

COMPARISON AND STUDY ON THE PROVISION AND PRACTICES RELATING TO DIVORCE AMONG HINDU AND MUSLIMS IN INDIA

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ABSTRACT

In India divorce and separation are perceived to be relatively rising event. There exists a correlation between legal change and social change. Law is socially derivative and it depends upon the environment conditions and human behaviour at a particular time and place. Divorce is a large aspect of Indian personal laws of every community. The institution of marriage is undergoing a rapid change with Act 1869, The Special Marriage Act 1954. Divorce has hit permanency of marriages where marriages were indissoluble union now they are dissoluble. Divorce word is just like a counter word for Indians. Most of the Indians dare to divorce but it was stated earlier. Now Indians are looking western people and following them. When the husband and wife can't adjust their relationship then decide to end up their relationship forever. Indian judiciary has made various laws regarding this. The divorce procedures in India are tremendously challenging both emotionally and financially. The judicial system has a vested interest in protecting the institution of marriage.

Keywords: *Concept of divorce, Divorce with mutual consent, grounds.*

INTRODUCTION

Marriage and family are ancient institutions and around them have grown up deep and powerful sentiments and traditions. Family is the institution which forms the basis of every other institution on the face of the earth. This important institution is formed on another institution namely, marriage. In most societies marriage is considered as a permanent union. We come across many passage to support the view that marriage is union made by god himself and hence none should break it. For a Hindu marriage is sacrament and hence unbreakable.¹

Despite all these there has been a significant change in the views and attitudes towards sanctity of marriage in the recent past, especially in cities. Marriage is no longer held to be a 'divine match' or a 'sacred union'. Marriage has been becoming increasingly unstable in many countries for the past few decades and divorce rate is mounting.

CONCEPT OF DIVORCE

The word 'divorce' in English is derived from latin word dovertium which again is derived from dis which means 'apart' and vertere which means 'to turn'. Divorce is dissolution of the tie of marriage. So, divorce is the turning away of partners from each other. Divorce in the proper and strict sense of the term means complete rupture of the marital bond; the persons divorced returning to their original state of being free to marry. Divorce is the word we use to mean the legal ending of a marriage. Divorce 'represents the end of the hopes that two people had for each other'. It is the certificate that their relationship failed.

Divorce is a way of dissolving a legal marriage that permits the partners to remarry if they choose. Divorce involves the recognition that marriage has irreparably failed and that at least one of the partners has no desire to continue the marital relationship. Total dissolution of the bond of a valid marriage is what is now generally meant by divorce.

Divorce or the legal termination of a marriage has been called the most detestable of all permitted things. The reasons for this may be that no other process knows to man causes such utter devastation to the family unit, socioeconomic status of the family, and the psychological well-being of all those involved. With such noticeable changes, the fabric of Indian society is being affected by the shift. Indian women are educating themselves, choosing professional careers and becoming independent. The impact of cable and satellite television, the internet and western influences have all contributed to women raising their expectations of marital life. Financial security and dependency on the man, as once practiced in the past, is now no longer the case. Professional women are making their own choice and financial stability is giving them the confidence which was not present in the past. However, this evolution is now damaging the sacred institution of marriage because separation and divorce rates in India are rising.

The estimated national figure for divorce in India is as high as 6 to 7 percent. However, there are no exact figures available for the number of divorces as many are handled locally and are registered differently by

¹. Hindu Marriage Act, 1995.

the various states. Some studies have indicated that in the small towns, semi-urban areas and cities, the number of divorces is definitely increasing. Numbers in divorce petitions being filed by young couples at family courts have grown significant increases.

Divorce laws in India are broadly categorized into 'Divorce by mutual consent', 'contested divorce', 'void marriages', here is a detailed overview about each of them

1. DIVORCE WITH MUTUAL CONSENT

Under section 13-B of the Hindu Marriage Act, 1995, the parties can seek divorce by mutual consent by filing a petition before the court. Mutual consent means that both the parties agree for peaceful separation. Mutual consent Divorce is a simple way of coming out of the marriage and dissolve it legally. Important requirement is the mutual consent of the husband and wife. There are two aspects on which husband and wife have to reach to consensus. One is the alimony or maintenance issues. As per law there is no minimum or maximum limit of maintenance. It could be any figure or no figure. Next important consideration is the child custody. This can also be worked out effectively between the parties. Child custody in mutual consent divorce can be shared or joint or exclusive depending upon the understanding of the spouses. The parties intending to dissolve marriage are required to wait for at least one year from the date of marriage. They have to show that they have been living separately for a period of ²one year or more before the presentation of the petition for divorce and that during this period of separation they have not been able to live together as husband and wife.

The parties can file divorce petition in the family court of the city / district where both the partners lived together for the last time, which was their matrimonial home.

2. CONTESTED DIVORCE

In case of a contested divorce, there are specific grounds on which the petition can be made. It isn't as if a husband or wife can simply ask for a divorce without stating a reason. The reasons for divorce are as follows;

CRUELTY:-

Cruelty may be physical or mental cruelty. According to the Hindu Divorce laws in India, if one spouse has a reasonable apprehension in the mind that the other spouse's conduct is likely to be injurious or harmful, then there is sufficient ground for obtaining divorce due to cruelty by the spouse.

ADULTERY:-

In India, a man that commits adultery can be charged with a criminal offence. The wife may, of course file divorce as a civil remedy. If, on the other hand, a wife commits adultery, she cannot be charged with a criminal offence, though the husband can seek prosecution of the adulterer male for adultery.

DESERTION:-

One spouse deserting the other without reasonable cause is reason for divorce. However, the spouse who abandons the other should be proof of it. As per Hindu law, the desertion should have lasted at least two continuous years.

CONVERSION:-

Divorce can be sought by a spouse if the other spouse converts to another religion. This reason does not require any time to have passed before divorce can be filed.

MENTAL DISORDER:-

If the spouse is incapable of performing the normal duties required in marriage on account of mental illness, divorce can be sought. If the mental illness is to such an extent that the normal duties of married life cannot be performed.

COMMUNICABLE DISEASE:-

If the spouse suffers from a communicable disease, such as HIV/AIDS, syphilis, gonorrhoea or a virulent and incurable form of leprosy the Hindu Divorce Law in India says that the other party can obtain a divorce.

RENUNCIATION OF THE WORLD:-

If the spouse renounces his/her married life and opts for sanyasa, the aggrieved spouse may obtain a divorce.

PRESUMPTION OF DEATH:-

² Case- Vishwanath Sitram Agarwal v. San. Sarle Vishwanath Agarwal, 2012 AIR (SC) 2586:2012

If the spouse has not been heard of as being alive for a period of at least seven years, by such individuals who would have heard about such spouse, if he or she were alive, then the spouse who is alive can obtain a judicial decree of divorce.

DIVORCE UNDER MUSLIM LAW:-

A husband may divorce his wife by repudiating the marriage without giving any reason. Pronouncement of such words which signify his intention to disown the wife is sufficient. Generally this is done by talaq but he may also divorce by ilya, and zihar which differ from talaq only in form, not in substance. A wife cannot divorce her husband of her own accord. Under an agreement the wife may divorce her husband either by khula or mubarat.

There are two categories of divorce under the Muslim law;

-Extra judicial divorce

-Judicial divorce

The category of extra judicial divorce can be further subdivided into three types, namely;

-By husband- talaq, ilya and zihar.

-By wife- talaq-i-tafweez, lian.

-By mutual agreement – khula and mubarat.

The second category is the right of the wife to give divorce under the Dissolution of Muslim Marriage Act 1939.

Qazi Mohammad Ahmad Kazmi had introduced a bill in the legislature regarding the issue on 17th April 1936. It however became law on 17th March 1939 and thus stood the Dissolution of Muslim Marriages Act 1939.

Section 2 of the act runs that a woman married under Muslim law shall be entitled to obtain a decree for divorce for the dissolution of her marriage on any one or more of the following grounds;

-That the whereabouts of the husband have not been known for a period of four years. Section 3 provides that where a wife files petition for divorce under this ground.

-That the husband has neglected or has failed to provide for her maintenance for a period of two years.

-That the husband has been sentenced to imprisonment for a period of seven years or more.

-That the husband has failed to perform, without reasonable cause, his marital obligation for a period of three years.³

That the husband treats her with cruelty, that is to say habitually assaults her, associates with women of ill repute, attempts to force her to lead an immoral life.⁴

CONCLUSION

Hindus consider marriage to be a sacred bond. Prior to the Hindu Marriage Act of 1955, there was no provision for divorce. The concept of getting divorced was too radical for the Indian society then. The wives were the silent victims of such a rigid system. However, time has changed; situations have changed; social ladders⁵ have turned. Now the law provides for a way to get out of an unpleasant marriage by seeking divorce in a court of law. The actual benefactors of such a provision are women who no longer have to silently endure the harassment or injustice caused to them by their husbands. But the manner in which the judiciary is dealing with the subject of irretrievable breakdown of marriage, it is feared that it will completely pause the system of marriages. Every theory has its negative and positive traits. Their applicability differs from situation to situation. Therefore it is very essential that the lawmakers of our country should deal with the subject in a very cautious manner after considering in detail its future implications.

³ Gul Mohd. Khan v. Hasina.

⁴ Syed Ziauddin v. Parvez Sultana.

⁵ Trimabak Narayan Bhagat v. Kumudini T. Bhagat, AIR 1967.

⁶ By Act 68 of 1976.