BLOGS

Notes on Fundamentals of Divorce under Hindu Law

Indrasish Majumder · 27 Mar 2023

Edit TABLE OF CONTENTS Divorce under Hindu Law: Grounds and Procedure Grounds for Divorce under Hindu Law Procedure for Divorce under Hindu Law Conclusion

Divorce under Hindu Law: Grounds and Procedure

In India, marriage is considered a sacred institution, and divorce is still viewed as taboo in many parts of society. However, divorce is a legal remedy available to those whose marriages have irretrievably broken down. The Hindu Marriage Act, 1955, governs divorce among Hindus, Sikhs, Jains, and Buddhists in India.

Let's take a closer look at the grounds and procedure for divorce under Hindu law.

Grounds for Divorce under Hindu Law

1. Adultery: Adultery refers to voluntary sexual intercourse by a married person with someone who is not their spouse. If one spouse engages in adultery, the other spouse can file for divorce on this ground. However, it is essential to note that a single act of adultery is not enough to prove a case of adultery. The aggrieved spouse must prove that the other spouse has had sexual intercourse with someone else and that it has resulted in the irretrievable breakdown of the marriage.
2. Cruelty: Cruelty is another ground for divorce under Hindu law. If one spouse treats the other spouse with cruelty, either physically or mentally, to such an extent that it becomes unbearable for the other spouse to live with them, it is a ground for divorce. Cruelty can take many forms, such as physical violence, mental torture, emotional abuse, and harassment. It is necessary to prove that the cruelty has resulted in the irretrievable breakdown of the marriage.

3. Desertion: Desertion is when one spouse leaves the other without a good reason.The spouse who has been deserted can file for divorce on this ground. The deserted spouse must demonstrate that the other spouse abandoned them with no intention of returning for a continuous period of two years.
4. Conversion: If one spouse converts to another religion, it can be a ground for divorce. But it's important to remember that this reason is only valid if the spouse who converts does so willingly and not because they were forced to.
5. Mental Disorder: If one spouse suffers from a mental disorder to such an extent that it becomes impossible for the other spouse to live with them, it is a ground for divorce. The mental disorder must be so bad that it can't be cured or treated, and the spouse must have had it for at least two years without getting better.
6. Venereal Disease: If one spouse suffers from a venereal disease in a communicable form and it becomes impossible for the other spouse to live with them, it is a ground for divorce.

Procedure for Divorce under Hindu Law

To file for divorce under Hindu law, the following procedure must be followed:

1. Filing of Petition: The first step in filing for divorce is to prepare and file a petition before the family court having jurisdiction. The petition must include all the facts and reasons why the couple wants to get a divorce.
2. Service of Notice: After the petition is filed, a copy of the same must be served on the other spouse. The notice must contain the grounds on which the divorce is being sought and the date of the first hearing.
3. Response from the Other Spouse: The other spouse can file a response to the petition and either admit or deny the petitioner's claims.
4. Trial: The court will conduct a trial and hear evidence from both parties. The court will also attempt to reconcile the parties and may refer them to mediation.
5. Decree: The court will give a divorce decree if it is sure that the marriage has broken down for good. The decree will become final after the expiry of the appeal period.

Conclusion

The Hindu Marriage Act, 1955, provides for several grounds on which a Hindu marriage can be dissolved, such as adultery, cruelty, desertion, conversion, mental disorder, and venereal disease. It is essential to prove that the grounds on which the divorce is being sought have resulted in the irretrievable breakdown of the marriage.

Note: This post contains some sponsored links by Lawrato.