant.
3. **Irretrievable breakdown** - This hypothesis contends that the breakdown of the marital union causes marriages to dissolve. When living together again is out of the question for both parties, the spouse may decide to file for divorce as a final choice.

The hindu law proffers any married spouse the right to divorce over the grounds as follows³:

1. **Desertion** - is when one spouse is permanently abandoned by the other without their permission or any justifiable excuse. Generally speaking, when one side refuses to accept the responsibilities of

² Gandhi, Parshav (2019) Grounds for Divorce under the Hindu Marriage Act 1955

³ Gandhi, Parshav (2019) Grounds for Divorce under the Hindu Marriage Act 1955

marriage. It stands a valid ground when there is desertion of the other spouse forever, rejection of the marital commitment without any justifiable basis and there's no agreement from a second spouse.

2. Conversion - is when the other spouse has the right to petition the court for a divorce if one of the spouses changes his or her faith without the other spouse's agreement.
3. Insanity - when someone is insane, they are considered mentally unstable. The following two conditions must be met for insanity to qualify as a cause for divorce: a). The responder has a history of mental instability b). The petitioner cannot fairly be expected to live with the respondent because of the respondent's ongoing or intermittent mental condition of such a sort and severity.
4. Leprosy - is when the skin, mucous membranes, neurological system, etc. are all affected by leprosy, an infectious illness. One individual can contract this illness from another. As a result, it is regarded as a legal basis for divorce.
5. Venereal Illness - According to this theory, a sickness that is contagious and may be passed on to the other spouse qualifies as a legal reason for divorce.
6. Renunciation - it means that the other spouse may go to court and request a divorce if one spouse decides to give up the world and follow God's way. According to this theory, the party who renounces the world is regarded as being legally dead. It is a common Hindu custom and is recognised as a legal basis for divorce.
7. Presumption of Death - If the relatives or friends of the deceased person do not receive any news about them for seven years, it is assumed that they have passed away. Although it is regarded as a legal basis for divorce, the onus of evidence is with the party requesting the divorce.
8. Divorce with Mutual Consent - by mutual permission of the parties, the individual may submit the divorce petition in accordance with Section 13B. The parties must wait one year from the date of marriage if they desire to end their marriage by mutual consent. They must demonstrate that they have been apart for a year or more and are unable to cohabit.

Although hindu law does not allow for divorce petition within a year after marriage. According to Section 14, no Court will consider a divorce petition filed within a year of a marriage. But, they may be considered if the issue involves bigamy, cruelty and the spouse's agreement was obtained by deceit, fraud, undue influence, etc.

Provisions governing divorce in the ambit of adultery and cruelty and relevant

case laws

Adultery

Adultery is defined as a voluntary physical interaction between two persons who are not in a marital union. Incest can also occur on rare occasions. Adultery is considered terrible and unethical in Hinduism, to the extent that it is outlawed and penalized. Adultery is described as consensual and voluntary sexual behavior between a married person and another person of the opposite sex, whether or not they are married. If the husband and his second wife's marriage is considered bigamy, their sexual encounters are grounds for adultery. Adultery may not be considered a crime in many countries. Yet, when it comes to marital transgressions, adultery is one of the most serious reasons for divorce, according to the Hindu Marriage Act. Adultery was included as a legal basis for divorce to the Hindu Marriage Act in The Marriage Laws Amendment Act of 1976 incorporated the concept of adultery to the Hindu Marriage Act.

In order to get a divorce on the grounds of Adultery, the following conditions need to be met⁴.

1. One of the spouses' involved in the intercourse with another person, married or unmarried, of the opposite sex.
2. Intercourse should be voluntary and consensual.
3. At the time of the act, the marriage was subsisting.
4. There must be sufficient circumstantial evidence to prove the liability of another spouse.

In *Sadanand Ghose v. Swapna Ghose*⁵ the wife saw her husband laying on the same bed with another female, and the neighbor also confirmed that the husband had broken the law. In this case, the woman is divorced. Also in the case of *Sachindranath Chatterjee v. Sm. Nilima Chatterjee*⁶ the petitioner and the defendant in this instance were wed. Once they were married, the husband left the woman in his hometown so she could finish her education and go to a different city for employment. He met her

⁴ Gandhi, Parshav (2019) Grounds for Divorce under the Hindu Marriage Act 1955

⁵ Swapna Ghosh vs Sadananda Ghosh And Anr. [22 July 1988] AIR 1989 Cal 1, 93 CWN 231

⁶ Sachindranath Chatterjee vs Sm. Nilima Chatterjee [16 May 1969] AIR 1970 Cal 38, 74 CWN 168

two or three times a month. Eventually, he discovered that his wife had engaged in infidelity, having sex with multiple people including his own nephew and their watchman. When the plaintiff went to court to request a divorce based on adultery, his petition was granted, and the marriage was dissolved on such grounds.

Cruelty

If we look at the history of the Hindu Marriage Act, 1955, we can see that cruelty was only ever used as a justification for judicial separation and never as a basis for divorce. Here, the petitioner or the injured party must demonstrate that the cruelty is so severe or so intolerable that it is becoming difficult for them to continue a relationship with their spouse (the defender). Yet, in the historic *Narayan Ganesh Dastane vs. Sucheta Narayan Dastane*⁷ a decision from 1975, the Supreme Court maintained this. With the addition of a legal definition of the term cruelty under this Act in 1976, this led to an amendment in the Act that introduced cruelty as a basis for divorce. The Court did rule, however, that the subject matter of the case should be the only factor considered by the courts for making a cruelty determination. With the exception of the two phrases "persistently or frequently" that were added, there was no contrast between the reasons of cruelty resulting in judicial separation and the grounds of cruelty resulting in divorce after this act was amended. This amendment significantly increased the weight of establishing cruelty as a basis for divorce over proving it as a basis for judicial separation. This ground was added under Section 10(1) of the Hindu Marriage Act, 1955 and now "Cruelty" has a self-contained definition⁸.

Both mental and physical cruelty are included in the definition of cruelty. The term "physical cruelty" refers to when one spouse physically harms or beats the other spouse. Nonetheless, the idea of mental cruelty was included since the other spouse can also abuse the other spouse mentally. Lack of compassion that negatively impacts a person's health is known as mental cruelty. Physical cruelty can be easily identified, while mental cruelty is more difficult to identify. Moreover IPC defines cruelty as when the wife is treated in a way that makes her reasonably fear it would be challenging to coexist with the husband. Cruelty covers both physical and emotional abuse. It can be in reference to odd

⁷ *Narayan Ganesh Dastane vs Sucheta Narayan Dastane* [19 March 1975] AIR 1534, 1975 SCR (3) 967

⁸ Sahu Rutuparna, (2020) Cruelty as a ground for divorce

behavior, persistent teasing and taunting, labeling her a barren woman, fanciful criticisms of her chastity, etc, this stands a valid ground of divorce under the Hindu Law in India. Instances when a woman experiences mental cruelty by husband may be when he falsely charges her of adultery, or there is a persistent requirement for dowry, or the husband is impotent. If the child is aborted under duress, there may be an issue of the husband's intoxication, or there may be a cheating husband. The spouse leads a morally dubious existence or husband's unrestrained and aggressive behavior and or he is exposing the wife to humiliation in front of relatives and friends all leads to mental cruelty which can be a valid ground for divorce.

As discussed in the case of *Arnesh Kumar v. State of Bihar*⁹, herein the petitioner in this case was Sweta Kiran, respondent number 2. The wedding was legally consummated on July 1st, 2007. In the wife's case, the petitioner's relatives had placed significant obligations on her. The petitioner threatened to wed another woman after learning of this truth and when it was brought to his attention. This led to the respondent's expulsion from her marital home as a result of the dowry demand not being met. After his anticipatory bail was denied and he became aware of his impending arrest, the petitioner applied for anticipatory bail by filing a Special Leave Petition with the Supreme Court.

Mental cruelty committed by a wife towards her husband may be in the form of embarrassing the husband in front of his loved ones, carrying out a pregnancy abortion without the husband's approval. A false accusation being made against him. A refusal of a marriage-related physical relationship without good cause, spouse having an affair, immoral wife leading a life, placing an ongoing requirement for money or wife's unrestrained and aggressive behavior and/or the husband's parents and relatives were treated poorly. For instance the case of *Balram Prajapati and Susheela Bai*, herein the grounds for the petitioner's divorce from his wife were mental abuse. He demonstrated that his wife's behavior towards him and his parents was aggressive and out of control, and that she frequently made up complaints against him. The petition is accepted by the court, and the divorce on the basis of cruelty was granted.

⁹ *Arnesh Kumar v. State of Bihar*. [2014] Criminal Appeal No. 1277

RECOMMENDATIONS

Adultery has been present as a significant part of the hindu religion since ancient times and in many towns in India, this practice is conventionally acceptable. Individuals have “water-wives” - a concept where due to shortage of water a man marries multiple women who can fill water from the nearest sources for their household. So herein the relevance of such laws falls short or it merely persists for the laws sake but society has no belief in it whatsoever. Uneducated individuals of the lower castes who too are unaware of the laws end up in bigamy, and their wives also suffer from cruelty but go unspoken due to societal pressures. Yet, there have been a surge cases of false and exaggerated accusations implicating several relatives of the husband and his family that have been flooding in a rampant way, leading to a widespread acknowledgement of these beneficiary laws as a means to inflict retribution by displeased women. There must be strict regulations regarding how these laws can be dealt with when either of the spouses is claiming the benefits associated from divorce which could be the alimony or maintenance and the grounds on which it is petitioned. The need for increasing literacy would be a plausible solution to the several instances when laws are ignored, not understood or are misused by people especially when it comes to a matter as significant as marriage.

CONCLUSION

The Hindu Marriage Act of 1955 has a variety of laws concerning divorce. According to the Hindu Marriage Act, "divorce as a dissolution of marriage" is defined. The three fundamental divorce ideas are Fault Theory, Mutual Consent Concept, and Irretrievable Theory. The blame theory is utilised in divorce disputes in India. According to this viewpoint, a marriage may be dissolved if one spouse is found guilty or liable for a crime classified as a marital offense. As a remedy, the innocent spouse is entitled to divorce. The principal causes for divorce for Hindu women, according to the Hindu Marriage Act, include adultery, abandonment, conversion, leprosy, cruelty, and so on. Yet, many philosophers oppose the concept of divorce. Hindu married women may also seek maintenance under current legislation. As a result, the innocent spouse may approach the court and obtain a divorce as a remedy. This paper has explored the grounds for divorce and came across present circumstances with regards to these laws.

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