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ANALYSIS OF GROUNDS OF DIVORCE UNDER THE HINDU MARRIAGE ACT,1955

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Abstract -:

Divorce principally means the legal dissolution of a marriage by a court or other competent body. In the processor of Divorce both the hubby and woman get relief from all types of nuptial scores. It's the complete breakdown of a marriage. All Hindu's are governed under this Act. There are some traits in a mate or circumstances due to which the divorce causes, which might force mates to seek a divorce. You can no longer manage with your mate, and divorce is maybe the stylish option. Divorce is a seven learned word, which separates the United couple at their own want with their own concurrence. Therefore divorce is considered as a means to break marriage that happens not just between two individualities but also between two families. According to Hindu law marriage is an eternal union as it can noway be ended up but under Hindu Marriage Act, 1955 with in contractual nature of marriage it can be ended up. As Hindu law believes that marriage is an eternal union it isn't veritably easy to take divorce under Hindu law. There are several grounds which are handed in this Act for any kind of divorce processor to be fulfilled. A divorce is a legal action between wedded couples who aren't willing to live together. It's the termination of the marriage contract. Under Hindu law divorce can also be taken with the collective concurrence of both of the parties, if both the parties had mutually agreed that they can't take there marriage further. In this composition we're generally going to study the colorful grounds under whom Divorce can be taken under Hindu law and critics about the differences between moment's condition and law. India with 1.1 of divorce rate as Indian's believe in the chastity of this holly union. But someone the less quantum of divorce cases is also because of the lack of mindfulness, dependence of women and orthodox thinking of society which needs to be changed. Commission of women has initiated the dissolution of marriage in civic areas as financially educated women are now open to the option of ending the relationship rather than to bear life-long abuses. The juggernauts on gender equivalency are now giving rise to pride clashes between the hubby and woman , especially if the woman too is the chuck winner of the family. As in ancient times their

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was noway disaccord between hubby and woman because of the reliance of woman upon her hubby, he used to treat her as he wanted, and woman noway used to raise any question about the atrocity on her because of her situation and circumstances. According to lawyers & Mental Health Experts, Pressures have Increased on the Domestic Front during the Epidemic.

Judicial separation-

Judicial separation is also an volition used for termination with the nuptial scores. Judicial separation also known as a decree of judicial separation or an order for judicial separation, is a legal document inked by a judge in India that declares the consorts to be separate and living piecemeal. Judicial separation can be granted on the same as for divorce. As in India there's a great taboo in the eyes of individualities that taking divorce is breaking up of a eternal union, Or holly union. An existent who had took divorce is generally about making that person feel bad about what decision they had made. So reducing degree of this belittle people frequently choose the way with means of judicial separation. Judicial separation conception as mentioned in section 10 of the Hindu Marriage Act, 1955 provides judicial separation for both the consorts, those who are married under this Act. They can claim the relief by a solicitation and when the decree of separation is passed by court also they no longer need to live together. principally in judicial separation the decision of not living together by the parties can be abandoned but in the case of divorce decision among the parties can't be abandoned. So if after Judicial separation parties had changed their minds also they can continue their nuptial scores. That's why as per the society's morals it's considered as lower wrong. According to Law enterprises, there has been a 50- 60 %Increase in Divorce Cases in the Last Year. Legal Practice Management Startup Legal Cart saw a nearly 25 %Increase in Separation & Divorce Questions between January & May this time compared to a 1 time ago

Fault Grounds for divorce -:

As under section 13 for Hindu Marriage Act ,1955 the grounds for taking divorce under Hindu law are as following -:

- Adultery
- Cruelty

- Desertion
- Conversion
- Unsoundness of mind
- Leprosy
- Venereal disease
- Presumption of death
- Renounced the world

On these nine grounds both the parties can claim divorce under Hindu Marriage Act,1955. So further we will discuss deeply about all the grounds provided under Hindu law:-

1. **Adultery** – Adultery principally means consensual and voluntary intercourse between a wedded person and any other person except their spouse. As according to Hindu Marriage Act this act is considered as a pivotal aspect for relationship of husband and wife . The burden of proving the act of adultery is upon the petitioner. As in the case **Subbaramma v. Saraswati** , court held that one single act of adultery is enough for divorce or judicial separation.

Now as we take view of various reports it set's up that numerous cases of divorce are because of the acts of adultery.

2. **Cruelty** – Cruelty is among the main grounds of taking divorce. It is the physical or mental violence on the spouse. The description of cruelty is not clearly mentioned . As in any act of cruelty the intention of the person doing cruelty doesn't matters . If person does cruelty without any intention of doing cruelty , he is still liable for his act. Cruelty is of two types physical cruelty and mental cruelty. Physical cruelty is generally physical abuse but mental cruelty is torturing a person mentally.

In case Bhagwat v. Bhagwat , the husband strangled wife's brother on one another and her son on other occasion because of the insanity attacks . So it was held that wilful intention to injure is not an essential element of cruelty.

- **Physical cruelty** – When one spouse does physical abuse or torture on another person effecting the physical health of that spouse is known as physical cruelty. In Jyotish Chandra v. Meera , in this case physical cruelty coupled was done with

mental cruelty . So it was stated that , even one or two acts of physical violence are sufficient to constitute cruelty ,but not in the case of isolated instance.

In case Ashok v. Santosh their was mere cruelty on the husband on the ground of wife as she used to pull flaccid penis of her husband. So the court held that this action of the wife is mere ground to cruelty, as these action result in intense pain .

- **Mental cruelty** -In Bhagat v. Bhagat Supreme court defined the concept of mental cruelty . So basically mere cruelty with acts and instances by any spouse on the other spouse which results in mental abuse of that spouse is known as mental cruelty.
- In the case of Parveen Mehta v. Inderjeet Mehta ,court has defined mental cruelty as a state of mind and feeling of a person.
- Om Prakash Bhagat vs Smt. Gauri Devi on 16 August, 2019
- Vishwanat vs Sau. Sarla Vishwanath Agarwal.
- U.Sree v. U. Srinivas

Some mental cruelty cases-:

*On the ground of false accusations of adultery or unchastity

*on the ground wife quarrelling with mother in law

*On the ground of demand of dowry by in laws or husband

*On the ground of Persistence refusal to have marital intercourse

*On the ground of drunkenness

*On false criminal charges

*On the ground of refusal to have children

These are the commonly found cases under cruelty.

Section 498A under Indian penal code -498A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Ingredients of Section 498A:-

- The woman must be legally married to her husband.
- The woman must have been subjected to some sort of cruelty or marital abuse.
- Such cruelty must be done by her husband himself or the relatives of the husband and here the terms relative only includes the husband's parents, brothers and sisters and nobody other than them, not even any close friend or any distant relatives.
- However, if the husband commits such cruelty he shall be liable for imprisonment which may extend to three years with fine.

Section 354 in The Indian Penal Code:-

354. Assault or felonious force to woman with intent to Outrage her modesty. Whoever assaults or uses Felonious force to any woman, intending to outrage or knowing it to be likely that he'll thereby outrage her modesty, shall be penalized with imprisonment of either description for a term which may extend to two times, or with fine, or with both.

Now as are has given relief to women against whom these pivotal acts of atrocity have been performed. As women in India aren't important educated and independent so they can raise voice against their hubby. Domestic violence was veritably common among Indians. On average, nearly 20 people per nanosecond are physically abused by an intimate mate in the United States. During one time, this equates to further than 10 million women and men.

So these vittles are really helpful for vulnerable women who are facing these kind of practices on them. But with these certain pros there are cons too.

As it's a big relief for women but certain fake cases are also set up in the same manner. When any women has made her mindset that she does n't wants to live with her hubby but she does n't have any ground under which she can apply for divorce and her hubby is also not agreed for divorce by collective concurrence also the most generally ground used is of atrocity and demand of dowry by in laws.

Indian people have mindset that courts processors are veritably top paining as they want to settle down effects mutually. Utmost of the time during the hail to settle down case mutually women demand compensation from there hubby's families and to settle the matter substantially people

fulfil their demand. Knowhow numerous relives are given under these kind of cases when there are fame allegations by other party but still these kind of practices are prevailing in our society.

→ Mukesh Bansal VS State Of UP & Another on 13 June, 2022

→ Arnesh Kumar VS State Of Bihar & Anr on 2 July, 2014

3. **Desertion** – (dereliction) “ The expression dereliction means reasonable cause and without the concurrence or against the want of similar party, and includes the wilful neglect of the supplicant by the other party to the marriage, and it’s grammatical variations and connate expressions shall be demonstrated consequently. ” So principally dereliction means when partner lefts the company of the other consorts not only from the place but from a state of effects. dereliction can distributed in to following-

- (factual dereliction)
- (Formative dereliction,)

Actual desertion (factual dereliction) - factual dereliction principally means the situation in which the partner has both the intention i.e.(enmity deserdendi) and has actually abandoned his/ her nuptial home. In case the partner has intention to leave his nuptial home but noway takes a step to leave it in reality this does not fall under the condition of factual dereliction.

→ Lachman v. Meena

→ jagannath v. Krishna

→ Rohini v. Narendra Singh

Now, concluding along with these two conditions there are three pointers more which are that dereliction shouldn't be without the concurrence of the other party, there should be reasonable cause for dereliction, the solicitation for the ground of dereliction can only be filled if there's completion of statutory period of two times. In case the partner return one day before the completion of the period of two times, vacated partner concurrence to dereliction also it would n't be a valid ground for dereliction.

Constructive desertion (Formative dereliction)- “ dereliction isn't pullout from a place but from the state of effects ” Now then state of effects may relate to nuptial scores or cohabitation. When the situation of dereliction on formative base it's called formative dereliction. For case a hubby beaten up his woman , treated her severely and used to keep

her in a separate room and now he's claiming for divorce under ground of dereliction. So would it be valid?

In colorful cases court considered it as formative dereliction.

→ Lang v. Lang

→ Anil Kumar v. Sefali

→ Shyam Chand v. Janki

→ Jyotish Chandra v. Meera

Termination of desertion – So if the conditions valid for dereliction being a ground for divorce aren't fulfilled, dereliction comes to an end. For case When resumption of cohabitation between the consorts, there resumption of intercourse between the consorts or there's offer of conciliation from the partner. The burden of proving the ground of dereliction is on the vacated person.

Conversion- If a person ceases to be a Hindu and has converted into another religion, also the partner of that person can file for divorce under the ground of conversion.

Illness of mind/ Insanity – This ground for divorce can be executed when the partner has been suffering continuously or intermittently from internal complaint of such a kind and to such an extent that the supplicant can not nicely be anticipated to live with the replier. So if the decree of insanity of that partner so high that it's insolvable for the partner to live with that person in such a case relief can be claimed under this group of divorce. “The expression desertion means reasonable cause and without the consent or against the wish of such party , and includes the wilful neglect of the petitioner by the other party to the marriage ,and it’s grammatical variations and cognate expressions shall be construed accordingly .” So basically desertion means when spouse leaves the company of the other spouses not only from the place but from a state of things.

4. **Leprosy** – Malignant or venomous leprosy is called virulent leprosy. When the condition of leprosy in a person is incurable then it can be used as a ground for divorce but in cases when leprosy is mild it can’t be used as a ground for divorce. Leprosy is also virulent from which ulcerous and unsightly symptoms appear or when social intercourse becomes almost impossible.

5. **Venerable Disease** –Any person can claim divorce under this ground if his spouse for a period of not less than three years immediately preceding the presentation of the petition, been suffering from venereal disease in a communicable form.
6. **Presumption of death** – If a person is lost from more than 7 years and there is no idea or proof of him being alive that person is presumed to be dead . The spouse of such a person can claim divorce under this ground. Without applying for dissolution of marriage if such spouse remarries and that person reappears after some time , not only the marriage can be declared void but also he can plead for bigamy . So such person before remarrying should first apply for dissolution of marriage . Once the marriage is dissolved such a perfect is free to marry any person.
7. **Renunciation of world** – If a person according to religious order or factors renounces the world , a petition can be filled by the spouse. Such spouse can file for divorce under this ground. If a person ceases himself from social interactions without entering into any religious order it would not be considered as a valid ground for divorce.

- **Wife's special grounds of divorce –**

According to section 13(2) of the Hindu Marriage Act,1955 there are certain special grounds given to the wife for divorce, these are:-

Bigamy: If 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 this case the wife can apply for a marriage stating the bigamy and proving their innocence in the matter. It provides relief to the wife from polygamous marriage.

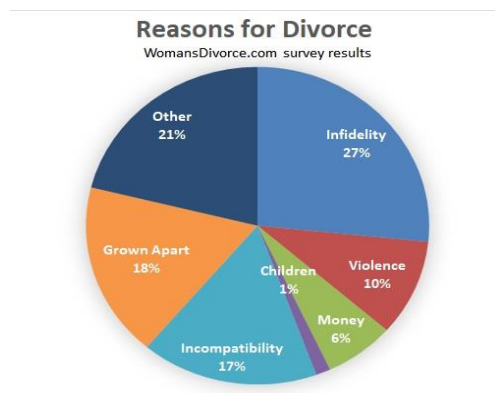
Unnatural offenses -: If the husband is convicted for any Unnatural offenses lie rape , sodomy ,or bestiality then the wife has the right to claim divorce from such person under this ground.

Separation:- Non-resumption of cohabitation for one year after an order of maintenance. When there is no resumption of cohabitation between the spouses after passing the decree of maintenance then the wife can claim divorce from her husband.

Underage:- The wife has right to claim divorce from her husband if her marriage was solemnized before she had attained the age of fifteen years, and she has refused to be in the marriage after attaining that age, but before the age of eighteen. After attaining the age of

eighteen years she has repudiated her marriage. There are necessary two conditions that she was married to that person before she had attained the age of fifteen years and secondly she repudiates her marriage after she attains her age of eighteen years.

- **Conclusion** –



The issue of increasing divorce rate in India just seems unsolvable because of the non faithful relationships. As per the above data we can see that 27% of divorce rate is just because of Infidelity as in these relationships people are not really ready for marriage. They just make it happen because of family pressure and societies pressure, which leads to acts of adultery. Increasing rates of divorce has its own positive and negative aspects. In past years women were not educated so that they can raise their voice against the cruelty happening on them but in present time women are well educated so they are well aware about their rights. On opposite side it has negative aspect. Women are so educated that they know they can live their life independently due to which the adjustment factors which used to prevail in marriages are ending now. Which are leading to increase in the divorce rates. The misuse of ground of cruelty is just because of the incompatibility of the spouses. Usually one of them doesn't want to be in that relationship but because of the lack of clear ground for taking them Divorce, they misuse the ground of cruelty by using false allegations of cruelty and dowry. The most disheartening fact is that these grounds are mostly suggested by lawyers to the spouses. It shows that Hindu divorce system needs to be more liberal so that if there is situation that one doesn't want live with other in any condition then there is no meaning of restricting them because marriage is a relationship where there should be consent of both of the parties. So if after marriage one has such mental state so that they don't want to be in that relationship then they should be set free.