



DIVORCE UNDER THE PERSONAL LAWS HINDUS IN INDIA

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Abstract:

This research work aims at providing a comprehensive analysis of divorce under the personal laws governing the Hindus and the offshoots of Hindus. The study is to provide for the legislation which governs the Hindus and the dissolution of their marriage, by shedding light on the underlying principles, procedural variations, and societal implications associated with dissolution of marriage. The research will delve into the key aspects of divorce under the Hindu law by examining the provisions that provides for the grounds of Divorce, the procedures to be followed, and certain other legislative doctrines associated with it. This will encompass an examination of grounds for divorce, the role of ecclesiastical authorities, and any unique considerations within the Christian context. Additionally, the study will assess the societal implications, cultural influences, and the evolving nature of divorce within each religious community. Special attention will be given to the impact of these legal frameworks on issues such as gender equality, social stigma, and the welfare of children affected by divorce. Through a multidisciplinary approach, incorporating legal, sociological, and cultural perspectives, this research aims to contribute valuable insights for policymakers, legal practitioners, and scholars. By understanding the nuances of divorce within the Hindu, Muslim, and Christian communities, it is anticipated that this research will foster a more informed discourse on family law reform and contribute to the development of a legal framework that aligns with contemporary societal needs.

Keywords:

1. Divorce
2. Hindu marriage act
3. Customs and usages
4. Shastric law
5. Vedas

Introduction:

It is belief among the Hindus that the marriage is long-lasting relationship and therefore there were no provisions for the dissolution of the Hindu marriage until the passing of the Hindu Marriage act of 1955. But it doesn't mean that the concept of divorce had arisen only by reason of passing of this act, the provisions were inserted by giving consideration to the conditions prevailing in the society. The same hold good for the Christian laws as well and their divorce is governed by the Indian Divorce Act of 1869. But if we consider the concept of Divorce under the Muslim law it was prevalent from the very beginning. But only men had the authority to grant divorce. Even the wife was to dissolve the marriage she has to obtain the consent of her Husband. Though such provisions are still prevalent among the Muslim countries the position is completely different in India and the wife can obtain divorce under any of the ground specified under section 2 of Muslim marriages act.

Historical context of Divorce:

Earlier under the Hindu law there was no provision for the Divorce. It was believed that marriage is a sacred bond formed between the husband and wife. There was also beliefs that, once a man and women get married they were same that is, that particular women was considered to be the half of the men. According to Manu, there is no chance for the separation of the husband and wife, and they have to live together, and the marriage cannot be broken. The concept of divorce was not recognized by the Hindu law. According to the Hindus of the ancient times, Marriage is an institution that is attached with religious sacraments. Since some of the essentials of the valid Hindu marriage is similar to the essential elements of a valid contract some considered marriage to be a sacramental contract and hence it cannot be revoked.

Shastric Hindu Law:

Earlier the Hindu marriages were primarily governed by the shastric Hindu law. They were governed by the Vedas which were primarily considered to be the utterance of the god. Manu's Smriti is considered to be the ancient text and it provided guild lines for the marriage, and other family related issues.

Customary Practices:

There were several customs prevalent in the territory. But, most of the customs has been out-ruled at present since they were opposed to the public policy.

Present context of Divorce:

At present, the provisions relating to the Hindu marriage, dissolution of Hindu marriage and the procedure for filing a suit in relation to any matrimonial disputes are provided in the Hindu marriage act of 1955. The act has been enacted to introduce or to be more specific to give effect to certain legislative reforms and to

provide a uniform codes for the Hindus. This particular act has been passed to remove some of the religious practices and customs that were opposed to the public policy.

Divorce under Hindu Law:

The provisions for the dissolution of the marriage of two Hindus is provided under the Hindu marriage act of 1955. The act provides for dissolution of marriage either on the basis of mutual consent of both the parties to the marriage or upon the fulfillment of any one of the grounds provided under section 13 of the said act.

There are three theories that govern the divorce under the Hindu Law. They are,

- ◆ Fault based theory
- ◆ Breakdown theory
- ◆ Mutual consent theory

Fault based theory:

As the name suggest, for the theory to be applicable either party to the marriage must be at default. And further it is not necessary that both the parties to the marriage must be at default. If the court is satisfied that either party to the marriage is at default it may grant a decree for the dissolution of marriage. Section 13 of the Hindu marriage act provides for the ground on which a decree for dissolution of marriage can be granted.

The grounds for divorce are as follows:

Adultery:

When either party to the marriage, during the subsistence of their marriage have a sexual intercourse with any person other than his or her spouse then they will be held criminally liable under section 494 and 495 of Indian penal code and the same act serves as a ground for the dissolution of marriage.

Cruelty:

Cruelty includes both physical and mental ill-treatment or cruelty. The burden of proof is upon the petitioner to prove that the respondent has treated him/her with cruelty. The relief of divorce on the ground of cruelty is available to both the husband and wife.

Desertion:

The Desertion refers to act by which one of the party to the marriage with draws from the conjugal society of the other. The willful abandonment without any reasonable cause without the consent or against the will of the other party refers to desertion. The deserted spouse is entitled to the relief of divorce after 2 years of desertion.

Conversion:

If either party to the marriage ceases to be a Hindu by converting to another religion the other party to the marriage is entitled to the relief of divorce.

Mental disorder:

If a spouse suffers from a mental disorder or has been continuously and incurably insane for a certain period, it can be a ground for divorce.

Leprosy:

This relief is available to both the husband and wife. For obtaining the decree of divorce it has to be party suffers from the leprosy in its virulent and incurable form. But this particular provision has now been abolished.

Venereal Disease:

If either party to the marriage suffers from venereal disease in its communicable form then the other party to the marriage is entitled to the relief of divorce. One thing that is to be proved is that the venereal disease is in its communicable form that is, it must be capable of being transmitted to the other person through contact.

Renunciation:

If either party to the marriage voluntarily renounces the world by becoming a sanyashi the other party to the marriage is entitled to the relief of divorce.

Death:

When a persons whereabouts are not known for more than seven years it is civil death of the person is presumed. In such cases the civil death of the person serves as a ground for divorce.

No Cohabitation:

The failure of resumption of cohabitation after a decree for restitution of conjugal rights becomes a ground for divorce.

Section 13(2) provides for the grounds that are available only to the wife.

The grounds are as follows;

1. Right from the date of marriage the husband is guilty of rape, sodomy, or bestiality.
2. In case of the marriage solemnized before the commencement of the Hindu marriage act of 1955 the husband had a wife living at the time of marriage of the petitioner or after the marriage of the petitioner the husband married again, but the second marriage was before the commencement of the act.

3. If the wife had got married before she attained the age of 15 years, and she had renounced the marriage after she had attained the age of 15 years but before the attainment of the age of 20 years.
4. A decree for maintenance is granted in favor of the wife, but there is no resumption of cohabitation for one year.

Mutual consent theory:

One can infer from the name, what the theory refers to. When both the husband and wife are not interested in continuing their relationship, or it appears to them, that it is impossible for the to live together, then they can apply to the court for the decree of dissolution of marriage. The court on being satisfied of the statements made in the petition may and after providing reasonable opportunity of being heard for both the parties to the marriage may decree accordingly. But, one cannot apply for the dissolution of marriage by the virtue of mutual consent theory before the completion of one year from the date of marriage.

Irretrievable Breakdown Theory:

This particular theory has not been explicitly provided under the Hindu marriage act but it can be inferred from the legal precedents. The recognition to the irretrievable breakdown theory has been provided after the leading case of Naveen Kohli V Neelu Kohli. In that particular case the supreme court has observed that when there is no possibility of reconciliation between the parties and the marriage has been broken irretrievably then it serves as a valid ground for divorce.

Conclusion:

The concept of divorce has been criticized by many philosophers. Though one party wants to break the marital tie the other party may wish to continue the bond but once the decree is granted the bond comes to an end and the innocent spouse is left remedy less.

