

## **Grounds and Procedure of Divorce under Hindu Marriage Act:**

### **A Special Reference to Cruelty**

Kavita Devi, LL.B., LL.M., H.No. 1665-A/21, Prem Nagar, Rohtak(Hr)

#### **INTRODUCTION**

An uncodified Hindu Law did not recognize divorce. Even it was unknown to the old textual Hindu Law. The reason was that the marriage was considered as sacrament not a contract. The divorce was not recognized unless it was allowed by the custom. However, with the passing of Hindu Marriage Act, vital and dynamic changes has been brought in the marriage laws of Hindus by introducing section 13 wherein the grounds of divorce have been prescribed. The primary object of the Hindu marriage act is to preserve and protect the Hindu marriages, rather than allow it to disintegrate. The dissolution of marriage is permitted only on the substantial grounds. Though the grounds of divorce has been provided in the act but to restrict the dissolution of marriage, a bar has been created before filing a petition for divorce. This bar is that divorce will not, ordinarily, be granted within one year of marriage. This bar find place in the Indian Hindu marriage legal enactments.<sup>1</sup>

Even when the grounds for divorce is made out, the courts has to satisfy itself that the petitioner is not seeking to take the advantage of his own wrong or disability, where the petitioner founded on adultery, the petitioner has not connived at or condoned in any manner the acts which he or she complained of, the petition isn't the result of any collusion between the spouses or its presentation of petition should be marked by any unnecessary or improper delay and that there is no other legal ground against the relief prayed for.<sup>2</sup>

Although there are many different grounds on which decree of divorce could be obtained. However, cruelty is one of them an important ground and a large number of cases have been

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<sup>1</sup> Singh, Sukhdev, "*Hindu Law of Marriage and Divorce*", Universal Law Publication, Delhi, 2012 p.n. 70.

<sup>2</sup> See Section 23(1) (a) to (c).

filed on the basis of cruelty only. Though the Hindu marriage act does not define the word cruelty but the courts have time to time frame the meaning of cruelty depending upon each facts of the case and circumstances. Basically the courts have refrained from defining the concept of cruelty as is a dynamic concept, the meaning of which may change from the passing of time from one society to another so as to confirm with the ever changing social things.

## **GROUND OF DIVORCE UNDER HINDU MARRIAGE ACT**

As per Hindu Marriage Act, 1955, if any person who is Hindu by religion in any of its forms or of his upbringing including Virashaiva, Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj, or who is Buddhist, Jain, Sikh or Jain by religion or any other person domiciled in Indian territories to which the act extends who is not Muslim, Christian, Parsi, Jew by religion, if the essentials condition of the section 5 of Hindu marriage act is violated then the other party to the marriage is entitled to the decree of divorce, nullity or judicial separation as the case may be.<sup>3</sup>

The word divorce has been derived from the word '*diverse*', a Latin word which therefore mean *divertium*. In ordinary sense, divorce is nothing more or less than another name for dissolution of marriage i.e., parties ceases to be husband and wife after the decree of divorce is passed between them.

## **TYPES OF GROUNDS FOR DIVORCE UNDER HMA, 1955**

It is pertinent to mention here is that **section 13** of *Hindu marriage act, 1955* as a whole, lays down three types of grounds for divorce, which is classified as below:

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<sup>3</sup> Akhtar, Naseem, "*Family Law on Divorce and Judicial Separation*", Deep and Deep Publications, New Delhi, 2003, p.n. 16

(1) **DIVORCE ON FAULT GROUND:** there are nine grounds based on the fault-disability theory of divorce wherein the only aggrieved spouse may avail the benefit of these sections.<sup>4</sup>

The central concern while transforming marriage from status to contracts was to obtain the right to dissolve the marriage through a judicial decree, which would entitle the spouses to enter into a subsequent marriage. Once the sacred tie of marriage was severed, the bondage of marital servitude ended. This was a significant step for Hindus.

While today there are several ways through which a marriage can be dissolved, the fault theory was first step in this direction. Fault divorce forms the core of matrimonial litigation.

#### **Ingredients of fault ground of divorce<sup>5</sup>**

1. First and foremost condition is the existence of guilty party or a party which is responsible for having committed matrimonial offences.
2. There must also exist an innocent party who has suffered due to misconduct of the guilty party.
3. The innocent party should have no role in the cause of the misconduct which means there must not be any collusion.

(2) **DOCTRINE OF “NO FAULT” DIVORCE:** or could be called up as consent theory of divorce. This no fault theory is based on the fact that marriage often fail not because the fault or guilt of the spouses but because the spouses are not compatible in their temperament. Despite their best efforts they are unable to live together as husband wife so they seek divorce mutually which is known as consent divorce also.<sup>6</sup>

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<sup>4</sup> See section 13(1) of Hindu Marriage Act, 1955.

<sup>5</sup> Agnes, Flavia, “Marriage, Divorce and Matrimonial Litigation”, Oxford University press, 2011, p.n. 29-30.

<sup>6</sup> Agnes, Flavia, marriage, “Divorce and Matrimonial Litigation”, Oxford University press, 2011, p.n. 49.

(3) **IRRETRIEVABLE BREAKDOWN OF MARRIAGE:** also known as breakdown theory of divorce based on which either the aggrieved or the guilty spouse may avail.<sup>7</sup>

### **When One Can Seek Divorce: Procedure**

Situations do arise when husband and wife cannot live together and cannot see each other and even do not want to see each other. A gulf erupts in the married life and one of them or both want to fall and live apart. Under Hindu law, marriage was considered to be an unbreakable marital bond tie. It is not so anywhere. Hindu marriage act, 1955 permits the parties get the marriage dissolved on certain grounds.

- (1) **Adultery:** Under the initial version of section 13 this ground was that the other party living in adultery: any party whosoever after solemnization of marriage, has had a voluntary sexual intercourse with any person other than her or his spouse amounts to adultery. Even a single act of sexual intercourse would entitle the petitioner to file a case for divorce. This is known as adultery which is a serious allegation and is required to prove on the same footing as criminal charge. The court has to be satisfied in the preponderance of probabilities that charge is established.<sup>8</sup>
- (2) **Cruelty:** That after solemnization of marriage, a person treats the spouse with cruelty. (Detailed discussion on additional pages)
- (3) **Desertion:** That the spouse has deserted the other after continues period of not less than two years immediately preceding the presentation of the petition. When there is abandonment of one spouse by the other and that is too without any reasonable cause and without the consent of the other party then this make it the essence of desertion.
- (4) **Conversion:** the party ceased to be Hindu by conversion to another religion.

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<sup>7</sup> See section 13 (1A) of HMA Act, 1955.

<sup>8</sup> Kumar Narender, *"Key to Marriage, Divorce and Maintenance: Practice and Procedures"*, Universal Law Publications, Noida, Second Edition, 2015.

- (5) **Unsound Mind:** That the party has incurably of unsound mind; or other party has been suffering from continuously or intermediately from mental disorder and such mental disorder is of such kind or to such extent that the other party cannot live together.
- (6) **Leprosy:** that the other party suffering from a virulent and incurable form of leprosy.
- (7) **Venereal Disease:** That the person suffering from venereal diseases in a communicable from.
- (8) **Civil Death:** That the party has renounced the world by entering into any religious order.
- (9) That the party has not been heard of as being alive for a period of seven years or more.

It means the other party has forever relinquished all property and globally concerns.<sup>9</sup>

## **CRUELTY AS A GROUND OF DIVORCE: A Review**

The notion of cruelty as ground of divorce has gone through substantial expansion over the last four decades. Cruelty means when conduct of the other party is of such a nature that it causes a reasonable apprehension in mind of the petitioner that the petitioners live with the other party it will be harmful or injurious.

### **Meaning of Cruelty**

In *Halsbury's laws of England*, Cruelty is defined as “ the legal conception of cruelty, which is not by statute, is generally described as conduct of such character as to have cause danger to life, limb or heal( bodily or mental or as to give rise to reasonable apprehension of such danger.”<sup>10</sup>

If it is alleged that the parties to the marriage were unhappy because of unruly temper of the spouse or due to matrimonial wrangling it would fall short of the conduct to be termed as cruelty. At times, due to differences in temperament of the parties, there may be petty quarrels and troubles.

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<sup>9</sup> Supra at p.n 39.

<sup>10</sup> Halbury's Laws of England, P.n. 514.

## Concept of Cruelty

The concept was explained in **N.G. Dastane v. S. Dastane**<sup>11</sup>, *Chandrachud*, justice, speaking for the bench, held that where an allegation of cruelty is made, the inquiry has to be made “whether the conduct charged as cruelty of such a character as to cause in mind of the petitioner a reasonable apprehension that will be harmful and injurious for him to live with the respondent.”

In **V. Bhagat v. D. Bhagat**,<sup>12</sup> Justice *Kuldeep Singh and B.P. Jeevan Reddy*, after referring to the above judgments, explained the concept of cruelty as:

Cruelty must be of such nature that the parties cannot be reasonably expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It is not necessary to prove that mental cruelty is such as to cause injury to the health of the petitioner.

The honorable supreme court was again confronted with the question to define the concept of cruelty in **Parveen Mehta v. Inderjit Mehta**,<sup>13</sup> and it held that the cruelty for the purposes of section 13(1) (ie) is to be taken as a behavior by one spouse towards the other which causes reasonable apprehension in the mind of the latter that it is not safe for him or her to continue the matrimonial relationship with the other.

In **Naveen Kohli v. Leelu Kohli**,<sup>14</sup> they were married on 20-11-1975 and they had three sons. The appellant constructed a bungalow no. 7/36A for residence. The parties got all their three sons admitted and educated in a public school in Nainital. According to the appellant, the respondent was bad tempered and a woman of rude behavior. After marriage, she started quarrelling and misbehaving with the appellant and his parents and ultimately, the appellant was compelled to leave the parental residence and started to reside in a rented premise from May, 1994. According to the version of the appellant, the respondent in collusion with her parents got sufficient

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<sup>11</sup> AIR 1975 SC 1534

<sup>12</sup> AIR 1994 SC 710.

<sup>13</sup> (2002) 5 SCC 706

<sup>14</sup> AIR 2006 SC 1675

business and property transferred in her name. The hon'able Supreme Court after considering the evidence on record came to the conclusion that the appellant was treated with mental cruelty.

The court said that even at this stage the respondent does not want divorce by mutual consent. From the analysis and evolution of the entire evidence, it is clear that the respondent has resolved to live in agony only to make life a miserable hell for the appellant as well. The type of adamant and callous attitude, in the context of the facts of this case, leaves no manner of doubts in our mind that the respondent is bent upon treating the appellant with mental cruelty.<sup>15</sup>

### **Different facets of Cruelty<sup>16</sup>**

**There are multiple reasons by which cruelty comes into picture.**

1. Demand of Dowry
2. Mental cruelty
3. Drunkenness or drug addiction
4. Sexual cruelty
5. Willful separation
6. Coitus Interruptus
7. Sterilization
8. Incompatible of temperament

Thus the concept of cruelty as a matrimonial offence the legislature had tagged a caveat which was to be interpreted and applied in each case on the basis of its own facts. Doing so, in some cases, the Indian courts had decided as follows:<sup>17</sup>

- (1) Cruelty could be inherent in the conduct of the guilty parents and need not necessarily be physical.<sup>18</sup>

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<sup>15</sup> Ibid at 1689.

<sup>16</sup> Singh, Sukhdev, "*Hindu Law of Marriage and Divorce*", Universal Law Publication, Delhi, 2012 p.n. 79-80.

<sup>17</sup> Akhtar, Naseem, "*Family Law on Divorce and Judicial Separation*", Deep and Deep Publications, New Delhi, 2003, p.n. 21.

- (2) Where the petitioner complained of isolated acts of violence on the part of the other spouse and took expectation to those acts, the courts could not dismiss them lightly.<sup>19</sup>
- (3) False accusations of unchaste would amount to cruelty.<sup>20</sup>
- (4) Modern trends in respect of matrimonial behavior would determine whether there has been cruelty of conduct.<sup>21</sup>
- (5) All inter- spousal quarrels and other relevant incidents would be examined together with the impact of each other's spouse's personality and conduct on the other, in order to determine mental cruelty.<sup>22</sup>
- (6) Totality of circumstances and all evidence on record would form the basis of judging cruelty<sup>23</sup>
- (7) Concubine on the part of the husband would amount to cruelty<sup>24</sup>
- (8) Cruelty in its universal sense was not within the purview of the act, it was only cruelty which produced a particular kind of consequences that fell within it.<sup>25</sup>
- (9) In case where a wife allegedly leaving the matrimonial home without any sufficient cause and took away all her ornaments and other valuables. In spite of efforts made the wife did not return. There was no cruelty by conduct of wife.<sup>26</sup>
- (10) Where the wife undergoes threatened abortion with the consent of husband that does not amount to cruelty.

## CONCLUSION

At the end it is to be concluded that that the grounds for dissolution of marriage and procedure to it has been explicitly provided under Hindu marriage act, 1955. Though there are different

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<sup>18</sup> Kaushlya v. Waisakhi, AIR 1961 P & H 521.

<sup>19</sup> Gurcharan Singh v. Waryam Kaur AIR 1960 Punj. 422.

<sup>20</sup> C. Jagan Mohan v. Sayitharamma, AIR 1973 AP 377

<sup>21</sup> Supra at p.n. 29

<sup>22</sup> Khajan Singh v. Jahtar Kaur, 1982HLR, 556.

<sup>23</sup> Neera v. Krishna, 1975 AIR 377.

<sup>24</sup> Lalita v. Radha Mohan, AIR 1976 Raj. 1.

<sup>25</sup> Pranab v. Marinmayee, AIR 1976 cal 156.

<sup>26</sup> Tarsem v. Satwant Kaur (1985) 1 HLR 140



grounds on which the decree of divorce could be granted. However, we had a special focus on the ground of cruelty which has been made one of the significant grounds by the legislature under Hindu marriage act. Cruelty is of indefinite variety and its categories cannot be closed with the environmental and economic liberalization, there has been an impact on the behavior of the individuals of matrimonial life. However, the act or ground of cruelty has not been defined by any enactment of Hindu marriage and special marriage act, but the courts has time to time interpreted the meaning of the concept of cruelty depending on each facts of the cases. Therefore, the varieties of cruelty are unending that they cannot be listed.

The standard of proof that they required to prove the cruelty is not the proof beyond the shadow of doubt applied in the criminal cases, but on the basis of the probabilities. It has to be ascertained as to the effect of the conduct of the respondent on the mind of petitioner.<sup>27</sup>

Thus, to fulfill the object of divorce law as to preserve and protect the marriage, the concept of cruelty should be given liberal interpretation which may lead to disintegration of marriage.

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<sup>27</sup> Singh , Sukhdev, "*Hindu Law of Marriage and Divorce*", Universal Law Publication, Delhi, 2012 p.n. 91.