



A UNIT OF
LAW LABORATORY

JANUARY 2023

Law Laboratory

Research Journal of Law & Socio-Economic Issues

ISSN: 2583-0783

VOLUME 1 | ISSUE 4

WWW.LAWLABJOURNAL.IN



MATRIMONIAL RELIEFS, INSTITUTIONAL SET UP IN RESOLVING MATRIMONIAL DISPUTES IN INDIA

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ABSTRACT

Marriage is seen as a lifetime commitment between two individuals in India. Hinduism saw the woman as a Dharampatni, and her presence was necessary for the husband to execute certain yajnas and complete certain responsibilities (sacrifices). People's worldviews evolved along with civilizations. The connection of two people's souls was less valued in marriage and more of a commercial transaction. Similar to divorce, divorce was a relatively new idea towards the end of the 19th century. The Hindu Marriage Act, which was adopted in India in 1955, defined marriage as a civil partnership that may be ended by mutual consent or at either spouse's discretion in specific circumstances. This sort of circumstance is known as “matrimonial relief”. This shows that each spouse has options if their marriage ends in divorce. The application of some of these remedies is nonetheless subject to limitations or outright prohibitions under current legislation. We shall go into great detail about it in this piece.

Keywords: Matrimonial Relief, Hindu Marriage Act, Divorce

INTRODUCTION

We believe that there was no such idea in ancient India. Manu said that her partner could not give her a spouse via a contract or by deserting her, implying that marital connections could not be broken under any circumstances. Divorce is still an option in contemporary India. When a couple agrees to divorce, they are no longer bound to one another and may pursue their separate lives. All ties between them are broken, with the exception of Sections 25 (maintenance and

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alimony) and 26.³ (custody, maintenance, and education of children). There are several reasons why a husband and wife can petition for divorce.

A couple may petition for divorce in accordance with Section 13 of the Hindu Marriage Act of 1955 if one of the following circumstances exists:

This Act's Section 13 regulates the procedure for annulling a Hindu divorce. Every marriage that has been formally dissolved by a divorce judgement, as mentioned in Section 13, is susceptible to a petition for divorce, which may be submitted by either the husband or the wife, whether before or after the commencement of this Act (1). However, a divorce judgement may be granted if the enumerated requirements are met. They are, in essence, as follows:

Safe, voluntarily performed sex

According to Section 13(1)(i) of the Family Code, the other spouse may seek for divorce if the other spouse had sex with the other spouse after the marriage was solemnised.⁴ For instance, if A and B had a consensual encounter after they had already formalised their divorce, C, A's husband, may seek for divorce; if it could be shown that A's relationship with B was completely consensual, the court would probably allow it.

Cruelty

Couples often decide to reconcile after experiencing a communication breakdown like this one. According to statistics, during the last several years there has been an increase in domestic violence and cruelty. Any spouse may request a divorce from the court if the other has been cruel to them after the wedding, in accordance with Section 13(1)(a) of the Act. For instance, if B's spouse A routinely strikes her without justification, B may file for divorce.

Desertion

The act of leaving one's spouse for an extended period of time without giving a reason is referred to as "desertion." Because of this, Section 13(1)(ib) of the Family Code stipulates that if one spouse has been unfaithful to the other for a continuous period of two years previous to submitting the petition, the other spouse may apply for divorce from the former. For instance, if

³ Hemendranath Reddy & Manohar Gogia, Marriage & Divorce Law, ALT publications, Pg.8.

⁴ V. Hemalatha Devi, Rural Women Legal Awareness, Supreme Court Journal - 1990, Vol-3(Sep-Dec).
3[http://supremecourtfindia.nic.in/MEDIATION% 20TRAINING% 20MANUAL% 20OF% 20INDIA.pdf](http://supremecourtfindia.nic.in/MEDIATION%20TRAINING%20MANUAL%20OF%20INDIA.pdf)

B's spouse A has been gone for four years and hasn't come back before the petition is filed, B may be granted a divorce by the court.

Religion

Any person who has ceased to be a Hindu by converting to any other religion may, after the marriage has been solemnised, seek for a divorce under this Act with the relevant court of law, in accordance with Section 13(1)(ii) of the Act. So, for instance, after finding that B had converted from Hinduism to Christianity after they were already married, A, B's wife, filed for divorce. The court will approve the couple's divorce if it can be shown that they converted.

Mental Health

You are not allowed to be friends with people who are either chronically and irretrievably mentally ill or who have a history of mental illness that is so severe or pervasive that it prevents them from living a normal, healthy life, according to Section 13(1)(iii) of the Act. The spouse may utilise this clause to request a divorce in such a scenario.⁵

JUDICIAL SEPARATION

For married couples who are having problems, judicial separation is a legal alternative that gives each spouse time to recover and think. The law enables husbands and wives to reconsider the length of their marriage and offers incentives for them to split. It is the last step in officially dissolving the marriage and gives each spouse total control over their future selves.

Couples who are lawfully married under the Hindu Marriage Act of 1955 may seek judicial separation from one another. They could approach the court for a judicial separation as a kind of remedy. They won't have to cohabitate any longer if the injunction is maintained.

ANALYSIS

America values marriage, but no one should be barred from quitting a relationship if they are unhappy. Numerous individuals believe that by requesting a divorce under the Hindu Marriage Act of 1955, they may ultimately be free of their spouse.

⁵ V. Hemalatha Devi, Rural Women Legal Awareness, Supreme Court Journal - 1990, Vol-3(Sep-Dec).
3[http://supremecourtsofindia.nic.in/MEDIATION% 20TRAINING% 20MANUAL% 20OFF% 20INDIA.pdf](http://supremecourtsofindia.nic.in/MEDIATION%20TRAINING%20MANUAL%20OFF%20INDIA.pdf)

A couple cannot legally split under this rule unless one spouse has seriously broken the law. If the conditions are met, the spouse should be allowed to request a judicial separation or divorce. This legislation includes a fantastic provision for settling marital conflicts and relieving spouses of their duties to one another.

CONJUGAL RIGHTS

The threat of restitution of conjugal rights may be used as a weapon by a deserting spouse against their spouse. According to the law, the accusing spouse may be forced to live with the guilty spouse. It is common practise in religious courts and those handling divorce and marital issues. This form of marital disagreement was historically allowed to be heard by Christian courts.

It provides each side with certain defences inside its confines. Under the law's restitution of conjugal rights provision, one spouse may file a lawsuit to recover what is legitimately theirs if the other spouse consistently refuses to comply with legal obligations without justification. Given that this is the case, it is also thought to be a cure for marital issues.

RESTITUTION

A marriage may be deemed "irretrievably shattered" under Section 9 of the Hindu Marriage Act of 1955 if one spouse withdraws without justification from the other's social circle. For the restitution of conjugal rights, the injured party may file a petition with the district court. The court may order the restitution of marital rights if it determines that the petition's allegations are legitimate and that no applicable defences exist.

RESTRICTIONS ON RESTITUTION

1. The harmed spouse must wait a full year before pursuing any additional action if they do not agree with the restitution's decision to restore their conjugal rights.
2. The petition for restitution of marital rights cannot be filed concurrently with the divorce petition. These prayers are said to be ineffective since each one must come after the failure of the one that came before it.

THE MATRIMONIAL DISPUTES IN INDIA

There are several factors that might strain a marriage and result in arguments later on because of their families or children.⁶ Because newlyweds are often less understanding and understanding of one another than long-term spouses, the bulk of marital conflicts occur in the early years of a marriage. The fact that the husband and wife have diverse professional interests, little time for one another, and various life objectives is another factor that contributes to conflict.

MEDIATOR'S WORK

Every relationship problem starts with a breakdown in communication. Mediation is a technique to promote dialogue, comprehension, and resolution with the aid of a neutral third person. Mediation is particularly effective for divorce and other family law problems since the parties are likely to stay in contact, especially if there are young children involved. Many divorcing women choose for mediation in order to avoid the hefty expenditures of divorce litigation. Since a quicker conclusion is the norm, costs are reduced. Additionally, mediation lessens tension, safeguards privacy, and aids in preventing trial uncertainty for spouses. Through mediation, couples may reduce heated conflicts, prevent the possibility of a lawsuit, and retain their privacy. The children of the new arrival may be spared the pain of parental conflict via mediation. Couples who choose to resolve their divorce via mediation are significantly happier than those who choose to go through a trial since each party signs their own agreements. Additionally, couples learn how to resolve disputes later on.

COURT AS A MEDIATOR

According to the court, mediation is the most practical method of resolving disputes. Despite the fact that a violation of Section 498-A of the IPC is exempt from compounding, the Apex Court¹⁵ recently decided that in appropriate circumstances, if the parties are cooperative and the criminal court believes there are elements of resolution, it should order the parties to consider the possibility of a settlement through mediation.⁷ It is clear that the goal of this is not to question the IPC's Section 498-A's strictness, efficacy, or purpose, but rather to identify circumstances in which a marital dispute may be arbitrated fairly. In order for this action to qualify, the judges must make sure that it is performed correctly. Judges are required to use their competence to

⁶ <http://www.lawyersclubindia.com/articles/Arbitration-and-its-relation-to-family-laws-7229.asp>

⁷ Sushil Kumar Sharma v. Union of India, AIR 2005 SC 3100 Para 18

make sure that this activity doesn't, via mediation, be transferred to the wrong partner in an attempt to violate the law.

THE IDEA BEHIND A FAMILY COURT

Although not a new concept, family courts do exist in a number of western countries. India's judiciary already has too many cases that have been pending for a long time. Family concerns, such as divorce and child custody, must thus be seen as social therapy issues. When deciding what is best for the welfare of the family, whether a marriage has broken down or not, who should have custody of the children, and other similar matters, the court cannot and should not be content with the assertions of the parties and their evidence alone. The engagement of the court in this task necessitates a special approach that is less formal and more investigative in character. The parties, lawyers, social workers, welfare officials, and psychiatrists are all working to find a solution to the problems garnering the court's attention, not as a legal battle in which the parties and their counsel are focused on succeeding or failing in a court case.

FAMILY COURT AND DIVORCE

The Hindu Marriage Act of 1955 has many laws about divorce. The Hindu Marriage Act defines "divorce as a dissolution of marriage." The three fundamental divorce theories are the Fault Theory, Mutual Consent Concept, and Irretrievable Theory.⁸ The blame theory is utilised in divorce disputes in India. This point of view holds that if one spouse commits a crime that is classified as a marital offence, the marriage may be annulled. Divorce is a remedy that may be granted to the innocent spouse. The Hindu Marriage Act states that adultery, abandonment, conversion, leprosy, abuse, etc. are the main causes of divorce for Hindu women. However, many intellectuals disagree with the concept of divorce.

How crucial conciliation is for settling disputes in family affairs will be made abundantly clear by the provisions of the Family Courts Act and the updated Code of Civil Procedure. The basic objective of a marriage is to maintain and preserve the sacred bond between the two parties. The parties to the marriage should first pursue the steps provided in the Rules via counsellors to see if there is a prospect of reconciliation or a settlement to their differences, even if the cause for the separation is serious. Resolution of the issues on legal grounds should only then be taken into

⁸ *Id.*

consideration.⁹ The Family Court must make an effort to achieve an agreement now that the Family Court Act of 1984 has been approved. The condition has to be satisfied. That paradigm change was made possible by the Family Courts Act, a special piece of law.

MEDIATION RULES, 2015

India features an adversarial court system and a common law legal system. In recent years, the judiciary's function has expanded and altered, becoming more complicated. The court's expanding influence has led to significant costs and unreasonable delays in providing justice to those who seek it. The issue persists despite the recent rise in the number of courts brought on by the concurrent development in the number of cases.

To address the issue of an increase in lawsuits, arbitration is one way to settle disagreements. The significance of Article 21, which upholds the right to life and includes the right to a speedy trial, is shown via alternative dispute resolution. One may quickly and effectively resolve their issue by using arbitration techniques.

MEDIATION IN MATRIMONY

The shifting environment has led to an increase in the number of instances involving marital conflicts. The quantity of petitions submitted in relation to these disputes causes a backlog in the judicial system. Conflicts between private parties have a legal framework thanks to alternative dispute resolution. Our courts are overloaded disproportionately with matrimonial disputes. In India, marriage is seen as a sacrament rather than a binding agreement. To assist the parties in resolving their conflict, mediation only serves as a mediator. Because to the welcoming atmosphere (as opposed to courts, which may sometimes be antagonistic), lack of complicated processes, and ease of understanding, parties interact amicably here. When a divorce is brought on by cruelty, mental illness, certain contagious or lethal illnesses, etc., mediation is a very effective conflict settlement method. In these situations, talking about and admitting such issues is simple and fast since their confessions won't leave the room. This method is private and secret in contrast to public courts.¹⁰ The optimum environment for amicable settlement discussions between the parties in divorce disputes is provided via mediation.

⁹ Flavia Agnes, Family Law Vol. II, Marriage, Divorce, and Matrimonial Litigation, Oxford Publication Page.319.

¹⁰ Ram Gopal v. State of M.P., 2010 SCALE 711.

It differs from a typical business or property conflict when we bring a marital issue to mediation. Because they include factors like sentiments, emotions, social concerns, obligations, personal tasks, the parties' views toward the marriage and life in general, and other factors, marital conflicts set themselves apart from other forms of conflicts.

Contrary to other forms of mediation, marriage mediation places a strong focus on illogical and emotional elements. It is necessary to look at the concerns in addition to the technological difficulties. The mediator has a duty to take the emotional aspect into account as well. In contrast to litigation, the mediator who facilitates the process is interested in the parties' satisfaction. In this situation, emotion is more significant than reason. The aim of the mediator is to reach a fair agreement that benefits neither party. His role is to set the environment for the parties to reach a deal, not to defend the parties in his opinion. The mediator must also serve as a counsellor and a conciliator to aid the parties in moving beyond their animosity against one another. The goal of meditation is to find lasting tranquilly. In order for the parties to come to an agreement on a course of action that the mediator or either party may suggest, the goal of marriage mediation is to bring the parties together.¹¹

CONCLUSION

In India, where the social structure is constantly shifting, there are more matrimonial disagreements as a consequence of spouses increased economic independence and literacy. When modern partnerships become accessible to divorce, the opposing mechanism does not comply with the wishes of the parties. In contrast to typical economic disputes, these disputes have a range of emotional, social, and personal elements. These requests often clash with the standard legal process. Due to court orders that lack the parties' collaboration, the disgruntled party turns to appeals, reviews petitions, and other processes in the hopes of winning a favourable decision. This results in a drawn-out, emotionally taxing process that often has no noteworthy results, making the money spent by the parties little in compared to the cost of the subject of the suit property.

¹¹ *Id.*