BLOGS

Dissolution of Marriage under Hindu Marriage Act, 1955

Indrasish Majumder · 12 Apr 2023

Edit TABLE OF CONTENTS Introduction Judicial Separation Provision related to Judicial Separation Landmark Cases on Judicial Separation Restitution of Conjugal Rights Provision of Restitution of Conjugal Rights Landmark Cases on Restitution of Conjugal Rights Divorce under Hindu Marriage Act Provision related to Divorce Landmark Cases on Divorce Conclusion

Introduction

Marriage in Hindu law is a sacrosanct bond that binds the couple together throughout their lifetime and therefore, in earlier times, there was no such concept of dissolution of marriage. However, as society progressed, the ideas and values relating to marriage, among other things also changed and thus, dissolution of marriage was permitted under certain grounds. Under Hindu Law, there are three ways in which a marriage can be dissolved: judicial separation, restitution of conjugal rights, and divorce.

Judicial Separation

Judicial separation means the parties are legally separated, but they are not free to remarry. It is a type of temporary divorce that can be given by a court when the couple can’t live together for different reasons.

Provision related to Judicial Separation

Section 10 of the Hindu Marriage Act, 1955, deals with judicial separation. Section 10 of the Hindu Marriage Act, 1955 provides for judicial separation of those couples who are married under the Hindu Marriage Act, 1955. They can claim the relief of Judicial Separation by filing a petition and once the order is passed, they are not bound to live together.

Any spouse who is hurt by another spouse, can file a petition for Judicial Separation in a District Court under Section 10 of the Hindu Marriage Act, 1955. To file for judicial separation, the following situations should exist:

- The marriage between the husband and wife should be celebrated properly under Hindu marriage Act.
- The respondent should be settled in the jurisdiction of the court where the petitioner filed the petition.
- The husband and wife lived together for a particular period of time before the filing of petition.

Landmark Cases on Judicial Separation

- Savitri Pandey v. Prem Chandra Pandey

In this case, the Supreme Court held that a decree of judicial separation can be granted on the grounds of cruelty, desertion, and adultery.

- Sureshta Devi v. Om Prakash

The Supreme Court in this particular case ruled that a decree of judicial separation can be given if the marriage has broken down irreparably.

Restitution of Conjugal Rights

Restitution of conjugal rights means the court can order either party to return to the matrimonial home and cohabit with the other party. It is a legal option for people whose partners have left them without a reasonable cause.

Restitution of Conjugal rights means:

1. Refusal to stay together,
2. Refusal to give comfort to each other,
3. Refusal to have marital intercourse, or
4. Refusal to discharge matrimonial obligations.

Provision of Restitution of Conjugal Rights

Section 9 of the Hindu Marriage Act of 1955 talks about restitution of conjugal rights. Following are the conditions essential under Section 9, HMA.

Essential Conditions of Section 9, HMA, 1955:

1. There must be a marriage between the parties i.e., the parties should be legally wedded, husband and wife.

2. There must be a withdrawal of one spouse from the society of the other spouse.

3. This withdrawal should be without any reasonable cause.

4. There should be no other legal ground for refusal of the relief.

5. The court should be satisfied with the truth of the statement made in the petition

Landmark Cases on Restitution of Conjugal Rights

- Saroj Rani v. Sudarshan Kumar

The Supreme Court held that the court can order restitution of conjugal rights only if there is no legal ground for refusal and the application is made in good faith.

- Harvinder Kaur v. Harmander Singh

The Supreme Court held that the court could not force either party to have sexual intercourse against their will.

Divorce under Hindu Marriage Act

Divorce means the legal termination of marriage. It can be obtained by mutual consent or on any of the grounds mentioned under Section 13 of the Hindu Marriage Act, 1955.

Provision related to Divorce

Section 13 of the Hindu Marriage Act, 1955, deals with divorce.

Landmark Cases on Divorce

- Vinita Saxena v. Pankaj Pandit (2006)

The Supreme Court held that a mutual consent divorce can be granted only if both parties have been living separately for a minimum of one year.

- Samar Ghosh v. Jaya Ghosh (2007)

The Supreme Court held that mental cruelty is a valid ground for divorce. The Court further held that the cruelty must be of such a nature that it makes it impossible for the parties to live together. It must also be of a nature that causes grave injury or danger to the mental health of the aggrieved party.

- Smt. Sureshta Devi v. Om Prakash

In addition, in the case of Smt. Sureshta Devi v. Om Prakash, the Supreme Court held that a decree of divorce can be granted on the ground of irretrievable breakdown of marriage. This means that if the marriage has irretrievably broken down and there is no chance of reconciliation, the court can grant a divorce.

Conclusion

The Hindu Marriage Act, 1955, provides for various legal remedies for the dissolution of marriage. Judicial separation, restitution of conjugal rights, and divorce are the three ways in which a marriage can be dissolved. The provisions related to these remedies and the grounds on which they can be granted have been discussed above. The landmark cases related to each of these remedies have also been cited. It is important to note that the dissolution of marriage is a sensitive issue and must be dealt with with the utmost care and sensitivity. The courts must ensure that justice is done and that the parties are not unduly burdened in the process.