

DIVORCE LAWS IN INDIA

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ABSTRACT

India is the seventh-largest country in the world. India has its own rules and regulations. India is a secular country where all religions have their own laws that follow by their community. There are only minor changes in the rules and regulations of divorce in respect of religion. In the past, marriage could not be dissolved by any means, but in modernization, the rate of divorce has increased with time. Now there is less negativity about divorce and no objection. In the journal economic weekly, Roma Mehta said women in India were “more protected and much better cared for than in the West.” In recent years, it has been seen by the court that more couples are getting divorced, and the most common reasons are either infidelity or incompatibility. Where in India, many cases were reported during the time of lockdown and solved online. There are many grounds on which a spouse can get divorced. The most common cases now are based on the separation of the husband by their family, where the wife demands the husband to live separately from her in-laws. Still, India contains rich interdisciplinary literature on specific aspects of marital stability. All middle-class couples work, wife, or husband both. The incompatibility is the problem for spouses to maintain their lives. The main ground of cases is infidelity and incompatibility.

Keywords: Divorce, Marriage, Hindu, India.

INTRODUCTION

My research on divorce in India was truly explained by my parents. Where divorce is less common in India because of the respect and guidance of a child's parents. children should knowledgeable; both need to be compatible. Marriage is about sharing and caring for each other. The term divorce is a noticeably big deal in India. Divorce is basically the end of marriage for couples. A divorce is a legal action taken between a husband and wife to destroy or discontinue their marital relationship. The end of a marriage by taking legal action before the death of either spouse. India is a secular country where religions are diverse, and all regions

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have their own rules and regulations in the term of divorce. In Hindu Marriage Act 1955, these Divorce Laws apply to Hindus, Sikhs, Jains, and Buddhists only.

As for Muslims, they have different personal laws of divorce, just as Christians and Parsis have different laws. The major religions have their own communities that govern divorce laws through the same laws, but many have separate rules and regulations concerning divorce in inter-religious marriage in India. The term divorce is defined as “divorce as a dissolution of marriage” in the Hindu Marriage Act of 1995.

In the past, the number of divorces was exceptionally low, but as time passed, the number of divorce cases increased. The mindset of the people changed dramatically. Recently, the cases of divorce increased by 1.3% in India, compared to last year’s 0.6%. Out of one thousand marriages, 13 couples get divorced. And that shows marriage is a holy custom in India. Where not only couples but families also interact the most. Earlier, the marriage of children was systematized by parents. Nowadays, love marriage is common in India as well. The low rate of divorce in India is due to their tradition and culture. In ancient times, there was no concept of divorce in India, but as time passed, divorce began to acknowledge as a frequent practise. Now, divorce picks out as an option more often. Where couples think that divorce is good for them and could solve their problems, those problems can clarify through discussion and adjustment.

HISTORY

In India, marriage is considered an eternal union. The term divorce is forbidden in major Hindu societies, where divorce is unacceptable in society. The community does not accept a wife or husband separated from their partners. A married couple should live together until death separates them. The term marriage means that husband and wife are inseparable in nature. As said, husbands cannot abandon their wives by any means. But there is a concept of remarriage for men only when their wife is dead or infertile.

In 1931, the laws provided the first law under which the husband and wife both had to get divorced on some grounds. The Divorce Act of 1931 is the first provision that is helpful for women who are facing cruelty by their husbands and in-laws.

GROUND OF DIVORCE

In the Hindu Marriage Act of 1955, the term divorce is defined under Section 13, where any married couple breaks down on some grounds. Where Section 13 sub-clause one provides grounds for divorce for both spouses. The grounds of divorce where husband and wife both apply are: -

1. Adultery
2. Cruelty
3. Venereal disease
4. leprosy
5. Renunciation
6. Presumption of death
7. Insanity
8. Conversion
9. Desertion

These rights are common ground for husband and wife. Before, adultery and cruelty were the main reasons for divorce. These grounds for divorce fill by the wife, mostly when her husband has a second wife or is cheating on her. There are some cases of cruelty where her husband and in-laws force her to pay a dowry or commit violence against her. The ground of desertion is the only ground of separation. The ground was added to Section 13 of the Marriage Laws Act 1976, where any couple could fill out the petition if they were abandoned by their partner. Desertion could charge if one of the spouses is abandoned by the other without any reason or cause for at least two years. In the cases where an appeal was filed by the husband, his wife abandoned him and refused to communicate with him. Where the wife filled out a petition saying that she was treated badly by her husband and in-laws for dowry. But the wife does not provide any evidence and does not examine herself. It shows that she is insincere in her attempts at reconciliation or in leading evidence of her allegations to the court. She refuses to come to court because there is no one to accompany her; the court held that she is a working woman and the distance between the two places is only 80 km. So, the court refused all demands of the wife and granted a divorce on behalf of the husband on the grounds of desertion.

Few grounds were given to women, where only she could fill out a divorce. Section 13 sub-section 2 specifies the grounds on which a wife may file for divorce --

1. If your husband enjoys or is obsessed with rape, inhumanity, or buggery,
2. If the husband married another woman despite having the first wife alive,
3. If a girl marries before completing the age of fifteen,

In recent years, the rate of divorce has increased with time and modernity. If a man wants a divorce, those nine grounds are sufficient. But in the recent judgement of Narendra v. K. Meena, the wife wants her husband to separate from his family. And there is evidence that the family depended on the husband's income. A son is brought up by their parents, so when parents become old, it is a child's moral and legal obligation to take care of them.

So now the men can also file for divorce on the ground of "separation of the husband from his family."

THEORIES OF DIVORCE

In primitive society, marriage was considered a sacred bond that could never collapse. But as time changes in modern society, divorce comes into the picture and puts an end to a marriage. The provisions and theories related to divorce were introduced by the Hindu Marriage Act of 1955.

The following are theories of divorce:

The fault theory, Section 13 sub-section 1 of the Hindu Marriage Act, covers grounds such as cruelty, adultery, insanity, etc. In theory, it is necessary to have an innocent party who fills out the divorce petition for the other guilty partner, who has committed a wrongful act. This theory has a drawback if both parties are guilty, so this ground is inapplicable if there are no guilty parties, or if no remedy lies with the innocent party.

Mutual consent: Section 13B of the Hindu Marriage Act of 1955 talks about mutual consent in divorce. Where parties may dissolve their marriage. It required the parties to live separately for the last year. The irrefutable breakdown theory says that when a marriage is broken, there is no chance of reconciliation. Where married couples have alleged each other with numerous of civil or criminal allegations. Marriage is at a stage where there is not a single possibility of restoration. This theory comes under Section 13(a) of the Hindu Marriage Act.

Naveen v. Neelu Kohli, in this case, both parties alleged each other with various charges. The court held under appropriate judgement that there is not a single chance of restoration of this marriage. So, the court passes the decree of divorce on the ground of irrespective breakdown.

Frustration theory: if one spouse is dead, of unsound mind and not consummated, etc., the other spouse may get divorced on the grounds of frustration.

LANDMARK CASES

Smt. Maya Devi v. Jagdish Prasad:¹ In this case, the allegation against the wife is that she does not provide food to her husband and her in-laws. The husband charges his wife with the threat of the death of his children. The honourable court held that the word cruelty does not define it in this case; cruelty can be physical or mental. And it is not safe to stay with a wife who has these dangers to live with. A husband can also get divorced on the grounds of cruelty.

Shobha Rani v Madhukar Reddi:² In this case, the wife accused her husband and his husband of demanding dowry. The wife is going to be a doctor in a few years. And the word cruelty is also analyzed in this case.

LOW RATE OF DIVORCE IN INDIA

The rate of divorce is not concerning in India. It shows that most people like to follow their traditions and customs. When anyone visits here, they observe that people are convinced by each other and follow the path of society and trends as well. In terms of wearing and eating, it is quite different and unique. When we refer to eating with our hands, we know there are germs in our hands. That shows our values and beliefs in our culture. Even in marriage, couples often have fights, but their families help them understand each other and stabilise their marriage. In India, couples respect their elders, do not spoil their feelings and reputation, and continue their marriage. The marriage ceremony is excessively big in India because everyone believes that people marry once and that only death can separate them from their partner. The law in India mostly helps women get divorced of their own free will, but the problem arises from society. Where patriarchal society followed, women have less right to speak up against their families, and married women should only follow their husbands. Even rural or urban women must leave their work and first focus on their families. And that is also the reason women have less

¹ AIR 2007 SC 1426

² 1998 AIR SC 121

employment and development. A man always desires a woman who takes care of his family and child, and in the meantime, they should focus on their work. Nowadays, a unique reason for divorce is that women's feelings, and self-respect hurt, and women's careers are just as important to men. The early marriage concept is getting low, too. But will the women still have to work or do house chores? Will men ever understand that they should maintain women's careers and marriages also? The reasons are various for the low divorce rate and low women's employment in India, but the main reason is the mentality of people, where acceptance is extremely low.

CONCLUSION

It discussed that Indian beliefs and culture are quite different where a husband and wife are a complete couple and should only be separated by death apart. So, there is no divorce law in India, after a few cases of cruelty or infidelity by the partner. Numerous patients experience violence and stress and depression. Then the principle of divorce comes into effect. Any kind of physical and mental abuse, either by husband or wife, should be accepted in any condition because it violates the basic right of dignity or liberty given under the constitution of India. This provides women with relief who are enduring violence from their husbands and in-laws.

In the case above (Maya Devi v. Jagdish Prasad), the court defines cruelty as being physical, mental, direct, or indirect. This case is based on circumstances and evidence. The grounds for divorce change with time and situation. The circumstances of society need to change so that women or girls get help mentally or physically. Now that women have more options and are less dependent on men, this encourages divorce among women, who has unhappiness with their marriage. The major reason for less divorce is the acceptance of society. Where women need to be homemakers so that their husbands can earn money for the family. But change in society is important.

Another point of view is that divorce may be a misfortune for couples, children, and society. In a society where tradition and culture embrace, the acceptance of divorce by men and women is necessary. The problem could be something like remarriage or stability in society. In research, it has become known that children of divorced parents face many problems. Those children mostly have emotional anxiety after the separation of their parents.

Divorce and marriage are both life-changing events. As for marriage, it is the happiest thing for couples and families, but divorce is the saddest part of life.

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