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Divorce

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ABSTRACT

A court order ending a marriage is called a divorce. The divorce must have a "legal reason" according to the court. Apart from the formal dissolution of the marriage, the court considers other matters that must be resolved before the divorce is finalized. Hindu law did not recognize divorce since marriage was seen as an irreversible bond between a husband and wife. Manu's declaration that a wife cannot be freed from her husband through sale or abandonment suggests that there is no way to break the bonds of matrimony. As a result, divorce is not recognized by Hindu law as written. Hindu law does not currently address divorce, but it has been decided that if a custom is accepted as established, it becomes enforceable. We all know that a happy family life depends on the husband and wife in a Muslim marriage, which gives rise to the concept of divorce. Islam, therefore, mandates that marriages be maintained and that it is best to avoid breaking the terms of the marriage contract.

Keywords: Divorce, Child marriage, Judicial separation.

I. INTRODUCTION

When both parties agree to dissolve their marriage by submitting a petition, a divorce is granted. Not every applicant for a divorce is given one. The pair must give justifications for their desire to dissolve their union. Divorce may be mutually agreed upon or voluntary. Numerous divorce procedures exist, and they can differ depending on one's religion. The Indian divorce laws of 1869, the Hindu marriage legislation of 1955, and the Family Courts legislation of 1984 regulate marriage and divorce in India. The three great religions of Islam, Christianity, and Hinduism all have distinct perspectives on marriage and divorce. On the other hand, the way that people view marriage has changed significantly as a result of the present divorce laws. The Hindu Marriage Act of 1955 addresses the reasons for divorce in Section 13. People no longer have an excuse for not getting a divorce; couples can file for one based on any of the grounds listed in the Act. Nonetheless, Section 14 of the Act stipulates that neither party may apply for divorce within a year of the marriage since the court's and the legislature's long-standing goal has been to protect the institution of marriage. The once-unbreakable link between a husband and wife can now be

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severed through divorce, reflecting the evolution of this connection over time. In addition, the advent of remarriage has brought about a great deal of change.

II. GROUNDS FOR DIVORCE

(A) Adultery:

In many nations, the idea of adultery could not be seen as a crime. However, according to the Hindu Marriage Act, adultery is one of the primary grounds for filing for divorce among matrimonial offenses. Consensual and voluntary sexual relations between a married person and another individual, married or single, of the other sex is known as adultery.

(B) Cruelty:

An act of criminal negligence or intentional harm to another person. Both physical and emotional cruelty are included in the definition of cruelty. Physical cruelty refers to beatings or other physical harm inflicted onto the other spouse. However, since the other spouse can also mentally harass the spouse, the idea of mental cruelty was created. A lack of kindness that has a negative impact on a person's health is known as mental cruelty. It is simple to identify the type of physical cruelty, but more difficult to define in terms of mental cruelty.

(C) Desertion:

Complete renunciation of marital rights. Desertion is the act of one spouse permanently leaving the other without their consent or any acceptable explanation. Generally one party's rejection of the responsibilities of marriage. The term "desertion" refers to the other party to the marriage abandoning the petitioner without a valid reason, with their consent or against their will, and it also includes the other party's deliberate neglect of the petitioner. All grammatical variations and synonymous expressions should be understood in this context. To put it another way, desertion is the act of one spouse abandoning or being permanently absent from the other without the other's consent and without apparent reason.

(D) Conversion:

Switching to a new religion after giving up the old one. If one partner stops being a Hindu and converts to another religion without the other's permission, the other spouse may file for divorce. "Ceasing to be Hindu" refers to a person's conversion to a non-Hindu religion, such as Parsis, Islam, Christianity, or Zoroastrianism. A person who converts to Buddhism, Sikhism, or Jainism is still considered Hindu because these people are covered by the Hindu Marriage Act of 1955 and are Sikhs, Jains, and Buddhists by faith.

(E) Insanity:

Mental illness or disorder. If the respondent has been experiencing mental distress of such a kind and degree that the petitioner cannot reasonably be made to live with the respondent, the petitioner may be able to obtain a divorce or judicial separation. There are two conditions for insanity to serve as grounds for divorce. One is that the respondent has a mental illness of such a nature or severity that it would be unreasonable for the petitioner to continue living with him or her, and that the respondent has been mentally ill for an indefinite amount of time.

(F) Leprosy:

An ongoing infectious illness. The Indian law commission recommended the repeal of any laws that discriminated against people with leprosy. India has also ratified a resolution at the UN calling for the elimination of prejudice towards those who suffer from leprosy. With the passing of the personal law amendment bill on February 13, 2019, the Indian parliament removed section 13(iv), which had leprosy listed as a reason for divorce.

(G) Venereal illness:

Divorce may be justified if one of the partners has a sexually transmitted illness that is both transmissible and incurable. A disease like AIDS is referred to as a "venereal illness."

(H) Presumption of death:

A seven-year-missing person. If the husband disappears and is silent for seven years, which is equivalent to a modern-day civil death.

(I) Mutual:

By the mutual agreement of the parties. According to this theory, both parties may mutually agree to end the marriage. The divorce can be filed if both spouses consent to the dissolution of the marriage. However, a lot of philosophers disagree with this theory because they believe it to be immoral and causes hasty divorces.

III. DIVORCE IN VARIOUS RELIGIONS**(A) Divorce in Hinduism:**

Hindus view marriage as a sacred union. It also serves to legitimize the child and make them inheritable. Personal laws govern marriages. Hinduism does not recognize the concept of divorce. Hinduism does not view marriage as a contract. For most marital issues, judicial separation was the solution. The Hindu Marriage Act of 1955 governs marriage and divorce. Hinduism views marriage as an indivisible union. It is a rite of passage, or samskara. Samskara

is that which imbues your world with form (akara) (samsara). It supports leading a complete life. The customs encompass a wide range of practices, such as shaving your head as a child, eating solid food, receiving an education, paying back debts to your ancestors and society at large by marrying you and encouraging you to have children so that those in the land of the dead can return to the world of the living, and having you perform funeral rites so that the deceased can pass from this life to the next. These customs and laws were written down by numerous Brahmins in the Dharmashastras over a millennium, from 200 BCE to 1200 CE. These regulations were not intended for all castes, but rather for the "upper" castes. Divorce has generally been discouraged, and only men are permitted to get married again. Men and women were not allowed to divorce. Furthermore, even after becoming widows, women were not allowed to get married again.

(B) Divorce in Christianity:

Christianity has two distinct perspectives on divorce. The Roman Catholic views marriage as a union that should not be dissolved and rejects the idea of divorce. The Church of England recognises that marriage is a real bond that can be broken and allows the idea of divorce. Because of the stress that a fast-paced world places on modern couples, it's possible that the topic of divorce between a man and a woman comes up more often than it has in the past. Unfortunately, the divorce rate among Christians is comparable to that of non-believers. God thinks marriage is so important that this is devastating. Examine the following Bible verses regarding divorce.

(C) Divorce in Islam:

When a couple's marital bond is broken, divorce is acceptable in Islam. Muslim marriage is a contract, despite its religious components. It may continue indefinitely or terminate earlier at the passing of one of the parties. Divorce shouldn't be the first course of action when there is discord between spouses. The Qur'an encourages marriage reconciliation by means of family-based arbitrators or mutually agreed-upon settlements. But if "mutual good treatment" isn't feasible, there ought to be a cordial parting. As a result, divorce is accepted but not celebrated in the Qur'an. According to reports, the Prophet Muhammad expressed this sentiment when he said that God detests divorce the most out of all legalities.

IV. JUDICIAL SEPARATION

Prior to the initiation of legal proceedings, the court has mandated a period of separation. This will be a one-year separation. In order for couples to settle their differences and maintain their marriage, judicial separation is required. Reducing divorce rates effectively can be achieved in

this way. The grounds for judicial separation are comparable to those for divorce, including cruelty, adultery, conversion, and desertion. Hindu law defines judicial separation as a legal process intended to provide troubled couples with a period of time to consider their marriage. It enables the husband and wife, who are living apart, to reevaluate their relationship. This legal procedure is their last choice for a formal separation and gives them the flexibility and room to consider their future. Couples who were married under the Hindu Marriage Act of 1955 may petition the court for judicial separation under Section 10. Living together as a married couple is not mandatory once the court grants the order for Judicial Separation. In comparison to divorce, judicial separation is less severe. The goal of judicial separation is to avert the divorce procedure. The couple may or may not stay together after a judicial separation, but in the event of a divorce, they are released from their marital rights and responsibilities.

V. EFFECTS OF DIVORCE

Following a divorce decree, the rights and responsibilities of married couples are suspended. Following the divorce decree, there are additional legal ramifications such as property division, child custody, and maintenance. When a marriage is judicially separated, it is temporarily suspended and the parties lose their right to cohabit. It might be viewed as a step closer to getting a divorce. Still, there's always a chance for reconciliation. The parties' marital status is not terminated by judicial separation. It is important to remember, though, that in cases where a judicial separation decree has been issued and the wife is unable to support herself, the court has the authority to order the husband to give her maintenance. The parties are still legally wed, but if one of them gets married again, that person will have committed the crime of bigamy. Likewise, in the event that one of the parties passes away while the judicial separation order is still in force, the survivor will be entitled to the estate of the departed.

VI. DIVORCE IN CHILD MARRIAGE

The 2006 Prohibition of Child Marriage Act governs child marriage in India. Any member of the couple in a child marriage must be a child. A child is defined as a male under the age of twenty and a female under the age of eighteen. In India, child marriages are fairly common. Even in this day and age, there are still places where child marriages occur. Under Indian law, child marriage is both voidable and not void. Before turning 20, the girl has to file a petition to dissolve the marriage.

VII. DIVORCE IN OTHER COUNTRIES

(A) Australia:

Australia's legal system for divorce and other family-related matters underwent a major overhaul in 1975 when the Family Act was passed, establishing no-fault divorce in the country. Since 1975, a 12-month separation as proof of irreversible marital breakdown has been the sole basis for divorce. But when it comes to matters of property reconciliation and child custody, there is still a component of "negligence."

(B) Brazil:

Brazil did not legalize divorce until 1977, presumably as a result of the influence of the Roman Catholic Church. As of January 2007, Brazilian couples without children or special needs or property in dispute can file for divorce at a notary public's office. To complete the process, which takes two to three weeks, couples only need to present their marriage certificate and national ID. They also need to pay a fee. However, a professional representative (Despachante) speeds up the procedure and needs a lawyer to complete the paperwork, as is typical in other areas of correspondence with the Brazilian government. The 2010-passed 66th Amendment to the Brazilian Constitution has been removed. Divorce cannot be granted until after a year of separation.

(C) Bulgaria:

Bulgaria implemented a new family law in 2009 that brought family law up to date. There are two ways to go about a divorce. together with consent. In this instance, the husband and wife consent to the divorce (Article 50). And without contesting the grounds, the court granted the divorce. if "the marital relationship has been severely and irretrievably dissolved," at the request of one of the spouses. Article 49 states that the spouse's "fault" will only be declared by the court upon one spouse's express request.

(D) Columbia:

To obtain a divorce order, the court must be satisfied that: Marriage exists legally, At least one of The federal legal system is uniform, but state laws set forth specific guidelines for property and debt division, as well as how orders are obtained from the courts, differ. In British Columbia, property and debt division between divorcing spouses is governed by family law. The Supreme Court of British Columbia's rules allow for uncontested divorce through fair procedures intended for couples who consent to divorce orders and other relief terms, as well as contested proceedings when the parties do not agree to the terms. (also known as a divorce

with a desk order). Before the proceedings begin, the parties must have lived in British Columbia for at least a year; provide proof of the alleged dissolution of the marriage; and, in the event that children are involved, pay the appropriate amount of child support.

(E) Japan:

Divorce is permitted under the French Civil Code (as amended on January 1, 2005) for four reasons. mutual consent; acknowledgement. 12 months apart. And one partner's "negligence" is to blame. During the French Revolution, on September 20, 1792, France passed its first divorce law. After being revised again in 1793 and 1794 and eventually included in the Civil Code, it was finally repealed on May 8, 1816, primarily at the Catholic Church's instigation following the restoration of the Bourbon kings. On July 27, 1884, the law reestablished the right to divorce.

(F) Greece:

Greece's laws pertaining to marriage and divorce underwent a substantial shift in 1982 and 1983 with the introduction of civil marriage. Greece permits divorce for a number of reasons. Divorce by mutual consent (requires both parties' consent) divorce on the grounds that the petitioner finds it intolerable to stay in the marriage after the marriage has suffered significant harm from issues that can be traced to either the defendant or the spouse. Divorce based on two years of separation (the four-year separation period was shortened to two years by Law 3719 of 2008's Article 14).

VIII. CONCLUSION

The Indian divorce process has undergone substantial changes in the past ten years. But opinions on divorce differ throughout India. Divorce has become a more common term than it was a few years ago, but our society has not accepted it as it ought to. As a result, couples choose to keep quiet and work on strengthening their marriages rather than taking the difficult decision to get a divorce and be happy. Despite the fact that divorce is a decision made by two people to live a better life, it is still perceived as a conflict between good and wrong. Knowing our rights and obligations, as well as what happens when a divorce petition is filed, is essential knowledge to have before considering divorce.
