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HINDU FAMILY LAW AT CROSSROADS: MARRIAGE AND DIVORCE IN AN EVOLVING SOCIETY

~Anshika Singh



INTRODUCTION:

Marriage also known as wedlock, is a socially and legally recognized union between two individuals which establishes rights and liabilities between them. Different codes have different approach towards marriage and divorce, some view marriage as a sacrament; others view it as a contract. As society has advanced, Hindu marriage has undergone several changes. Let us discuss the concept of marriage and divorce under the Hindu Marriage Act, 1955.

MARRIAGE

HINDU LAW: In ancient Hindu law, eight forms of marriage prevailed, of which three forms were valid- *Brahma*, *Gandharva* and *Asura*.

Before the Hindu Marriage Act, 1955, there existed no uniform code for marriage as it was strictly viewed as a sacred, indissoluble sacrament. After 1955, marriage had evolved from being viewed just as a sacrament to a blend of sacrament and a contract; but Hindu marriage is still a ritual-ridden marriage. On becoming a codified law on 18th May 1955, the Hindu Marriage Act, 1955 became applicable for all Hindus, Buddhists, Jains, or Sikhs.

CONDITIONS FOR A VALID MARRIAGE:- Section 5 of the Hindu Marriage Act, 1955 explains conditions for a valid marriage, which are as follows:-

- **MONOGAMY-** Neither party at the time of marriage should have a living spouse,
- **MENTAL CAPACITY-** Neither party should be incapable to give *consent* i.e. both the parties should be mentally sound and must not be suffering from mental disorder of such kind which makes them unfit for marriage and procreation for children or is subject to recurrent attacks of insanity or epilepsy,
- **PHYSICAL CAPACITY-** the bridegroom must be above age of twenty one years and bride must be above eighteen years at the time of marriage,
- **PROHIBITED DEGREES-** This condition covers the following relationships between two parties:- By lineal ascent and by affinity. The parties should not come under the degree of prohibited relationship, unless the customs permit it.
- **SAPINDA RELATIONSHIP-** ‘Sapindas’ means when there is a common ancestor between them or when one is lineal ascendant of the other. The prohibition of sapinda marriages is also based on the rule of exogamy. One cannot marry a person related to them within five degrees on mother’s side and seven degrees on father’s side.

If the parties do not fulfill these grounds, they are rendered incapable to marry i.e the marriage may either be rendered void under section 11 or voidable under Section 12.

DIVORCE

Divorce refers to the dissolution of a legal marriage between two individuals. Historically, within *Hindu Dharma Shastra*, marriage was seen as a sacred and *indissoluble bond*, with no provisions for divorce until the enactment of the Hindu Marriage Act in 1955. This Act, introduced grounds for divorce under Section 13, allows parties to petition a competent court for a divorce decree.

Section 13 governs the provisions for divorce and provides for certain grounds on which one of the parties can present a petition for dissolution of marriage by a decree of divorce on the following grounds:

GROUNDS FOR DIVORCE-

- **SECTION 13 (1)- VOLUNTARY SEXUAL INTERCOURSE-** with any person other than their spouse; or
- **SECTION 13 (1a)- CRUELTY-** either party has after the solemnization of the marriage, treated the petitioner with cruelty. It includes both mental and physical cruelty. In *Bhagat v. Bhagat*¹, the Supreme Court defined mental cruelty as that conduct that inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. Some examples could be false accusation of adultery and unchastity, demand of dowry, false criminal charges, irretrievable breakdown of marriage; or
- **SECTION 13 (1b)- DESERTION-** either party has deserted the other without reasonable cause and without consent for a continuous period for not less than 2 years immediately before the petition. Desertion can be actual, constructive and wilful neglect; or
- **SECTION 13 (2)- CONVERSION-** either party has ceased to be a Hindu by converting to another religion; or
- **SECTION 13 (3)- UNSOUNDNESS OF MIND-** if any party is suffering from incurable unsoundness of mind or has been suffering continuously or periodically from mental disorder of such a kind and the unsoundness is to such extent that the parties are not expected to live with the each other. Mental disorder means mental illness, or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia(a chronic illness in which that disrupts how a person feels and acts); or
- **SECTION 13 (4)- LEPROSY-** either party has been suffering from a virulent and incurable form of leprosy, then the other party can file a petition for divorce; or
- **SECTION 13 (5)- VENERAL DISEASE-** one of the parties has been suffering from venereal disease in a communicable form; or
- **SECTION 13 (6)- renounced the world** by entering any religious order; or
- **SECTION 13 (7)- PRESUMPTION OF DEATH-** the other party has not been heard to be alive for a period of seven years or more by those persons who would naturally have heard of it had the that party been alive

¹ Bhagat v. Bhagat, 1994 SC 710

OTHER GROUNDS:

Either party may also present a petition for the dissolution of the marriage by a decree of divorce on the ground that –

- **No resumption of cohabitation:** that there has been no resumption of cohabitation as between the parties to the marriage for a *period of one year* or upwards after the passing of a decree for judicial separation
- **No restitution of conjugal rights:** that there has been no restitution of conjugal rights as between the parties to the marriage for a *period of one year* or upward after the passing of a decree of restitution of conjugal rights in a proceeding to which they were parties
- **A wife may also present a petition** for the dissolution of her marriage by a decree of divorce on the ground- (i) that the husband had married again; or (ii) that the husband has, since the solemnization of the marriage, been guilty of rape, sodomy or bestiality; or (iii) that in a suit under Section 18 of the Hindu Adoptions and Maintenance Act, decree or order has been passed against the husband awarding maintenance to the wife; or (iv) that her marriage was solemnized before she attained the age of fifteen years and she has repudiated the marriage after attaining that age but before attaining the age of eighteen years.

CONCLUSION

Marriage and divorce are two aspects of a matrimonial relationship. Under Hindu law, the marriage has always been viewed as sacrosanct, but with the evolution of society, the perspective has changed. The Hindu Marriage Act, 1955 governs the legal framework for marriage, registration, divorce and maintenance among Hindus in India. Thus, it is a consolidated blueprint for regulating matrimonial relationship amongst Hindus.