

Concept of Divorce under Hindu Law in Present Scenario



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Marriage is one of the oldest institutions of Hindus. It occupies a very important place in their social life. Hindus have perhaps from the very beginning of their civilization, regarded marriage as a Sanskar.

According to a great poet *George Eliot* - Marriage is a union of two hearts and "what greater things is there for two human souls than to feel that they are joined for life to strengthen each other in all labour, to rest on each other in all sorrow, its minister to each other in all pain, to be one with each other in silent, unspeakable memories at the moment of last parting"¹

The Hindu law is a holy union for the performance of religious duties. It has been held by the High court of Bombay that the marriage is a Sanskar or Sacrament. It is the last of the 10 sacrament enjoined by the hindu religions for purifying the body from inherited taint.²

Hindu marriage is not a contract. It is a Sanskar. (an adge) marriage are made in heaven, so there are no any concept of divorce. Unless allowed by custom the divorce was not recognised by the general Hindu Law, as administered by courts in British India. Subject to the exception relating to right where it is recognised by custom.

The word 'Divorce' conjures up images of divided families, separated cauples failed marriage, forgotton commitments, long and expensive legal battles, resentment, hostility, bitterness and vulnerable children.

As ordinarily understood, 'Divorce' is nothing more nor less than another name for dissolution of marriage. The divorce is a Judicial act by which the marriage relation is either dissolved or partially *L.B. Curzon - 'In his book 'family law' he stated that in family law the term 'divorce' refers to a mode of dissolution of the marriage contract a formal termination of the states derived from marriage so that following the great of a decree, both Spouses have neither the duties nor the rights of husband and wife.'*⁴

In the Vedic and Post-Vedic Literature there is no reference to or evidence about divorce, Smritis, Srutis and the Scriptures prima facie denied the right of divorce. In Smritis, marriage is considered indissoluble and is regarded as sacrament.

In relation to marriage our great *Smritikar Manu Says: Let mutual fidelity continue till death. Mutual friendship and mutual fidelity is the highest dharma to be observed by husband and wife through out their life.'*⁵

*Manu also states: 'Husband is declared to be own with his wife. Neither by sale nor by repudiation is a wife released from her husband.'*⁶

Since the marriage is a sacred institution for a Hindu, its irrevocable But smritikars *Narada* and *Parasara* have allowed a wife to dissolve the marriage under certain exceptional ground. Both of them laid down five conditions in which a woman could take another husband for herself.

such conditions are:-

- 1- where the husband has been found lost. or
- 2- where he is dead, or
- 3- where he has renounced the world, or
- 4- where he has become impotent, or
- 5- where he has become an outcaste on account of some social stigma.⁷

Great economist Kautilya too has very clear view on the matter of divorce. The grounds of divorce propounded by is that he recognises desertion, cruelty, apostasy, Impotency and mutual consent.⁸

Considering all the above. Stated discussion the statement that divorce is an idea which is foreign to Hindu law is to same extent incorrect. It is true that till that middle of the 1950, there was no universally statutory recognition of divorce in Hindu society. 'Before the coming in to force obtain divorce only if a custom governing them allowed it. Hindu marriage Act preserves customary divorce, and to customary divorces no provision of the Hindu marriage act applies. However there is no general custom of divorce among Hindu. At varies from caste to caste, from place to place'.⁹

It may be stated here, that unlike western society, in our society divorce is still discouraged and the permitted only in case where it is absolutely a necessity under circumstance of exceptional hardship or where it is possible for either party to live with the spouse. However, this changed when the Hindu marriage act was pass in 1955, which legally permitted divorce to Hindu including Sikhs, Janis and Buddhists but excluding Scheduled Tribes. As we know that under the uncodified Hindu Law divorce was not recognized and it was rather unknown to the old textual. Hindu Law of marriage but a radical change has been occurred after the codification of marriage Laws of Hindus because such Law provides provisions in relation to circumstances wherein the right of divorce occurs. *Now, section 13 of the Hindu marriage act 1955* provides grounds for seeking decree of divorce. The Hindu marriage act recognize nine fault ground of divorce which are available to both the spouses [Section- 13(1)], and four fault grounds are available to wife alone [Section -13(2)]. Thus a Hindu wife is granted certain special grounds against the husband.⁹

The grounds for divorce and Judicial separation are same for both the wife and the husband. The ground are contained in section- 13(1) of the act, which are as follows-

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|--------------|-----------------------|
| 1- Adultery | [Section- 13(1)(i)] |
| 2- Cruelty | [Section-13(1) (ii)] |
| 3- Desertion | [Section-13(1) (iii)] |

4- Apostasy	[Section-13(1) (iv)]
5- Mental disorder	[Section-13(1) (v)]
6- Leprosy	[Section-13(1) (vi)]
7- Venereal disease	[Section-13(1) (vii)]
8- Renunciation of world	[Section-13(1) (viii)]
9- Missing for seven years	[Section-13(1) (ix)]
10- Judicial Separation	[Section-13(1) (xi)]
11- Decree for restitution of conjugal rights not to be followed	[Section-13(1) (xii)]

Under section-13(2) of the Hindu marriage act four additional ground of divorce are available to the wife and also available for Judicial separation under section- 10 of the act. There grounds are as follows-

1. Another marriage by the husband [Section-13(2) (i)]
2. Committing of offence of unnatural intercourse [Section-13(2) (ii)]
3. Decree for maintenance against husband [Section-13(2) (iii)]
4. Option of puberty [Section-13(2) (iv)]

Section- 13-b of the Hindu marriage act a revolutionary concept of divorce by mutual consent. This section analogous to section-28 of the special marriage act-1954. A petition for dissolution of marriage by decree of divorce may be presented by both parties to a marriage together, on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed the marriage should be dissolved.

Hitesh Bhatnagar Vs Deepa Bhatnagar Air- 2011-SC.

The Supreme court observed: The most important requirement for a grant of a divorce by mutual consent is free consent of both the parties.

The Supreme Court also exercising the power under Art-142 of the Constitution of India has held that where the marriage is dead and there is no chance of its being retrieved, it is better to bring it to an end.

"In our society the family value is carrying its own cultural identity and values, which is very aspect of life. Family is a divinely established institution of human society but today's families have becomes very small or nuclear or modern semi-semi democratic family. Couple do not want to live with their parents or extending family. They are staying long distance from its original root. This familiar tendency makes people very lonely, creates at the time of sickness, sadness or economic hardship, moreover in the situation of conflict and dispute between the couple. They go through great suffering distress and pain because one does not know to whom to turn and whose help to seek. They living without moral integrity, religious, etches and guidance. Therefore as we seen today's highly family crime such as high rate of divorce, extra marital relationship and so on. Divorce is one of the widely viewed as serious problem in the society. It's a sensitive issue of the family.'¹⁰

However Law allowed separation when couple is absolutely not interested to live together they can dissolved their marriage by mutual consent as provided by Law. However grounds of divorce especially in case of mutual consent. It should be carefully examined to protect the marriage, because in present context marriage are breaking on very small issues like they have different ideas about marriage, hobbies, happiness, liberty and ways of entertainment, lower income and socio-economic status and so on. However divorce can save people from a bad marriage but research has shown that it debilitate a society-Divorce promoting poverty. Particularly for woman and children, Divorce parent who remained single have less time to supervise their child's as a result these children involved in unsocial activities.

Finally we can say that the marriage under Hindu Law was sacrament has converted in to the concept of contract after passing Hindu marriage act 1955 and the concept of the divorce break the rites of Hindu marriage and badly affected to the society.

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