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I Do, I Did, I'm Done: Divorce and Rights of the Parties

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ABSTRACT

“I now pronounce, you over and done with...”

The seven-letter word 'Divorce' derived from the Latin word 'divortium' which means separation, causes a person to be looked down upon and shamed for being bold and unapologetic about being single again. Divorce is considered to be a stigma, especially in India. A person is brutally judged on his/her character just because of a procedure which helps him/her end a relation, which is legal according to Section-13 B of the Hindu Marriage Act, 1955 and Section-28 of the Special Marriage Act, 1954. Getting divorced does not mean a person is weak, rather it means that he/she has the audacity to stand up for himself/herself and to get out of a toxic relationship. The society should be supportive and equally respectful towards people seeking a divorce. Through this research paper, the researcher wants to take a closer step towards ending the big taboo in Indian society - the Divorce.

Keywords: Divorce, Stigma, Audacity, Toxic relationship, Taboo.

I. INTRODUCTION

Divorce is defined as the legal termination of martial relations; it means dissolution of the martial bond but in its real sense there is a lot more to it. In today's world, with increasing mental health problems, it's mandatory for any individual to stay true to one's values and find solace. Breaking the stigma, all of us as a society should move past troubleshooting, blaming and assigning faults and respect a person's decision to get out of a broken relationship and not be trapped in it. For better or worse, divorces have emerged as a very likely outcome of marriages today, questioning the truth of the saying that marriages are made in heaven. Nevertheless, it is a courageous decision. There is no reason why the option of divorce should be scorned upon in the society. In India, the repercussions of a divorce are likely to be more adverse for women than men! This includes social stigma and loss of face considering that marriages are regarded sacred and even quintessential for women. Despite greatly relaxed

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divorce statutes passed 20 years ago, social stigmas still apply to the divorce and remarriage of Hindu women.

(A) Research Question

For better or worse, divorces have emerged as a very likely outcome of marriages today, questioning the truth of the saying that marriages are made in heaven. With the rising divorce rates in our country, India. This research paper attempts to look at ‘Why divorce is still a stigma in India in the 21st Century?’ and ‘What are the rights of the people going through a divorce?’

(B) Literature Review

In today's society, this study examines the attitudes and perceptions of marriage and divorce among college students. This study looks at how the opinions of college-age students from divorced and non-divorced families differ almost two decades later, based on a 1981 study by Ganong² which examined the perceptions and attitudes of high school students from intact, divorced and reconstituted families. In the United States, the divorce rate is among the world's highest (Linlin,1993)³. For social science researchers, parental divorce has been an issue of interest and the rise in parental divorce for college students has been widely noted. 8.7% of college freshman reported having experienced parental divorce in 1972, while the percentage of college freshmen from divorced families increased to 22.6% in 1989 and to 25.4% again in 1999 (Daniel et al., 2001). 50 % of first marriages and 60 % of second marriages are estimated to end in divorce (Cohen, 2002)⁴. Today, as compared to 1970, more divorced parents choose to cohabit with someone before getting remarried (Nielson, 1999). Approximately 15% of those divorced cohabitation couples never marry each other (Nielson, 1999). Daniel et al. (2001) reported that single-parent households would also rise as the divorce rate increases. Parental separation and divorce in our society continues to be an important factor contributing to the risks of children's cognitive, behavioral and emotional development today, and 40 percent of children are expected to have experienced parental divorce by their sixteenth birthday (Tanner, 2002). Demographic research shows that, on average, there is an increased risk of divorce for individuals who marry under the age of 30, as well as marriages where the wife has completed a higher degree of education than her husband (Linlin, 1993). Low religious

² (Ganong 1981)- Effects of Parental Divorce on College Students

³ (Linlin 1993) – A Comparative Study on Divorce

⁴ (Cohen 2002)- Helping Children and Family Deal with Divorce Separation

affiliations, low education and income, cohabitation before marriage, being in a second marriage and experiencing divorce as a kid are other variables that increase the risk of divorce (Amato & Rodgers, 1997).

(C) Scope & Objective

In order to find out and understand the meaning, types and reasons of divorce the researcher has stated legal provisions along with the case laws. This paper aims to prepare a well analyzed study on the issue of divorce including rights of the parties going through a divorce.

(D) Methodology

Throughout the report the researcher has adopted a doctrinal approach. Owing to the lack and impossibility of the compilation of the first hand data, a secondary source of information was used. The content is descriptive and analytical. An in dept. study was carried out by the researcher on the subject of divorce, along with the planning to understand the rights of parties.

II. DIVORCE UNDER HINDU LAW

Divorce means that a competent judge dissolves the union of marriage. As marriage was seen as an indissoluble relationship between husband and wife, earlier divorce was unfamiliar to general Hindu law. Manu claimed that either by auction or by dissolution, a wife cannot be freed by her husband, indicating that the marital connection can in no way be cut. While Hindu law does not contemplate divorce, it was also held that it would have the force of law where it is accepted as an established tradition.

In the case of an unapproved mode of marriage, marriage could be dissolved by mutual consent, according to Kautilya's Arthashastra. But, Manu does not believe in marriage discontinuance. He says let reciprocal loyalty continue until death; this can be understood, in brief, to be the husband and wife's highest dharma. However, after divorce was incorporated in the Hindu Marriage Act, 1955, everything changed. Basically there are three divorce-fault theory hypotheses, the hypothesis of mutual agreement and the irretrievable dissolution of marriage theory.

Under the principle of blame or the theory of wrongdoing or the theory of guilt, marriage can only be broken if a sexual sin has been committed by any party of the marriage. A guilty and innocent party must be in place, and the only innocent party may seek a divorce remedy. The most striking aspect and downside, though, is that there is no redress possible if both sides are at fault. The theory of divorce is one of reciprocal acceptance. The fundamental

reasoning is that if two people are free to marry, they should both be able to step out of their own free will partnership.

Critics of this theory, however, say that this strategy will encourage immorality as it will lead to hasty divorces and parties will dissolve their marriage even if temperament incompatibility is slight. The third hypothesis is linked to the marriage's irretrievable collapse. The marriage breakup is defined as such failure in the marriage relationships or such circumstances adverse to that relationship that there is no reasonable likelihood of the spouses living together again as husband & wife." Such marriage should be broken with full fairness & minimum resentment, misery & embarrassment. Some of the reasons available under the Hindu Marriage Act could be. This include civil death, renunciation of the cosmos, etc.

III. TYPES OF DIVORCE UNDER HINDU MARRIAGE ACT, 1955 & IT'S PROVISIONS:

Grounds of Divorce

These are the following conditions for Divorce under Hindu Marriage Act, 1955:

- Fault Ground (Section 13(1))
- Breakdown Ground (Section 13(1A) (i), 13(1A) (ii))
- Divorce by Mutual Consent (Section 13-B)
- Customary Divorce (Section 29(2))

1. Fault Ground

Under the Hindu Marriage Act 1955, Section 13(1) lays down nine reasons for divorce. Treason, desertion, cruelty, lunacy, leprosy, vernal illness is all of them, while others are generally Hindu causes, such as baptism or renunciation of terms.

- Desertion:

Parliament explained desertion in sub-section (1) of Section 13 of the Hindu Marriage Act, 1955: The term 'desertion' refers to the desertion of the petitioner by the other party to marriage without a reasonable cause and without the consent or wish of the other party, and includes the willful negligence of the petitioner by the other party to marriage and its grammatical va Desertion, in other words, implies permanent leave or forsaking of one spouse by the other without the consent of the other without any reasonable reason.

For the offence of desertion so far as deserting spouse is concerned, two essential conditions must be there

- the reality of the split and
- the desire to finally put an end to cohabitation (*animus deserendi*). Similarly, two elements are essential so far as the deserted spouse is concerned:
- the lack of consent, and
- the lack of a valid cause of action for the partner leaving the matrimonial home to render the required purpose referred to above.

Cruelty:

Cruelty was not the basis for divorce before 1976. It was the basis of judicial segregation. Cruelty is made a basis for divorce by the Amendments Act. The word "cruelty" has not been outlined in the Oxford Dictionary and is used with regard to human behavior or human behavior. It is the behavior in relation to or in relation to duties and obligations of marital status. It's a course of behavior and one that moves the opposite adversely. Cruelty is also physical or mental, deliberate or unintentional.

Adultery:

Reydon defines adultery as "consensual sexual intercourse during the subsistence of marriage between a married individual and a person of the opposite sex, not the other spouse."

It is not appropriate, or sufficient, to show in the case of a divorce petition that the correspondent had information or reason to believe that the respondent was the wife or husband of the petitioner. If the respondent had a relationship with the full understanding of exactly how co-respondent he or she wasn't a wife or husband, then that was appropriate.

Insanity:

Section 13(iii) may obtain a decree of divorce or judicial separation under the Marriage Laws (Amendment) Act, 1976, if the respondent has experienced such a kind of mental turmoil consistently or irregularly and so much so that the petitioner cannot be sensibly required to live with the respondent.

In *Ram Narayan v. Rameshwari*⁵, the Supreme Court held that the petitioner should demonstrate not only the said mental disorder in schizophrenic mental disorder, but also establish that the petitioner's account could not reasonably be expected to live with the respondent.

⁵ *Ram Narayan vs. Rameshwari* 1988 AIR 2260, 1988 SCR Supl. (2) 913

Venereal Disease:

The Hindu Marriage Act, 1955 provides grounds for divorce against communicable Venereal Disease in Section 13(V). *Mr. X v. Hospital Z*⁶ Supreme Court held that either husband or wife can get a divorce on the ground of venereal disease, and a person who has suffered from the disease cannot be said to have any right to marry even before marriage, as long as the disease is not completely cured.

Conversion:

Section (13) (1) clause (ii) may obtain divorce under the Hindu Marriage Act if the respondent turned from Hindu to other religions and ceased to be a Hindu. Two conditions must be met under the clause:

- Respondent has ceased to be a Hindu, and
- He has converted to another religion

Ceased Hindu means that a person, such as Parsis, Islam, Christianity, or Zoroastrianism, has been converted to a non-Hindu faith. When he converted into Jain, Buddhism, Sikhism, a person did not cease to be Hindu because Sikh, Jain, Buddhist is a Hindu by religion.

Renunciation of World:

Renouncing the world could imply withdrawing from worldly pursuits as a way of leading a non-secular life. Section 13(1)(vi) of the Hindu Marriage Act is referred to. The word "renouncing" means making a formal resignation of a few rights or believing in one's role as successor or trustee in particular.

To obtain a divorce under this clause two conditions must be satisfied:

- The respondent must have renounced the world, and
- He must have entered some other religious order

Presumption of Death:

Under the Indian Evidence Act, 1872, if he/she has no longer been heard of as alive for a period of at least seven years, a person is presumed to die. The petitioner may obtain a divorce on this ground. But a presumption of death is not like a presumption under modern law in ancient Indian Hindu Law, it should lapse twelve years to presume that a person dies. This presumption is not inflexible under the availability of regulation and death could even

⁶ *Mr. X vs. Hospital Z-C.A.No. 4611/1998 (1998) 8 SCC.296 2.*

be presumed before the lapse of 7 years from proof of specific instances.

2. Breakdown Ground (section 13(1A)(i), 13(1A)(ii))

Section 13(1A) under the Hindu Marriage Act 1955, either party to a marriage, whether solemnized before or after the beginning of this Act, may also file a petition for the dissolution of the marriage by a decree on the ground of divorce.

- that there has been no resumption of cohabitation as between the parties to the marriage for a period of 8 [one year] or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties; or
- that there has been no restitution of conjugal rights as between the parties to the marriage for a period of 8 [one year] or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.

3. Divorce by Mutual Consent

Sub-section (1) of section 13B of the Act required, under the Hindu Marriage Act, that the petition for divorce by mutual consent must be submitted to the court jointly between the events and that there were three other requirements of sub-section (1) specifically.

- they have been residing separately for a period of 365 days,
- they have not been capable of live together and
- they've together agreed that the marriage has to be dissolved

Under Section 13-B of the Hindu Marriage Act, it may be clear that both parties are capable of documenting a joint divorce petition by mutual consent, provided that they have been living separately for a period of 365 days. In addition, it is far supported that the court, on the motion made by means of each event not earlier than 6 months after the date of presentation of the petition stated and no later than 18 months after the date stated, is satisfied after hearing the events and after making such an inquiry as it considers appropriate, by mutual consent, pass a decree of divorce dissolving the wedding.

4. Customary Divorce (section 29(2))

It is a fact that the general Hindu rule did not recognize divorce, but in some cultures, however, divorce was accepted by custom and the courts followed the custom where it was not contrary to public policy. The scheme and the purpose of this Act are not to circumvent any of those customs recognized by the savings found in this chapter as having divorce and effect. It is not obligatory, in any other situation, for the spouses to come before the Court to seek divorce on grounds recognized by the custom.

Wife Special Ground of Divorce:

- **Husband having more than one wife living**

Under clause (1) of sub clause (2) of section 13 of the Hindu Marriage Act, the wife was entitled to file a petition dissolving her marriage on the ground that at the time of the marriage ceremony between the appellant and the appellant, the appellant's first wife, who had been married to the appellant prior to the commencement of the Act, was still alive.

The court held in *Leela v. Anant Singh*⁷ that the wife of polygamous marriage cannot be deprived of her right of divorce on the ground that she entered into a compromise with her husband before the beginning of the act to continue living with her; nor can the husband plead that her behavior or disability is a bar to her divorce claim.

- **Rape, Sodomy or Bestiality**

A wife is entitled to divorce on the ground of rape, sodomy, or bestiality against her husband under clause (ii) of sub-clause (2) of section 13 of the Hindu Marriage Act.

A man is guilty of rape if he causes an unwilling woman to engage in sexual intercourse, i.e. unwilling or unfiltered, or if his consent is obtained by putting her in fear of death or consent, or by mistakenly believing that when she is not or if she is less than twelve years old, she is his wife. One cannot however be charged with raping his own wife unless she is less than 15 years old. Sodomy or bestiality occurs when one outside the order of nature, has a carnal relationship with another man, woman, or animal. If the man was to perform sodomy on his wife without their consent, the matrimonial crime of sodomy under the scope of the clause would be.

- **Non-resumption of cohabitation after a decree of maintenance**

The woman was provided with an alternative basis for a divorce under clause (ii) of sub-clause (2) of section 13 of the Hindu Marriage Act. The aim of incorporating the above provision was to grant the wife the right to pursue a divorce if she had been ignored or not sustained by her husband after a maintenance order had been passed in her favor.

- **Repudiation of Marriage**

On the basis that she was under 15 years of age when she was married, but that she had rejected her marriage before she was 18 years of age, and that she was thus granted a

⁷ *Leela vs. Anant Singh* AIR (1963) Raj 178

divorce order under Section 13(2)(iv) of the Hindu Marriage Act, 1955, the wife/applicant filed an application for divorce from the defendant-husband.

IV. MAINTENANCE

Maintenance is an amount paid to his wife by the husband who is unable to maintain herself either during the marriage subsistence or after separation or divorce. Various laws governing maintenance are as follows:

- for Hindus – Hindu Marriage Act, 1955; Hindu Adoption and Maintenance Act, 1956
- for Muslims – Muslim Women (Protection of Rights on Divorce) Act, 1986
- for Parsis – Parsi Marriage and Divorce Act, 1936
- for Christians – Divorce Act, 1869
- secular laws – Criminal Procedure Code, 1973; Special Marriage Act, 1954

(A) Temporary Maintenance (pendent lite) During pendency of the suit

During the pending procedure for divorce or separation, temporary maintenance is granted by the court to satisfy the petitioner's immediate needs. Under Section 24 of the Hindu Marriage Act, 1955, relief may be granted to either spouse, husband or wife if the court is satisfied that the applicant does not have an independent income adequate for his or her support and the necessary costs of the proceedings pending under the Act. Under Section 125(1) CrPC, interim maintenance may also be claimed by the wife during the pending proceedings relating to the monthly maintenance allowance pursuant to Section 125(1) CrPC. In addition, Section 36 of the Special Marriage Act, 1954 also provides for the wife to seek the husband's expenses if it appears to the district court that she does not have sufficient independent revenue for her support and necessary procedural expenses under Chapters V or VI of that Act.

Moreover, either Parsi wife or husband is entitled to claim expenses under the Parsi Marriage and Divorce Act, 1936, if the proceeding is pending under the Act. Section 39 of the Act, which is essentially the same as the provisions made in that name by Section 36 of the Special Marriage Act. A wife is also entitled to expenses of proceeding under the Act maintenance under Section 36 of the Divorce Act, 1869, which applies to persons who profess Christian religion, while the suit is pending. All these provisions specify that the application for interim maintenance has to be disposed of within sixty days of service of notice on the respondent.

(B) Maintenance after the dissolution of marriage and conditions

It is the maintenance provided on a permanent basis after the disposal of the divorce or separation proceedings. Hindu Marriage Act, 1955, Section 25-Applicant, either wife or husband, is entitled to receive a gross or monthly or periodic amount for a term not exceeding the lifetime of the applicant or until he/she remarries or remains chaste from the spouse for his/her maintenance and support. Hindu Adoption and Maintenance Act, 1956, Section 18. The Hindu wife has the right to be maintained during her lifetime by her husband. Where any of the conditions in Section 18(2) [desertion, cruelty, leprosy, any other wife/concubine living in the same house, conversion of religion or any other reasonable cause] is fulfilled until she remains chaste or does not convert to another religion, the wife also has the right to separate residence and maintenance. It may also be noted that a widowed wife is provided for by Section 19 of this Act to be maintained by her father-in-law.

(C) Maintenance under Cr.P.C.– Permanent alimony

Code of Criminal Procedure, 1973, Section 125-This section provides not only the wife, but also the child and parents with maintenance. A husband who has sufficient means but neglects or refuses to maintain his wife, who is unable to maintain herself, may be ordered by the Court to provide her with monthly maintenance. However if the wife lives in adultery or refuses to live with her husband without sufficient justification, or lives separately with mutual consent, the wife shall not be entitled to receive maintenance.

V. RELEVANT CASE LAWS**(A) Bipin Chander Jaisinghbhai Shah vs Prabhawati ⁸**

In this case the court held that the offence of desertion is a path of conduct that exists independently of its duration, but it must exist as a ground for divorce for a period of at least 3 years at once prior to the presentation of the petition or, in which the offence appears to be a cross-charge, the answer. Desertion as a divorce ground differs from the statutory grounds of adultery and cruelty in that the offence that establishes the purpose of desertion's motion is not always complete, but until the healthy is constituted is inchoate. Desertion endures the offence

⁸ Bipin Chander Jaisinghbhai Shah vs. Prabhawati (1957) SC 176

(B) Savitri Pandey vs Prem Chandra Pandey⁹

In this case the court held that Cruelty was not outlined under the Act, but it is considered to be the behavior of such a kind that endangers the petitioner's life with the respondent in marital matters. Cruelty is an act that is harmful to life, body, or safety. Cruelty for the purpose of the Act suggests that wherever a spouse equivalent has thus treated the opposite and expressed such feelings about having inflicted bodily injury on her or him, or to have caused cheap apprehension of bodily injury, suffering, or own bruised health. Cruelty might be physical or mental as well. Mental cruelty is the behavior of other equivalents of the spouse that causes mental suffering or worries about the opposite of marital life. Cruelty" therefore postulates the approach of the petitioner with such cruelty as to cause an open apprehension that it may be detrimental or harmful to him.

(C) Subbaramma v. Sarasvati Court¹⁰

It was held that for divorce or judicial separation, one single act of adultery was sufficient. In the same case the court also held that in this country and especially in village areas, unwritten taboos and rules of social morality must necessarily be taken into account." If an unknown person is found alone in an actual physical juxtaposition with a young woman after midnight in her apartment, unless an excuse is provided that is consistent with an innocent interpretation, the only conclusion that the Court can draw must be that the two have committed an act of adultery together. So we can conclude that actual penetration for an act of adultery is not necessary in the dispute of Indian law.

(D) Smt. Alka Sharma v. Abhinesh Chandra Sharma¹¹

On the first evening of marriage, it was discovered that the spouse was so cold and sub-zero and apprehensive as not to have the option of coordinating in a sexual act. She was found incapable of dealing with homegrown computers. She fizzled to clarify within the sight of all relatives the direction of peeing. The court held that she had schizophrenia, and the spouse was held to be entitled to marriage nullity.

(E) K. Srinivas Rao v. D.A Deepa¹²

Here under the Hindu Marriage Act of 1955, the court held that the irretrievable breakdown of a marriage is not a basis for divorce. Nevertheless, where marriage is beyond repair

⁹ Savitri Pandey vs. Prem Chandra Pandey (2002) SC 591

¹⁰ Subbaramma vs. Sarasvati Court (1996) 2 MLJ 263

¹¹ Smt. Alka Sharma vs. Abhinesh Chandra Sharma (1991) (0) MPLJ 625

¹² K. Srinivas Rao vs. D.A. Deepa (2013) 5 SCC 226

due to the animosity induced by the actions of the spouse or the wife or both, the courts have often regarded the irretrievable dissolution of marriage as a rather serious situation, causing, among other things, marital separation. If the parties are unable to do so, a marriage which is dissolved for all purposes cannot be restored by the court's decision.

VI. CONCLUSION

Divorce rules differ greatly internationally, but they require it in most countries. In a judicial procedure, the approval of a judge or other jurisdiction. Where the law is monogamy, Divorce makes it possible for each former wife to marry another; polygyny is legal but Polyandry is not legal, since divorce requires a woman to marry another man. Divorce relates to the dissolution of a marriage and is mostly complicated and traumatic. It has reached nearly everyone, either by going through it itself as a partner or the divorce of a child, or knowing someone who has gone through it. In modern Indian society, this divorce is now becoming an acceptable feature of modern Indian society. In the marriage columns of newspapers, times are clear. We find divorcees who are looking for fresh spouses, consummated or unconsumed with or without encumbrance. Even the divorcee applications are considered appropriate. The pre-married condition today is equated with a term called single for the post-married state. Divorce is multidimensional and includes social activities involving various causes. It can be seen in every and every culture, either in the ordinary or legal way. Basically, inside a more transparent and industrial society, it happens quickly. Because of the trend of socio-cultural changes through the modernization process and urbanization at the same time, it is emerging as a type of new sociological event.

VII. SUGGESTION

Divorce's effects are numerous and severe. Between childbirth and death, the most significant thing in a person's life is marriage. The marriage adjusts the men's and women's traits, attitudes and lifestyles. Matrimony has been entered into and high aspirations and great ambitions. Divorce is the loss of family life and as a result, it is the person, family and community have significant consequences. Several scientific trials and observations have shown that divorce's negative effects contribute to intimate, family-like outcomes and disorganization of culture. Divorce is a profound shift in status and position for anything involved. In their lives, this transition is a tragedy. Those with a powerful or well-integrated the intensely selfish organization of life will withstand this with comparative ease. But what a great one, for people with poor personalities or for those who care to adapt, it is not possible to deeply. They are unable to forgive. They do not adapt to their new position and function

automatically. It must be recalled that ties between partners are a question of human life. Human life must not run on the statute-specified dotted lines or chartered route. Before granting the prayer to the petitioner to permanently snap the partnership between the parties to the union, it must be held in mind that any effort should be made to retain the sanctity of the relationship that is important not only for people or their children, but also for society.
