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DIVORCE MADE EASIER: STRIKING DOWN SECTION 10A

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Abstract:

The Indian Divorce Act, also known as the Divorce Act of 1869 is one of the few codified personal laws implemented in India to regulate and govern the actions of the personal laws. This was one of the oldest acts framed during British rule. This act highly mentions judicial separation, alimony, conjugal rights, divorce, remarriage and custody of children. Since then, there weren't enough amendments in this act to match the dynamic nature of law. For example, mutual consent divorce. This short article is going to focus on Section 10A which talks about the same.

Objectives of the Article:

- To know what Section 10A of the Indian Divorce Act states
- To know how the provision violates the fundamental rights
- To understand the reason for striking Section 10A
- To forecast the consequences of the verdict
- To review the decision of the Court

Keywords: Indian Divorce Act, Divorce Act of 1869, Violation of fundamental rights, Section 10A, Anup Disalva v. Union of India

Introduction:

The common belief prevailing in the minds of people is that marriages are decided by the Almighty in Heaven. The institution of marriage is a sacramental one which involves the union of two people in a consensual relationship. It also involves the meeting of minds while covering financial and emotional support. The words in the Bible (Matthew 19:6, Mark 10:9) state that what God has put

together shall not be separated by anyone. This is the main idea behind the concept of Christian Marriage.

But when there arises any misunderstanding or a dispute or even a worse situation in which they couldn't tolerate each other, they should get separated mutually, invoking the right provision, which is under Section 10A of the Indian Divorce Act, 1869.

Section 10A of the Indian Divorce Act:

Sub-section (1) of Section 10A states that if the couple who are married, before or after the commencement of the Indian Divorce Act, on the ground that they have been living separately for one or more than one year and that they cannot live together anymore and mutually have agreed that their marriage should be dissolved, they can invoke this section for getting a mutual consent divorce.

Previously, the separation period should have been two or more years, so that the consenting couples can get divorced. As it was found to be such a long period and it seems to violate the fundamental rights of the married couple, in 2010, the separation period was reduced from two years to one year. Sub-section (2) of Section 10A states that the motion made by the parties not earlier than six months after the date of filing the petition and not later than eighteen months if they don't withdraw the petition and if the court is satisfied with the statements of the parties and that the averments are true, then the marriage can be declared to dissolved.

Problems with the Provisions:

The cooling period suggested by the provision was three hundred and sixty-five days. Within a full year, anything can happen. In cases where the parties cannot survive in the presence of each other, the failure of the marriage and the waiting period may give them additional emotional and mental trauma. For instance, in any domestic violence, a husband beating his wife can give her physical pain and the urge to get separated. This is because she is living in the same house as her husband, taking all the thrashes from him. When the wife gets tortured for dowry and the family restricts themselves from providing her with proper respect, emotional or mental support and financial assistance, there is no way that she can live a life with the dignity and basic happiness a person deserves. Not to be

Tomy Joseph v. Samitha Tomy:

In this decided case, the couple jointly with consent wanted to file a petition under Section 10A of the Indian Divorce Act for waiving the cooling period of six months. The petition to waive the six months cooling period was dismissed. It was observed that under 10A of the Divorce Act, the second motion cannot be made before six months of the first motion. Hence the petition was dismissed.

Monika Sanctis v. Henry Joseph and Anr.:

In this case, the wife preferred an appeal under Section 55 of the Indian Divorce Act read with Section 19 of the Family Courts Act against the order of two Additional Judges. The petition was filed under Sections 10 and 11 for the physical, sexual and mental torture of the husband against her. He indulged in beating, forcing her to have unnatural sex with him and several other types of torture. Losing her tolerance, she filed a divorce petition. As a result, the order was passed that six months of cooling period will be given to them and if they think it is fit to dissolve the marriage after the given period, then the same will be proceeded. But the wife preferred an appeal.

When a person is facing physical, mental, financial, sexual and emotional torture from their spouse, it is so hard for them to stay in the same house as the other one. Adjusting to all of the pain is not going to solve anything. This action violates the right of the petitioner to live a life with dignity under Article 21. That's why it was later held that if it was a requirement and of utmost importance, the decree of divorce can be passed and the marriage can be dissolved immediately.

Even after this case, too much injustice with the process of separation brought the judgment, striking down Section 10A of the Indian Divorce Act of 1869. Let us discuss the judgment and its consequences.

Anup Disalva v. Union of India:

In this case, two young, newly married Christians realised that their marriage is a mistake and their marriage was not consummated. They filed a joint petition for divorce before the Family Court under

Section 10A of the Divorce Act. The court rejected the same by stating that the petition was filed within one year of their marriage and one-year separation should be an essential condition to maintain the petition. Challenging this the couple approached the Court and filed a Writ Petition to declare that Section 10A is unconstitutional with Advocates Sandhya Raju and Leela R as amici curiae.

Many circumstances and consequences were taken into account while the observation is made by the Hon'ble Court. Divorce by mutual consent reflects the consent of both parties to get separated by getting rid of the marriage. In India, marriage is seen as a foundation to form a strong family and society. That is why enough time is given to the party to think about the separation and to take a firm decision. But when the couple themselves have no mutual understanding, the institutions of marriage and family fail to stand strong.

The state interferes in marriage relationships through legislation on the assumption that humans are prone to mistakes and are ill-equipped to decide for themselves. The Court after presentation under Section 10A(2) of the act is obliged to allow the parties to think on their decision of mutual separation. Parties are still given the right to withdraw the petition not earlier than six months after filing the petition. It is also to be noticed that 10A(1) will violate the right of the couple if they are not given the option to highlight the hardships they experience during the waiting period.

So, it was held by the Hon'ble Court that a spouse can file a divorce petition without any waiting period. The Court can grant a divorce even if the petition is filed within one year of marriage, on being satisfied with the ground for divorce. It was also held that fixation of a minimum period of separation as provided under Section 10A is violative of fundamental rights and accordingly, struck it down.

Consequences:

Though it has several good effects on society, it has various other consequences too. Protecting the fundamental right rights of the citizens, also gave them the freedom to choose the status of their marital life. They can choose to dissolve their marriage whenever they feel the marriage will not satisfy them mentally and emotionally. It prevents them from waiting time to get a divorce and they can get married for the second time as soon as the parties get separated legally from their first spouse.

This has also increased the rates of divorce in the country, which is a negative effect and something very new to a country like India. It should be taken in an optimistic way that it is better to get rid of a bad marriage than to live a life of distress. It is to be noted, the decree of divorce is passed only if the court is satisfied with the ground stated by the parties.

Conclusion:

A good society forms where there is a strongly formed family. By striking Section 10A of the Divorce Act, a foundation for a stronger society is being laid while protecting the people's fundamental rights and getting rid of a bad marriage at its root. So, in my opinion, the decision of the Hon'ble Court should be cherished.

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