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The recent and changing trends of Divorce Post Covid-19 Lockdown in India concerning the Hindu Law

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There was a time in India when there were almost no/fewer trends of divorce in the Hindu community, as it was a pretty rare phenomenon and not at all prevalent. According to Hindu Law, the marriage of two persons is considered to be a sacramental union. We know divorce to be the disintegration of marriage, or as the legitimate end of a marriage, to manage the issues brought among the two married people due to marriage. Divorce in those days brought severe mental injury. The child of a divorced relationship was poorly treated, thus causing a pathetic experience for the divorcees. However, after the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act') was introduced, all Hindu laws related to relationships in family and society were thoroughly revised, including divorce, which caused the disintegration of marriages progressively simpler when the Act was amended in 1976. However, with the advent of modernization and westernization in today's world, the rigid boundaries that were once a part of traditional Hindu life have completely changed in terms of lifestyle and relationships. The reasons for this change were women empowerment and employment, change in demographics from the rural villages to the urban cities or metros, the breaking up of extended families into small nuclear families, and live-in relationships. It can be understood that the conventional systems have been erased in modern society, thus offering a lenient socio-cultural life. With the onset of the Covid-19 lockdown, the rate of divorce spiked throughout the country and led to the breaking up of most couples during this time. This Research paper will lay stress on the changing scenario of divorce before and after the Covid-19 lockdown, examine the recent trends and causes for divorces during this period, and suggest possible solutions that might resolve the problems in a family.

Keywords: *Hindu law, divorce, unification, incompatibility, socio-cultural factors, covid-19, pandemic, marital distress.*

INTRODUCTION

Divorce is the process of legally terminating a marriage. In the Hindu community, the procedure for divorce is provided by the Act. As stated by this Act, the court grants separation after receiving a petition from either the wife or husband. However, before granting separation, the court points out other problems that led to the divorce becoming final. Since medieval times, Hindu marriage has been considered an unbreakable union of a husband and wife. So, there was no knowledge about divorce earlier. Manu¹ had declared that a wife cannot be separated from her husband through sale or abandonment and that the bond that has been established must be respected until either the husband or the wife dies. Therefore, Hindu Law does not consider divorce under its purview. It has been stated that where divorce is contemplated as a custom, it is bound to be a force of law at some point in time.² However, this concept gradually faded, eventually leading to the enactment of the Act. Slowly, after that, the old concept of marriage being a sacrament was long gone in this modern time. With increased modernization, gender roles have blurred, traditional values are questioned, and value systems have dropped in the last few years. Furthermore, the spouses are willing to live apart rather than remain together and unhappy. So, a ground of divorce for an irretrievable breakdown of a marriage is necessary. Since the beginning of the Covid-19 lockdown, there have been many problems among couples, all due to the randomness of this Pandemic. In the following portions, we will discuss the Theories and Grounds of Divorce stated in the Act, along with the new causes responsible for the increase in divorce incidents during the Modern Period and the Covid-19 Pandemic.

THEORIES OF DIVORCE

The concept of divorce is quite Dynamic and has many theories related to **Section 13** of the Act³. However, there are several theories of divorce. They can be stated as follows:

¹ The author of Manu Smriti

² Dr Paras Diwan, *Modern Hindu Law* (Allahabad Law Agency 2019-20)

³ Hindu Marriage Act 1955, s 13

Indissolubility of Marriage Theory: The theory of Indissolubility of Marriage considers a marital union between the husband and wife as unbreakable. Marriage has been described as an eternal tie (between a man and woman) that unites bone with bone and flesh with flesh. Society forces them to stay together even if both of them are unhappy. They have no other choice except from living and dying together.

Will Theory of Divorce: This theory is entirely opposite of the Indissolubility of Marriage Theory. The Will theory permits a husband and wife to divorce their spouse at one's will, whenever they want. The theory is known as "Mubarak" and is recognized by Mohammedan law. The word means "obtaining release from each other." In this theory, both the husband and the wife can get liberation and freedom from their married status with prior mutual consent and desire.

Fault/ Guilt/ Offence Theory of Divorce: During the nineteenth century, divorce was hated as an evil act and an act of the Devil. At this time, the Fault/ Guilt/ Offence theory of divorce existed. The only way this theory used to work and the society consented to it was when a spouse would sin, i.e., a heinous offence against marriage or while the marriage was being sustained. Basically, in this theory, two parties were there. Firstly, the guilty party, i.e., the committer of the heinous crime, and secondly, the innocent party or the party who had been outraged by the act committed by their spouse.

The frustration of Marriage Theory: This theory concerns the possibility of frustration between the married parties. However, there might be no possible sign or guilt of committing any marital offence. This might happen if one of the spouses suffers from mental unsoundness, conversion from one religion to another, renunciation from the world, or desertion. In the modern world, these are the most common grounds for divorce as recognized by the Act.⁴

Consent theory of Divorce: This theory explains that if both the husband and wife agree, they are allowed to dissolve their marriage since forcing them to cohabit can cause mental

⁴ Hindu Marriage Act 1955

degradation in the parties and cause other marital problems. Also, no allegations or counter-allegations are made against the parties. Section 13B⁵ of the Act mentions this theory.

Irretrievable Breakdown of Marriage Theory: This theory is based on the time when a marriage has reached a certain point where the marriage is completely broken with no scope of retrieval of the previously existing bond. In such a situation, the couple has the choice of leaving each other's company without bitterness and distress. Under Section 13 of the Act, irretrievable breakdown of marriage has not been listed as a ground for divorce. However, in many cases, judgments have been held based on this principle. In *Ajay Sayajirao v Rajashree Ajay Desai*,⁶ the Court held that when there is no alleged fault ground proved, relief cannot be granted based on the irretrievable breakdown of a marriage.⁷

GROUPS OF DIVORCE

As stated under Section 13(1)⁸ of the Act, a party may seek the decree of divorce on the following grounds:

Adultery

According to Section 13(1)(i),⁹ a Decree of Divorce can be granted in favour of the petitioner if the respondent had voluntarily sexual intercourse with anybody other than his/her spouse after the marriage was solemnized.¹⁰ In the previous cases, it was concluded that if the respondent was involved in an adultery relationship, a Decree of Divorce could be constituted. In *Veera Reddy v Kista Amma*,¹¹ the court decided that "even a 'single act' of adultery would be a sufficient ground for divorce". A similar judgment was held in *Sanjukta Pradhan v*

⁵ Hindu Marriage Act 1955, s 13B

⁶ *Ajay Sayajirao v Rajashree Ajay Desai* AIR 2005 Bom 278

⁷ *Ibid*

⁸ Hindu Marriage Act 1955, s 13(1)

⁹ Hindu Marriage Act 1955, s 13(1)(i)

¹⁰ *Ibid*

¹¹ *Veera Reddy v Kista Amma* 1981 AIR 116

Lakshminarain Pradhan.¹² Thus, the vigour and practice of "living in Adultery" had reduced significantly with these judgments.

Cruelty

As section 13(1) (a)¹³ and section 10(1)¹⁴ of the Act provide, cruelty is considered one of the main grounds for divorce and judicial separation, respectively. In *Dastane v Dastane*,¹⁵ the term 'cruelty' was defined as "conduct of such character as to have caused danger to life, limb, or health (bodily or mentally), or as to give rise to a reasonable apprehension of such danger."¹⁶

Cruelty can be divided into two categories:-

Physical Cruelty - Physical violence is relatively straightforward to determine, and the courts would have no difficulty to reach a conclusion. It was stated in *Marry v Raghavan*¹⁷ that a mere single act of physical violence can be considered to be in the ambit of cruelty.¹⁸

Mental Cruelty - As compared to physical cruelty, an act of mental cruelty is much more serious. Mental torture and harassment are notoriously difficult to prove in court. The Hon'ble Supreme Court defined mental cruelty as "the state of mind" in *Pravin Mehta v Inderjeet Mehta*.¹⁹

In *Shobha Rani v Madhukar Reddi*,²⁰ the Court observed whether or not a certain act or conduct is an act of cruelty depends on the facts of each case. The Court further decided that

¹² *Sanjukta Pradhan v Lakshminarain Pradhan* AIR 1991 Ori 39

¹³ Hindu Marriage Act 1955, s 13(1)(a)

¹⁴ Hindu Marriage Act 1955, s 10(1)

¹⁵ *Dastane v Dastane* AIR 1975 SC 1534

¹⁶ *Ibid*

¹⁷ *Marry v Raghavan* AIR 1979 MP 40

¹⁸ *Ibid*

¹⁹ *Pravin Mehta v Inderjeet Mehta* AIR 2002 SC 2528

²⁰ *Shobha Rani v Madhukar Reddi* AIR 1988 SC 121

the two factors listed above must be proven in order to establish the nature of the cruel treatment and its impact on the person who was subjected to it.²¹

Some common instances of cruelty are-

- Accusations of adultery or unchastity that are false.
- Demand for dowry
- Impotence
- Childbirth
- Drunkenness
- Threat to Commit Suicide
- Wife writing false complaints to the Husband's employer
- Temperament incompatibility
- Irretrievable breakdown of marriage

Desertion

Under section 13(1) (ib),²² a decree of divorce can be obtained from the Court on the ground that his/her spouse has deserted the petitioner for nearly two years immediately prior to filing the petition.²³ The Amending Act of 1976²⁴ added an explanation after clause (vii) of (13)(1),²⁵ which is as follows:

In *Bipin Chandra v Prabhavati*,²⁶ a case decided before the Act's amendment, the Court held that, as long as the deserting spouse consents, two essential requirements must be met to create the offence of "desertion," namely:

- Factum of separation, and
- The intention to end cohabitation (*animus deserendi*)²⁷

²¹ *Ibid*

²² Hindu Marriage Act 1955, s 13(1)(ib)

²³ *Ibid*

²⁴ Hindu Marriage (Amendment) Act 1976

²⁵ Hindu Marriage Act 1955, s 13(1)(vii)

²⁶ *Bipin Chandra v Prabhavati* AIR 1957 SC 176

Similarly, there are two elements essential for the deserted spouse:

- Absence of consent, and
- Absence of appropriate behaviour that could justify a spouse's decision to leave the marital house.

Conversion or Change of Religion

Divorce may be obtained under Section 13(1) (ii)²⁸ of the Act if the respondent has converted to another religion and has ceased to be a Hindu. Two conditions must be considered under the section and clause:

1. respondent no longer believes in Hinduism, and
2. he has converted to another religion.

The marriage, on the other hand, would not terminate only because the other spouse has converted to another religion.²⁹ In addition, the spouse who did not change their religion has the right to claim divorce on the ground that the other spouse has abandoned their faith to be a Hindu by conversion. In *Lily Thomas v Union of India*,³⁰ the husband of the petitioner had converted to another religion to marry another lady without divorcing the petitioner. It was contended that because he had converted to Islam, he was free to be polygamous and could have a maximum of four wives at once, and therefore he could not be charged for polygamy under section 494, IPC. The petition was denied by the Supreme Court which held that conversion does not end a Hindu marriage that has already been solemnized under the Act and shall not be terminated by conversion. However, during his wife's lifetime, if a person marries a second time, then the marriage is not only void under sections 11 and 17 of the Act but also constitutes bigamy under section 494, IPC.

²⁷ *Ibid*

²⁸ Hindu Marriage Act 1955, s 13(1)(ii)

²⁹ *Ibid*

³⁰ *Lily Thomas v Union of India* AIR 2000 SC 1650

Insanity

Judicial separation and Divorce can be granted if one of the parties is insane in nature. S. 13 clause (iii) of The Marriage Laws (Amendment) Act, 1976, states that a petitioner may get a decree for judicial separation if "the respondent has been suffering continuously or intermittently from a mental disorder of such a kind and to such extent that the petitioner cannot reasonably be expected to live with the respondent." The Supreme Court held in *Ram Narain Gupta v Rajeshwari Gupta*³¹ that "merely branding the spouse as schizophrenic is insufficient to prove mental disorder for divorce u/s 13(1)(iii)". The disease must be severe enough to make it impossible or dangerous for the petitioner to live with his/her spouse.

Venereal Disease

Under section 13(1)(v) of the Act, venereal diseases such as AIDS, gonorrhoea, or syphilis, which are contagious diseases, are ground for getting a decree of divorce. Under this section, the respondent must not only be infected with the venereal disease, but the disease must also be contagious to anyone who comes into contact with the infected. The Hon'ble Supreme Court decided in *Mr. X v Hospital Z*³² whether the venereal disease was a ground for divorce. The court held that the petitioner may obtain a decree for divorce. It was also held that the infected person cannot marry even before marriage, as long as he is not perfectly cured of the disease. The honourable Calcutta High Court in *Smt. Mita Gupta v Prabir Kumar Gupta*³³ held that although the venereal disease is a reason for divorce if a partner is responsible for the disease and the other partner suffers so much, the responsible partner may be denied.

Renunciation of the world

"Renouncement of the world by entering any religious order" according to Section 13(1)(vi) is a solid ground for divorce. A spouse may seek divorce under modern Hindu law if the other person has given up all worldly assets and joined a religious order. Renunciation through

³¹ *Narain Gupta v Rajeshwari Gupta* AIR 1988 SC 2260

³² *Mr X v Hospital Z* AIR 2003 SC 664

³³ *Smt Mita Gupta v Prabir Kumar Gupta* 1954 SC 606

joining a religious order, on the other hand, must be unwavering and rigid. Supreme Court in *Sita Das v Sant Ram*,³⁴ held that “the renunciation must be complete and final and affected by the ceremonies and rites prescribed by the order he enters.”³⁵

Presumption of Death

For at least seven years, **if a party is not seen or heard in as alive, then he shall be** presumed as dead as per the Act. Under all the matrimonial laws, the petitioner bears the burden of proof that the whereabouts of the respondent have been unknown for the required period. In accordance with section 108 of the Indian Evidence Act, 1872, the burden of proof falls on the person who affirms that the person hasn't heard from their partner for at least seven years. In *Balambal v Kannammal*³⁶, the court passed the judgment that “the presumption of death could only be invoked if the death or inexistence of that person is proved when the presumption is raised in the court and no person can utilize such presumption for generating any type of death record of the called person.”³⁷

Unavoidable Judicial Separation

According to Section 13(1A), either party to a marriage may seek dissolution on the ground "that there has been no resumption of cohabitation between the parties to the marriage for one year or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties."

Essentials of Judicial Separation are:

1. A decree of judicial separation between the petitioner and the respondent,
2. Non-resumption of cohabitation between the parties for one year or upwards
3. The petitioner should not be in any way taking advantage of their wrong or disability
4. Non-existent of any other legal ground warranting refusal of the relief prayed.

³⁴ *Sita Das v Sant Ram* AIR 1954 SC 606

³⁵ *Ibid*

³⁶ *Balambal v Kannammal* (1997) 1 MLJ 181

³⁷ *Ibid*

Not only the aggrieved party but also the defaulting party may get help to obtain a decree for divorce under this clause.

GROUND THAT ARE AVAILABLE ONLY TO THE WIFE

Besides the grounds stated above, four additional grounds are provided to the wife for divorce under Section 13(2) of the Act. These may be stated as follows:

Pre-Act Polygamous Marriage: This clause states, "That the husband has another wife from before the commencement of the Act, alive at the time of the solemnization of the marriage of the petitioner". In *Venkatame v Patil*,³⁸ the respondent had two wives. One of the wives filed a divorce petition. The respondent divorced the second wife while the petition was pending.³⁹

Thereafter, the respondent claimed that the petition should be dismissed because he had only one wife left. This plea was outrightly rejected by the court. The such ground can only be applied if both the marriages are valid & the other wife (2nd wife) is present while filing the petition. However, there is no practicality on this ground anymore.

Rape, Sodomy, or Bestiality: A divorce petition can be filed under this section if the husband has been convicted of rape, sodomy, or bestiality since the marriage was solemnized.

Non-Resumption of Cohabitation after a Decree/Order of Maintenance: If the court has granted maintenance under section 125, CrPC⁴⁰ or a decree under Section 18, Hindu Adoption & Maintenance Act, 1956⁴¹ & cohabitation has not been resumed between parties after one year or upwards, it shall be a valid ground to file a petition for divorce.

Repudiation of Marriage: If the marriage was solemnized before the wife turned fifteen and she has repudiated the marriage before turning eighteen, she may obtain a divorce under this provision. It may be expressed (written or spoken words) or implied repudiation of the wife's conduct (left husband & refused to come back).

³⁸ *Venkatame v Patil* AIR 1963 Mys 118

³⁹ *Ibid*

⁴⁰ Code of Criminal Procedure 1973, s 125

⁴¹ Hindu Adoption & Maintenance Act 1956, s 18

CAUSES OF DIVORCE IN MODERN TIMES DURING AND POST-COVID LOCKDOWN

We are already seeing massive shifts in the number of problems between married couples during the modern era leading to divorce. However, during the lockdown, the divorce rate grew exponentially, leading us to question the ethics and abiding of the Act. Some of the causes may be defined as follows:

Anxiety due to the Virus - Many people had witnessed such a Pandemic for the first time in their lives. Therefore, most people feared getting infected with the Covid-19 virus, and also, there was uncertainty about the future, which resulted in anxiety and tension for many people. Sometimes, one spouse misbehaved with another due to such anxiety and tension, which resulted in the deterioration of the marriage.

Faulty communication patterns - Communication plays an essential role in developing a happy married life. Lack of respect, proper words and tone, and body language in communication can ruin a marriage. If the communication lacks respect, proper words, appropriate tone, and body language, it may disrupt the marriage. During the lockdown, there was a communication gap between the spouses due to severe anxiety or too much communication, which led to a worsened relationship.

Partner/Partners with a psychological disorder - If the partner/s has already suffered from a psychological disease before covid, it was natural for the already tense situation to escalate quickly, increase symptoms, and thus affect the marriage.

Work overload - This problem hit the hardest for every married couple in India. Families in India are mainly dependent on their maids for all the household chores like mopping, dishwashing, cooking, etc. With the lockdown beginning, the family had to work these menial jobs all by themselves and work from home. Also, since employees were working from home, they had to work extra hours, thus causing the spouses' irritation and anxiety.

Couples already on the verge of a broken relationship - Couples who were already on the brink of a breakup, separation, or divorce just before the lockdown tended to be more

engrossed in fighting and arguing, thus causing a toxic environment for both spouses. However, they still had to stay together till the lockdown was over compulsorily.

Couples who live separately owing to work requirements - If a spouse goes to work every day by travelling to a place which is far away from his/her home, he/she may hardly get time to stay at home 24/7. Another spouse is also involved in a similar lifestyle. So, usually, they stay away from each other. Such couples may have frequent conflicts concerning their lifestyles and end up breaking the marital relationship.

Unrealistic expectations - During the lockdown, things that were once possible seemed a bit unrealistic. This created a degeneration in the relationship when those expectations were not fulfilled.

Job loss/salary cut - Many people are anxious because they are afraid of losing their jobs or having their salaries reduced. Most of the time, they do overwork to please their bosses which makes it difficult for them to justify their job/salary. This anxiety and fear affect their marital relationships, as the spouses are forced to stay away due to long hours.

Domestic Violence - Domestic Violence was the biggest reason for most of the divorce cases in India during the lockdown period. The causes stated above were more or less the contributing factors to such violence, and as a result, the wives wanted to divorce their husbands to stay away from a toxic environment.

MODERN-DAY SOLUTIONS TO CONTROL THE RATE OF DIVORCE IN OUR SOCIETY

Mediation and establishment of fast-track court - Sometimes in marriage households, spouses might fight on very trivial issues, which cause the couple to develop a rift among themselves, which might escalate into divorce. In that case, mediation centres are the best places to go to restore trust and possibly save their relationship. Mediation centres have their own procedures for dealing with the case. As a result, at first, the husband and wife are first

referred to mediation before going to court. Mediators are frequently appointed based on their qualifications for specific cases by the court.

Govt helpline number - The Government of India issued many steps to help women from domestic violence, which led to divorce. The authorities to be contacted included the Protection Officer or the office of the District Legal Services Authority to help approach the Court to protect rights. During the lockdown, it was the job of the Duty Magistrate to remain present in the Court. Under the Domestic Violence Act, an application can be filed for protection orders and other appropriate orders before the Duty Magistrate. The national women's commission must take proper steps to curb domestic violence with the legal authorities.

Dowry prohibition - Dowry is a social evil that has resulted in unspeakable tortures and crimes against women, as well as contaminating the Indian marriage system. Dowry refers to a monetary or in-kind payment paid to a bride's in-laws, which is more like a payment for the wife during her marriage. Today, several government laws (such as the Dowry Prohibition Act of 1961⁴²) and reforms have been enacted to abolish the dowry system and improve the situation of girl children through various schemes. However, because of the social nature of the problem, legislation has not yielded the expected consequences in society. To solve this issue, it is necessary to intrigue the socially and morally conscious people, who can provide education and economic independence for women, and effective implementation of anti-dowry legislation may help.

CONCLUSION

There is absolutely no doubt that the primary basis of marriage is to stay together and provide support and comfort to each other. However, it was not the case with most families last year. Life has been quite hard with the lockdown beginning due to the Covid-19 Pandemic. Many people lost their jobs during this period, and many had to work from home. Unable to go out or do our daily jobs, we have been confined in our homes for almost a year, which has

⁴² Dowry Prohibition Act 1961

impacted nearly everybody in the whole world. This research paper, along with the Act, has provided the Causes of divorce and the solution to control the rate of divorce in society. However, since all marital ties between the parties are destroyed, divorce should always be considered a last choice.