BLOGS

Divorce under Hindu Marriage Act, 1955

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Nullity of Marriage under Section 12 of the Hindu Marriage Act

Marriage is a sacred union between two individuals who pledge to spend their lives together. However, sometimes marriages can break down due to various reasons. In such cases, a divorce is an option available to the couple. The law provides for certain grounds on which a divorce can be granted.

In some cases, the marriage can be declared null and void. This means that the marriage never existed in the first place, and the parties are considered to have never been married. This is different from a divorce, where the marriage is considered to have existed but has now been legally terminated.

Grounds for Nullity of Marriage

The grounds for nullity of marriage are provided under Section 12 of the Hindu Marriage Act, 1955. These grounds are:

1. Non-Consummation

If the marriage has not been consummated due to the impotence of either party or if either party is not capable of sexual intercourse, the marriage can be declared null and void.

2. Mental Disorder

If either party is of unsound mind at the time of the marriage or is suffering from a mental disorder that makes it impossible for them to understand the nature of the marriage and its consequences, the marriage can be declared null and void.

3.Fraud

If either party has been induced into the marriage by fraud, such as by misrepresenting their religion, age, or marital status, the marriage can be declared null and void.

4. Prohibited Relationship

If the parties are within the degrees of a prohibited relationship, such as being within the same gotra or sapinda relationship, the marriage can be declared null and void.

5. Voidable marriages

If the marriage has been solemnized but is voidable, such as if one of the parties was already married at the time of the marriage, the marriage can be declared null and void if the voidable marriage is annulled by a decree of nullity.

It is important to note that the burden of proof lies with the party seeking nullity of marriage. They must prove to the court that the marriage should be declared null and void on one of the grounds mentioned above.

In conclusion, nullity of marriage is an option available to couples when the marriage is void ab initio, or from the beginning. The grounds for nullity of marriage are specified under **Section 12 of the Hindu Marriage Act, 1955**, and it is important to understand these grounds if one is seeking nullity of marriage.

Grounds of Divorce

In addition to the grounds for nullity of marriage, the law also provides for certain grounds on which a divorce can be granted based on the petition of either husband or wife. These grounds are provided under **Section 13 of the Hindu Marriage Act, 1955.**

The grounds for divorce are as follows:

1. Adultery

Adultery is when one partner has a sexual relationship with someone other than their spouse. This can be a reason to get a divorce. Adultery, however, has been decriminalized as an offence in the case of ***Joseph Shine v. Union of India.***

2. Cruelty

Cruelty in marriage were not recognized as a reason for divorce until 1976, after which through the amendment of the Hindu Marriage Act of 1955 it was included as a valid reason of divorce. If either party treats the other with cruelty, either physical or mental, to such an extent that it becomes unbearable for the other spouse to continue living with them, it can be a ground for divorce. Cruelty includes mental cruelty as held in the landmark case of ***Dastane v. Dastane***.

3. Desertion

If either party has deserted the other for a continuous period of two years or more, it can be a ground for divorce. There are mainly four basic elements which are primarily to be satisfied to constitute desertion. The first two are:

- The fact of separation (factum deserdendi)
- The intention to desert (animus deserdendi)
- Absence of consent to such desertion

The absence of conduct which led to the other spouse leaving the matrimony

Only if the elements are present, such act will amount to desertion

4. Conversion

If either party has converted to another religion, it can be grounds for divorce if the other party does not want to continue living with them.

5. Mental Disorder

If either party has been suffering from a mental disorder that makes it impossible for them to continue with the marriage, it can be grounds for divorce.

6. Venereal Disease

If either party has been suffering from a venereal disease in a communicable form, it can be grounds for divorce.

7. Presumption of Death

If either party has not been heard of as being alive for a period of seven years or more, it can be presumed that they are dead, and the other party can seek a divorce on this ground.

In addition to the above grounds, the law also provides for certain special grounds for divorce that are available only to women. These grounds are provided under Section 14 of the Hindu Marriage Act, 1955.

Special grounds on which a wife can seek divorce

- Bigamy

If the husband has married again while the first marriage is still subsisting, it can be a ground for divorce.

- Rape, sodomy, or bestiality

If the husband has committed rape, sodomy, or bestiality, it can be grounds for divorce.

- Non-Restitution of Conjugal Rights

If a husband refuses to live with his wife for at least a year without a good reason, this can be a reason to get a divorce.

It is important to note that in all cases of divorce, the burden of proof lies with the party seeking divorce. They must prove to the court that the marriage has broken down irretrievably on one of the grounds mentioned above.

Also, it's important to know that when a couple gets a divorce, the court may decide on support, alimony, and child custody, depending on the circumstances. The court may also require the parties to attend counseling sessions to explore the possibility of reconciliation.

Divorce by mutual consent

Apart from the grounds for nullity of marriage and the grounds for divorce, there is another way to dissolve a marriage in India, which is divorce by mutual consent. Divorce by mutual consent is a less adversarial process and is available to couples who have agreed to end their marriage amicably.

Section 13B of the Hindu Marriage Act of 1955 says that a couple can get a divorce if they both agree to it. According to this section, a petition for divorce by mutual consent can be filed in court by both parties jointly, stating that they have been living separately for a period of at least one year and have mutually agreed to dissolve their marriage.

The joint petition must be accompanied by a statement from both parties stating that they have agreed to dissolve the marriage and that they have made adequate provisions for the maintenance of any children of the marriage as well as for the settlement of any property disputes.

After the filing of the joint petition, the court may conduct counselling sessions for the parties to explore the possibility of reconciliation. If the parties still wish to dissolve their marriage and the court is satisfied that the requirements of Section 13B have been met, it may grant a decree of divorce by mutual consent.

It is important to note that both parties must be present in court for the grant of the divorce decree by mutual consent. The court may also require the parties to file affidavits affirming their consent to the divorce.

Divorce by mutual consent is generally considered a quicker and less expensive way to dissolve a marriage as compared to the traditional process of divorce. However, it is important to ensure that all legal requirements are met and that adequate provisions are made for maintenance and property settlement, as failure to do so can result in legal complications and disputes in the future.

Divorce due to Irretrievable Breakdown of Marriage

Apart from the grounds for nullity of marriage, grounds for divorce, and divorce by mutual consent, there is another aspect related to the dissolution of marriage, which is the concept of irretrievable breakdown of marriage. Irretrievable breakdown of marriage refers to a situation where the marriage has broken down irretrievably and there is no possibility of reconciliation.

The concept of irretrievable breakdown of marriage is not recognized under the Hindu Marriage Act, 1955, which provides for specific grounds for divorce. However, the Supreme Court of India, in the case of **Anil Kumar Jain v. Maya Jain**, which was decided by the Supreme Court of India in 2010, it was held that the power to grant a divorce on the ground of irretrievable breakdown of marriage lies with the Supreme Court under Article 142 of the Indian Constitution. This is because the Hindu Marriage Act, 1955, which is the governing legislation for Hindu marriages in India, does not recognize irretrievable breakdown as a ground for divorce. The court stated that unless and until Parliament amends the Hindu Marriage Act to include irretrievable breakdown as a ground for divorce, the Supreme Court will continue to exercise its extraordinary power under Article 142 to grant divorce in such cases.

In a subsequent case, **Hitesh Bhatnagar v. Deepa Bhatnagar**, which was decided by the Supreme Court in 2011, the court clarified that it will use its power to grant divorce on the ground of irretrievable breakdown only in cases where it is impossible to save the marriage and all efforts made in that regard would be counter-productive. Even if the chances of the marriage surviving are infinitesimal, the court will not use its power to grant divorce if it believes that there is still a chance for the marriage to be saved.

The Law Commission of India, in its **71st Report in 1978**, had recommended that irretrievable breakdown of marriage be recognized as a ground for divorce, as restricting divorce to particular offences or matrimonial disabilities can cause injustice to those cases where the parties are not at fault but it is not possible to continue the marriage.

In response to this recommendation, the Marriage Laws Amendment Bill, 2010, was introduced in Parliament and sought to amend the Hindu Marriage Act, 1955, to include irretrievable breakdown as a ground for divorce. However, the bill could not be passed by both houses of Parliament. As a result, the law remains unchanged, and the Supreme Court continues to use its extraordinary power under Article 142 to grant divorce on the ground of irretrievable breakdown of marriage.

It is worth noting that the Supreme Court has exercised this power sparingly and only in cases where it is convinced that the marriage cannot be saved. The court has emphasized that divorce should not be granted lightly and that every effort should be made to save the marriage before resorting to divorce.

While the law regarding divorce on the ground of irretrievable breakdown of marriage in Hindu marriages in India remains unchanged, the Supreme Court continues to exercise its extraordinary power under Article 142 to grant divorce in such cases. However, the court does so sparingly and only when it is convinced that there is no chance of saving the marriage. Parliament has attempted to amend the law to include irretrievable breakdown as a ground for divorce but has so far been unsuccessful in doing so.

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