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**A STUDY OF DIVORCE THEORIES IN THE INDIAN LEGAL  
CONTEXT: THE PHILOSOPHY OF DIVORCE**

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**ABSTRACT**

Divorce-related notion was previously vague. Hindu law was predicated on the idea that a husband and wife's marriage was an unbreakable relationship. Manu hinted that there was no way to break the marriage link when she said that her better half could not provide a partner through a trade or by running away. Divorce is not addressed in Hindu Law, but it has been decided that customs that have been followed for a long period of time have legal standing. According to Kautilya's Arthashastra, an unlicensed marriage type might lead to a marriage dissolving by common consent. Manu, however, doesn't actually practice divorce.

**KEYWORDS: Hindu Law, Fault Theory, Consent, Divorce, Marriage.**

**INTRODUCTION**

Hindu marriages were historically thought to be sacramental unions between husband and wife, lasting until death and signifying a sacred union that could never be dissolved. Once made, such a sacred knot could not be broken. Hindus believed that the division of wives was a transgression of divine law. They therefore refused to separate, however, following the passage of the 1955's Hindu Marriage Act, it did offer guidelines for divorce. There are several categories that cover divorce-related topics and others. According to Kautilya in Arthashastra, a mutually agreed-upon end to an unauthorised marriage is possible. Manu, on the other hand, thought that fidelity between a husband and wife should be upheld until death and that ending a marriage as a sacrament was difficult. 1955's Hindu Marriage Act, however, altered the circumstances following the imposition of divorce.

Matrimony is a commitment and a sacrifice. It is comparable to cohabiting under an agreement and is based on offer and acceptance, which makes it a contract. Sentiment because of its religious significance. A healthy marriage is built on respect, tolerance, and tolerance for one  
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another. In the unlikely event if neither partner in the marriage is inclined to reside on the same side, the partnership would not be joyful.

Stretching such a relationship would not help; instead, it will fuel the spouses' hostility and anger. To preserve the integrity of marriage, reduce the number of unhappy marriages, and prevent squandering the spouses' cherished extended lives, it is necessary to divorce such a marriage. A court order dissolving a marriage is called a divorce. The "legal reason" for the divorce must be given to the court. Other than the official collapse of the union, the court considers additional matters that must be resolved before the divorce is finalised. Since marriage was viewed as an irreversible tie between a man and woman, Hindu law does not recognise divorce. Manu's statement that a wife and her spouse are inseparable. by selling or leaving implies that it is impossible to perform the responsibilities of matrimony. Thus, it might be inferred that Hindu law as written does not acknowledge divorce.

In Muslim marriage, the idea of divorce is understood. It is common knowledge that a husband and wife are essential to a harmonious family life. Islam therefore requires that marriages be upheld and that it be avoided to violate the provisions of a marriage contract. Initially, no marriage is meant to end in divorce, but sadly, matrimonial contracts are broken and weddings do occur. A marriage may end due to:

- A divine act;
- A party's action.

The idea of marriage has evolved along with socioeconomic advancements. The couple is now more autonomous and self-sufficient than they were in the past. The attitude of coerced acceptance from earlier times is fading. Instead, then continuing to live together while unhappy, they are willing to live apart. It is evident that section 13(1-A) was added to meet the demands of the moment. In a similar vein, parties whose marriages are irretrievably broken down should be entitled to file for divorce if the legislation is amended to support this. This will comply with the laws of England.

The breakup of a marriage with a judge's approval is called a divorce. Divorce is a consequence of someone wanting to end a burdensome marriage. The legal process of going through a divorce provides a way for people to end an unsatisfactory marriage. Regarding the kind of divorce, two theories have been identified: "fault theory" and "no fault theory."

Furthermore, in the event that the statute contains a special provision, the courts would not have to interpret the statutory provisions or add new ones, which would remove the need for strictures. Furthermore, the integrity of the family is constantly at stake when there is a

breakdown in the mutual trust and understanding between the spouses. In these situations, releasing them from the bond would be the most sensible move. because it serves no useful function. Social attitudes towards husband-and-wife relationships have drastically changed over time.

### **DIVORCE MEANING**

Divorce signifies the termination of a marriage by dissolving marital connections. It is the formal dissolution of a marriage by a magistrate or other court that has the required jurisdiction. Following a divorce, the husband and wife won't be parties. Each party to the divorce settlement is permitted to get married as often as they like. In the present era, divorce is allowed for couples who are unable to work out a settlement with one another. The 1955 Hindu Marriage Act governs divorce in Hindu law. The following sections of the demonstration look at dissolution:

Section 13 stipulates the following grounds for divorce filing:

- Extra clarification for Hindu wives who wish to file for divorce;
- Discharge pursuant to Section 13B by mutual consent;
- Alternative remedies under Section 13A during divorce proceedings;
- Divorce by mutual consent under Section 13B;
- Filing a divorce petition under Section 14; and
- Divorced people who remarry Section 15.

### **DIVORCE UNDER DIFFERENT LAWS**

Owing to India's multitude of religious traditions, the Indian judiciary has passed laws designed to facilitate weddings between people of different religious backgrounds.

- The Dissolution of Muslim Marriage Act of 1939;
- The Parsi Marriage and Divorce Act of 1936;
- The Hindu Marriage Act of 1955;
- The Special Marriage Act of 1956; and
- The Foreign Marriage Act of 1969

### **THEORY REGARDING DIVORCE**

The provisions for divorce are found in 1955's Hindu Marriage Act, Section 13. The Act recognises many theories of divorce.

#### **i. The concept of culpability and consent-based divorce**

In accordance with the "fault theory," a marriage can only be dissolved in the event that one of the partners has broken the law. This idea states that only the innocent party may file for divorce, and that both the guilty and the innocent parties must exist. The biggest drawback, however, is that if both parties are at fault, there is no way to get justice. The "mutual consent" hypothesis of divorce is an additional one. Opponents of this notion contend that the technique will encourage immorality since it will result in hurried divorces and force couples to end their marriages even in cases where there is just a minor temperamental mismatch. A few of the grounds allowed by the Hindu Marriage Act fall within the theory of frustration due to particular circumstances. Among them include the world's renunciation of civil death, etc. Nine grounds of fault were added to the 1955 Act under section 13(1), and any spouse may file for divorce on these grounds:

### 1. Infidelity

The idea of infidelity might not be considered offensive in some countries. That being said, infidelity is considered to be the primary basis for seeking a separation under the Hindu Marriage Act, which pertains to marriage violations. Adultery denotes a regular and deliberate sexual relationship—whether married or not—between a married individual and a non-married individual. Sexual relations between a spouse and his second wife, for instance, can result in adultery charges against the individual if their marriage is deemed to be polygamous. A scenario states that after a second woman fell asleep, the wife discovered her husband, and the neighbour informed her that he had broken the law. This woman is divorcing her husband.

#### ➤ **Smt. Nilima Chatterjee v. Sachindranath Chatterjee**

A married couple was one of the parties to the case. Husband abandoned wife at home after she had solemnized. Wife needed to finish school in order to work in another place. He was seeing his wife every two to three months on a regular basis. Later on, he found out that his wife had engaged in adultery by having sex with her nephew and other people. When the complainant appears in court with evidence of adultery, his claim is accepted, and the marriage is dissolved.

The basics of interpreting adultery:

- Regardless of whether the other person is married or not, one partner is committed to having sexual relations with another member of the opposite sex.
- Consensual and voluntary sexual activity is necessary.
- Marriage was existent at the time the deed was committed.

- To hold someone else accountable, there must be a substantial amount of circumstantial evidence.

## 2. Cruelty

Both emotional and physical abuse are included in the definition of cruelty. Physical cruelty occurs when one spouse hits another or causes bodily harm. However, the notion of mental abuse was created because the other spouse might also psychologically assault the partner. The lack of empathy that negatively impacts the welfare of the individual is known as mental cruelty. The essence of mental cruelty is difficult to define, whereas the essence of physical brutality is easy to discern.

Things escalating into mental cruelty through wife retaliation Spouse:

- To make fun of him in front of friends and family.
- Terminating the pregnancy without the spouse's consent.
- To fabricate false charges against him.
- Not providing permission for a married physical relationship without a good justification.
- When a wife engages in extramarital affairs.
- When a wife leads an unethical life.
- A constant demand for money. An uncontrollably angry behaviour from the wife.
- Taking advantage of spouse and family.

In one instance, the petitioner accused his wife of mental abuse and sought for divorce.. He demonstrated how his wife had been violent and unpredictable towards him and his parents, and she had often made-up complaints against him. The court accepts the appeal and awards the divorce based on cruelty.

Reasons why the spouse and his better half committed acts of mental cruelty:

- When false accusations of adultery are made.
- The demand for dowry is persistent.
- If the spouse lacks erectility.
- Abortion of her kid by force
- Husband's drinking issue
- Spouse has one or more affairs.
- If the husband leads an immoral life or exhibits uncontrollably hostile behaviour.
- Husband humiliating wife in front of family and friends.

### **3. Desertion**

Desertion refers to the irreversible leaving of one spouse by the other, without justification and without his consent. Generally speaking, it grants one spouse's dismissal during the marital obligations.

Essentials:

- Another partner suffering from desertion.
- Reduction of marital duties.
- Absence of explanation.
- Not having the left spouse's consent.

A situation where the respondent, in this case, fully intends to leave his wife behind. The defendant proved that when he left the house with the intention of deserting, he did so with the intent of leaving his wife behind. He attempted to return, but the petitioner prevented him. Eventually, the wife appeared in court. In this instance, the criminal shouldn't be held accountable for desertion.

### **4. Conversion**

The left spouse may file for divorce from the court if one partner becomes a different religion convert without the other's permission.

#### ➤ **Leela vs. Suresh Babu**

Here, the husband converts to Islam by wed locking a different woman. Leela, her ex-wife, filed for divorce on the grounds of conversion without getting her consent or consenting to it.

### **5. Insanity**

Being insane indicates that a person is not of sound mind. Two conditions must be met for a respondent to be declared insane and be eligible for a divorce:

- They must be permanently mentally disabled.
- The respondent's mental condition has been so severe and persistent that it is not reasonable for the complaint to be obliged to cohabit with them.

### **6. Leprosy**

Leprosy is an infectious disease that affects the neurological system, skin, mucous membranes, and other organs. It is an unstoppable infection. This is a disease that spreads from person to person. It is therefore seen as a legitimate basis for dissolution.

#### ➤ **Lakshmi Swarajya v. G. G. Padma Rao**



In this case, the spouse filed a complaint indicating his acceptance of a divorce due to leprosy. From professional evaluations, he assumed his wife had incurable leprosy. Nevertheless, he is able to obtain a divorce on the basis of leprosy.

### **7. Illustrative Disorder**

According to this definition, if the sickness is contagious and can be passed to the other partner, it constitutes a legitimate reason to file for divorce.

### **8. Renunciation**

This implies that if one partner decides to give up the world and follow God's plan, the other partner will go to court and file for divorce. According to this view, the group that rejects the universe is considered to be civilly dead. It is considered a valid reason for divorce and is a long-standing Hindu custom.

### **9. Death Assumption**

In this instance, the concerned person's friends or relatives feel that the person has passed away because they have not received any updates about their whereabouts in the last seven years. Although there is legal justification for a separation, the burden of proof is with the party seeking the separation.

Apart from the aforementioned rationales, a wife has been granted four other justifications, which are indicated in s.13(2) of the relevant Act. These are;

#### **1. Pre-Act marriage in polygamy**

At the time of the petitioner's union solemnization, the husband had another wife who had not passed away prior to the Act's passing. Either way, the request can only be submitted while the other spouse is still alive.

#### **2. Rape, Sodomy, or Bestiality**

Since marriage was formally constituted, the spouse has been held accountable for acts of violence, homosexuality, or inhumanity.

#### **3. Not moving back in together following a maintenance request or declaration**

The couple has not resumed living together after the announcement or request was granted, whether through a suit under either under Cr.P.C Section 125 or the Hindu Adoptions and Maintenance Act, 1956, Section 18.

#### **4. Rejection of marriage**

In cases where the wife called off her relationship with her husband before reaching majority and the marriage took occurred when she was a minor or no older than fifteen years old.

**ii. The no-fault divorce theory**

Before 1976, a couple could only get their marriage dissolved if one of them had breached the law. This is what is meant by the "fault theory" of divorce. However, 1976's Marriage Laws (Amendment) Act has made it possible to file for divorce on the grounds of the no fault theory, which holds that only with the consent of both married parties may a divorce be approved. The married parties must jointly file this kind of petition in accordance with section 13-B (1), declaring that they have jointly chosen to end their marriage and that they have not lived together for a year or more.

In accordance with Section 13-B (II) of the Act, the court will hear from the parties and carry out any required investigations before issuing a divorce order, stating that the marriage is dissolved with effect from the date of the decree, if the petition is not withdrawn in the interim. The court will grant the request if the petition was submitted no earlier than six months from the date specified in sub-section (I) of the Act and if the averments stated within were truthful. The Special Marriage Act of 1970 codified the breakdown premise and established the third type of divorce under Hindu law, which was established in 1964. The final two divorce-related clauses in the two Acts were changed to accomplish this. The Hindu Marriage Act has recently included Section 13(IA), which allows any party to file for divorce if they haven't lived together for two years or more following a court-ordered separation or if a decree restitution of conjugal rights hasn't been followed for two years or longer. Section 27(2) of the Special Marriage Act contains a similar phrase, although it is only valid for a year.

When our courts were asked to interpret the Hindu law clause, we adopted the guilt concept. They refused the remedy if, following a thorough examination, they found that the petitioner was, in fact, abusing his own wrong. The question was most frequently asked in this manner: "Has the husband disregarded the wife's decree restoring acquired conjugal rights?" Two years later, the spouse filed for divorce. The court order states that he is to fault for not following the decision, and that divorcing would be tantamount to pardoning him for his own transgressions. This makes the argument seem convincing rather than just credible. It is crucial to keep in mind that divorce should be allowed if non-compliance is a prerequisite for a marriage to fail, regardless of who is more at fault for the separation. It is unfortunate that this part of the situation was missed by both the bill's drafters and the Law Commission, whose report formed the basis for the 1976 Marriage Laws (Amendment) Act. The Hindu Marriage Act's two-year separation requirement should be shortened to one year, according to the only proposal put up in this respect.

It was much desired that Parliament had enacted a simple statute that would enable any spouse, regardless of whether a judicial separation or restitution judgement had been in effect at the time, to petition for divorce after ceasing to live together for two years. We argue that all communities would accept such a provision and that the goal of a uniform civil code would be achieved. The women won't suffer because both statutes permit a widow whose spouse has filed for divorce to obtain long-term maintenance from him.

### **iii. The Marriage Theory's Irretrievable Breakdown**

Breakdown theory's central claim is that a marriage should be dissolved without considering who is at fault if it has failed to work out or is irretrievably ruined. "What we are concerned with is the fact of breakdown of marriage; if a marriage has broken down irretrievably, then divorce should be granted, as there is no use in retaining the empty shell," according to the breakdown hypothesis. As a result, the law recognises an uncomfortable situation and notifies the petitioner that "your marriage shall be dissolved whatever may be the case if you can satisfy the court that your marriage has broken down irretrievably and that you desire to terminate a situation that has become unbearable to you."

The Supreme Court said in a landmark ruling that bad circumstances shouldn't be allowed to persist without end and that ending a marriage that was unsalvageable was best for everyone. The parties in **Naveen Kohli v. Neelu Kohli, AIR 2006 SC** were married in 1975 but went their separate ways a short while after. Both sides accused one another of being unkind, being an adulter, and engaging in other wrongdoings. The spouse commenced multiple legal actions, both civil and criminal, demonstrating her determination to bring about his misery. In addition, the husband started a few legal actions and lived apart from the wife for over a decade. Therefore, it was clear from the case's facts that the marriage was irreparably destroyed. The trial court declared that despite the fact that both parties had accused one another of character assassination, they had not shown any evidence to support their claims. The court stated that the accusations were so serious that there was no longer any room for amity between the parties and no chance of mending the rift in their married life. It was concluded that the parties' marriage should be dissolved as there was no other option. The husband's divorce was granted by the trial court without a sufficient evaluation of the evidence in the case file, according to the high court's position. The Supreme Court considered physical and psychological abuse in situations involving marriages, as well as the idea of an irretrievable breakup of a marriage, while considering an appeal. The court determined that when there has been an extended time

of continuous separation, it is reasonable to presume that the marriage is irreparably harmed. The marriage must end the legal relationship as well.

The majority of the reasons for divorce under sub-sections (1) and (2) of section 13 are based on the guilt or fault theory, according to an examination of the provisions of the Hindu Marriage Act, 1955. This viewpoint holds that a marriage can only dissolve if one of the partners has committed a marital offence that is official cause for divorce. Marriages that have broken down cannot be restored by the fault-based divorce laws. The blame theory requires proof of wrongdoing, and divorce courts are full of real-life examples of people acting in ways that undermine the institution of marriage.

Legally speaking, it would not be possible to ignore the permanently dissolved marriage because doing so would be detrimental to both society and the interests of the persons concerned. Sections 13-B and 14 further specify that natural consent will be used to finalise the divorce in line with the consent theory of divorce.

A marriage may end because of the faults of neither party, of both parties, or of either party alone. It is possible for a husband and wife's relationship to deteriorate to the point where they decide to part ways. In the interests of society overall and both parties, it is preferable in such a case to end the partnership by a divorce order based on the irretrievable breakdown of the marriage, without placing blame on either party. To help people relocate, it is beneficial to recognise de facto what already exists.

However, in the lack of legislative acknowledgment of this cause, the supreme court has been affording relief to the parties by using its plenary powers under Article 142 of the Indian Constitution.

#### **iv. Indissolubility of Marriage Theory**

This notion holds that during a marriage, a husband and wife have an unbreakable bond. It is the joining of flesh with flesh and bone with bone. There is never an end to it. They must endure their miserable relationship to the end despite everything. This is the Shastra, or Hindu legal, philosophy. Neither the acts of one spouse nor their passing could dissolve the marriage. Divorce was not seen favourably. But for the regenerating castes, the so-called upper three castes, this was the law. The Shudras and their tribes tolerate divorce and have ceremonies surrounding it. The shastric status was eliminated by the Hindu Marriage Act. Marriage is no longer an unbreakable tie, not even for the regenerated caste as long as the requirements outlined in Sections 13 and 13B are satisfied, any Hindu may seek for divorce. Looking at it this way, the Hindu Marriage Act is definitely a ground-breaking statute.

**v. 'Divorce at Will' Theory**

This ludicrous belief says that a person can divorce their partner whenever they want.

Here, divorce is easier than marriage, even though it should be the other way around. The Mohammedan law recognises this theory. A mentally stable Muslim husband is free to divorce his spouse without providing a reason. He is not required to ask a judge or the legal representatives in his neighbourhood for help or intervention. Even if Mohammedan law only benefits the husband in this situation, we can envision a rule that grants both parties the freedom to end the marriage whenever they choose.

Divorce was neither accepted under the old textual Hindu rule of marriage, nor was it recognised by the general uncodified Hindu law. The explanation is simple: a marriage was a commitment made irrevocably by a man and woman. Divorce was therefore frowned upon unless it was approved by custom. Thus, Section 13 brings about a significant and progressive modification to Hindu marriage law. The two theories—that a marriage is irreversible and that it lasts as long as one or more of the partners feel like it—touch on diametrically opposed extremes. They are similar in that they are both irrational and unjust. The first forces a partner to endure the burden of an even more traumatic union.

Stressed-out relationships should have an escape route because the purpose of marriage is to establish a loving home, not a severe jail. In case number two, either partner can call it quits on a marriage at any moment, irrespective of the other party's feelings, services, helplessness, and most crucially, innocence. Since the first idea was supported by Shastric Hindu Law, the second theory was not relevant. Divorce at the whim of any partner was not accepted under traditional Hindu law, which permitted divorce among the so-called lower communities. The second theory is forbidden by the Hindu Marriage Act.

**ESSENTIAL CASE LAWS FROM THE APEX COURT**

➤ **Smt. Gopi Bai vs. Govind Ram, as published in AIR 2007**

In the ruling from the Rajasthan High Court on February 5, 2007, it is held that "marriage forms a holy tie between a husband and wife. It is the responsibility of both to maintain the institution's stability. They ought to try their best to live in harmony and peace. The Acts Section 23 only introduces "the fault theory" into divorce proceedings.

➤ **Sreenivasan v. Shylaja 2004**

The Kerala High Court rendered a decision on February 10, 2009, holding as follows: "The evidence would suggest that the wife was meted out cruelty, but she did not agree for divorce."

Is it possible for an at-fault party to seek a divorce decree by hiding their mistakes? In our opinion, a party who subjected his wife to mental abuse does not have the right to dissolve their union by taking advantage of their own fault, particularly in cases where the respondent woman is unwilling to file for divorce even if her husband mistreated her.

➤ **Samar Ghosh v. Jaya Ghosh**

The Supreme Court of India ruled on March 26, 2007, in *Samar Ghosh v. Jaya Ghosh*, published in appeal (civil) 151 of 2004, that to address a broken marriage, the fault-based divorce law is insufficient. The blame theory holds that guilt must be proven, and it provides divorce courts with concrete instances of people acting in ways that undermine the custom of matrimony.

**CONCLUSION**

Hinduism considers marriage to be an extremely holy institution. Before the Hindu Marriage Act was passed in 1955, there was no legal framework in place for divorce. The Indian community did not view divorce as a socially acceptable concept at the time. The women were passive targets of a rigid system like this. Not only has the existing state of affairs altered, but so has society. A court decree can be used to achieve a divorce, providing a way out of an unhappy forced institution. It is women who are already free from having to quietly put up with abuse or mistreatment at the hands of their spouses that truly stand to gain from such a provision. The greatest concern, though, now stems from the possibility that the marriage system may be completely suspended in light of the way the judiciary has handled cases involving irretrievable marriage breakdowns.

Every philosophy offers advantages as well as disadvantages. Their applicability varies according on the situation. As a result, it is imperative that our nation's legislators handle issue sensitively and carefully after carefully weighing all of the potential outcomes. The concept of divorce has emerged as a means of promoting harmony and peace in society. There wouldn't be any peace in society if married couples couldn't live in harmony. If the married couple does not want to live together, they cannot be allowed to do so for legal reasons. Whatever their theological aspirations, all societies have acknowledged the same thing: the idea of divorce. Its existence also gave rise to the theories of fault and no fault.

These days, the law offers a means of ending a bad marriage by filing for divorce in a court of law. The women who are spared from having to bear in silence the abuse or injustice that their husbands inflict upon them are the true beneficiaries of this kind of assistance. However, the law establishes specific limitations and grounds for divorce in order to avoid hurried divorces. (Website-lexscriptamagazine.com) 14 (lexscriptamagazine@gmail.com)

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