

An Analysis of Instant Divorce in Hindu Marriages

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ABSTRACT: *Section 13B of the Hindu Marriage Act, 1955 tells how a couple can file instant divorce, after feeling that their relationship has been a complication and a Gordian node, it's hard for them, without making any fault, to continue their wedding arrangement, to send a petition to the courts for divorce. This paper, titled "An Analysis of Instant Divorce in Hindu Marriages," seeks to illustrate the problems with the current practice and examine the question of pursuing divorce by way of compromise deeds which is also unlawful. In this paper the author has discussed about the process of Instant Divorce and recommendation for the same has been given by the author to understand the topic better.*

KEYWORDS: *Divorce, Hindu Marriage, Instant Divorce, Mutual Consent, Women.*

INTRODUCTION

And nowadays with the spread of awareness, education, consciousness, emancipation of the female counterpart of the society, economic independence and breakdown of the joint family system, more and more marriages are getting unstable. So as to stay up with the change, there has been a plain liberalization in divorce laws, especially under the Hindu Marriage Act 1955.¹

In fact, strict divorce laws can hold a marriage de jure, but when relationships are compromised beyond tolerance, the parties to the marriage eventually become psychologically and emotionally separate from each other.

In the true sense, what protects and sustains a marriage is not the actual fact that it subsists legally or that the couple is morally obligated to remain in it, it is the facts, the honesty and therefore the affection with which the marriage bond is preserved intact.

Under the Hindu religion, marriage is taken into account as a sacrament between husband and wife that lasts to seven lifetimes, during which the couple support each other to advance socially, economically and even spiritually.

In the case of Hinduism, the aphorism that marriages are made in heaven is amazingly valid. Actually, the bond between couples is a partnership of souls. Marriage occurs for family continuation and dharma practice.

There's no such term as divorce in Hindu culture. When married, a couple must stay together forever. Divorce is a modern phenomenon enacted in Hindu society in India through the Hindu Marriage Act.²

Except in certain families, within the lower social strata, Hindu law, strictly so called, did not allow divorce.

Also, since it was written in our customs and preceded by Hindu beliefs that marriage is a sacred vow to be taken and never released from that vow until the death of one of the spouses. In the case of matters concerning the establishment and dissolution of marriage, however, different circumstances emerged and equal and equitable solutions had to be sought.

¹ B.A.LLB (Hons), 2nd Year, National University of Study and Research in Law, Ranchi.

² Yukta Ambastha, Instant Divorce in Hindu Marriages, National University of Study and Research in Law, Ranchi, ISSN: 2582-3949.

Although marriage for life is the most normal style of marriage and is ideally suited to a civilized society, often under conditions of extreme deprivation or cases of extreme depravity by one of the partners, there is often no reason for legally insisting on the union as indissoluble.

But then, before the Hindu Law Committee, substantial proof was provided that there were thousands of cases of desertion of wives by their husbands and many cases were delivered to their notice in which remarriage was desired and probable but could not be carried out because of the prevalent law against divorce.

Before the eyes of the court, there are numerous grounds for a wedded couple to apply for marital relief by filing a petition for divorce. Perhaps as small as a lack of compatibility or comprehension, the explanation may be as large as bigamy, desertion or cruelty.

DISCUSSION

1. Background:

The legal acceptance of no-fault divorce was expected by proponents of divorce reform in earlier times. A divorce was often granted under this idea on grounds such as incompatibility, irreconcilable distinctions, or an irretrievable breakup of the nuptial relationship. Instead of the question of whether any party is guilty, the court considers the state of the marriage.

This method of proceeding eliminates the need for one party to accuse the other of a conventional reason for divorce, such as adultery, cruelty, alcoholism, or dependency. No-fault divorce has become a fast and inexpensive way to end a marriage, especially when a couple has no children and moderate assets of property.³

In particular, the right to use no-fault processes to call off a marriage has led to criticism that divorce has become too easy to receive, encouraging spouses to leave a marriage at the primary indication of marital discord. And there was a provision introduced in 1976 in the said law that allowed the parties to the union to sue for divorce by mutual consent, so the change from the theory of blame or guilt to the theory of fault of divorce took place.

2. The Instant Divorce

In compliance with section 13B of the Hindu Marriage Act, the Hindu Marriage Act of 1955, as it stands today, allows for the dissolution of marriage by mutual consent.

In the Family Courts Act, 1984 or the Civil Procedure Code, 1908 (where Family Courts have not been established), the procedural law for handling these cases is included.

Even the Family Courts Act 1984 allows for the Civil Procedure Code to be available. The rules of Section 8910 of the C.P.C., Order XII C.P.C., Order XXIII C.P.C., are applicable in this sense.

In view of unique provisions of Sections 13 and 13 B of Hindu Marriage Act, the vexed issue is whether the divorce order must be given or assured by the submission or submission to the Court of Application of the substance of a divorce petition in compliance with Order XII of the C.P.C. and subsequently by the removal.⁴

Once the parties to the divorce procedure agree with their disagreement, they can opt to live together or in part through dissolving marriage by meditation and/or the other ADR process.

In the case that a divorce arises between the couples, they emerge by applying to the Court a resolution on the compromise under sec 13-B of the Hindu Marriage Act in the unresolved petition, whether it can or cannot.⁵

³ Prof. (Dr.) Daljeet Singh, Instant Divorce under Hindu Law: A Critical Appraisal of Emerging Trends in Judicial Approach.

⁴ Hindu Marriage Act, 1955.

⁵ Daljeet Singh, Desirability of Instant Divorce By the Judiciary: A Critique, Indian Law Institute.

The question could not be resolved because, under the terms of CPC Order 23, a settlement between the parties should be reached between two litigants. The court is assured that a civil case has been modified by some formal arrangement or settlement only as regards a compromise.

The agreement proposed to the court shall therefore be a constitutionally permissible compromise that is to say compromise for the legal intent rather than against the public policy clearly explained in compliance with Section 23 of the Indian Contracts Act.

A compromise/accord filed in the divorce case will not be legal and will breach and thus invalidate Section 13B of the Hindu Marriage Act.⁶

In particular, the Hindu Marriage Act states that divorce can be granted on any grounds of fault specified under Article 13 of the Act or through mutual consent of the parties in compliance with Article 13B of the Act, given that a number of preconditions have been fulfilled.

Thus, we presume that there is an irregularity in process where the compromise act of section 13B of this Act includes immediate divorce.

RECOMMENDATION

In order to correct the following situation and provide for situations in which the parties have spent several years living separately, and where there is no scope or hope of settling or reconciling their marriage, a change in the Hindu Marriage Act, 1955 and its other counterparts is required to waive the legal period of time.

The legislature cannot move on in a place of forgetfulness and apathy to a situation in which attempts should be taken to settle family conflicts easily, and only parties in a situation of uncertainty and desperation are left to devour. Law is not a static matter.

It is still rising and the administration of justice is like that. Many factors change the dynamics of law.

This requires a natural right and the process to obtain the relief, among many other aspects. The provision of Section 13B of the Hindu Marriage Act must be amended.

CONCLUSION

The laws state that, under the joint agreement of the Court of Justice of original jurisdiction, it is beyond the scope of rule of law to issue immediate petitions in a petition for divorce.

The Court of Families or the Court of District and the courts of appeal of the Supreme Courts or the High Courts of the State do anything in their power to ensure the conciliation between and the parties in compliance with section 9 of the Family Court Act, 1993, Section 23 of the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954.

The general conclusion however that Article 13B, if taken in all its width, does not tie the appeal court can sometimes lead to unsatisfactory findings. In case of extraordinary problems, it will be easier to amend section 13B by granting the court the authority to lighten the ban. Such authority shall then be passed both to the appeal and to the prosecutions.

⁶ *Supra* 2.