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Navigating Marital Disputes: The Role of Judicial Separation in Modern Hindu Marriages

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ABSTRACT

Hindu law views marriage as a holy and indestructible ritual, representing an enduring relationship that transcends lifetimes. In India, Hindu weddings are governed by the Hindu Marriage Act of 1955 (HMA), which also has judicial separation measures. Married couples may live apart without ending their marriage thanks to judicial separation, which gives them an opportunity to work things out before filing for divorce. This article offers a thorough analysis of judicial separation under the HMA, looking at its definition, significance, context, legal foundation, grounds for separation, procedural features, and ramifications. Couples can evaluate their marriage, get treatment, and perhaps prevent divorce through legal separation.

The essay highlights the possibility of reconciliation and the maintenance of marital ties by drawing comparisons between legal separation and divorce. It also covers the function of counselling and mediation as well as the necessity of legislation changes to improve access to support services. Case laws are included to show how judicial separation is really applied in practice. In the end, the paper emphasizes how crucial judicial separation is as a way to resolve marital disputes while defending the family's interests and future.

Keywords: *Marriage, judicial separation, divorce, husband and wife, maintenance, custody, Adultery, Bigamy.*

I. INTRODUCTION

The purpose of marriage is for a husband and wife to become closer to one another. According to Hindu law, marriage is the last and most revered of the ten unbreakable sacraments, involving a sacred bond. It's also a link that develops from birth to birth. Smritikars says that death cannot sever this relationship. The Hindu Marriage Act of 1955 (HMA) is a comprehensive statute governing Hindu marriage in India. One of the Act's most essential elements is judicial separation, which allows married spouses to live apart without terminating their marriage. As a transitional step before divorce, judicial separation allows married couples

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to examine their relationship and maybe strive toward reconciliation. The goal of this article is to provide a comprehensive assessment of judicial separation under the HMA, including its foundations, procedural elements, legal background, and implications. One possible means of preventing divorce is through judicial separation.

Meaning Of Judicial Separation

A judicial separation is a court-issued legal order that requires a husband and wife to live apart or end their conjugal relations without dissolving their marriage. It is commonly known as "divorce mensa et thoro," which means separation from "bed and board." Following a judicial separation order, the husband and wife are no longer obligated to live together or cohabit, and all necessary marital obligations are stopped. They are just separated consensually so that they may reflect on their marital lives. The agreement for judicial separation frequently results in a divorce or reconciliation between husband and wife.²

A separation agreement prohibits the parties from remarrying since they remain husband and wife. If they remarry, they may face charges of bigamy. If one of the spouses dies within the term of the separation agreement, the other spouse inherits his or her property.

II. HISTORICAL BACKGROUND

Matrimonial laws in India have seen substantial changes, owing to social, cultural, and legal advancements. The notion of judicial separation was established in the Hindu Marriage Act of 1955 as a way to resolve marital conflict without resorting to divorce. Initially, the reasons for judicial separation were restricted, but successive revisions broadened the scope to reflect shifting society attitudes regarding marriage and separation.

It is a term of separation ordered by the court before divorce procedures may begin. Under all personal laws, the judicial separation time lasts one year. The term of judicial separation allows opportunity to resolve marriage conflicts and misunderstandings between the couple.

It is also governed by Indian Divorce act, 1869.

Why judicial separation and not divorce?

For a number of reasons, judicial separation is frequently preferable to divorce. The main benefit is that it gives married couples the chance to temporarily separate from one another without permanently breaking their union, giving them time to think through their problems and work toward reconciliation. This can be particularly crucial in situations when divorce is

² Pragya Agrahari, Judicial separation, ipleaders, August 20,2022, <https://blog.ipleaders.in/judicial-separation/>

discouraged by personal, cultural, or religious convictions. Couples who choose judicial separation can also keep some of the legal advantages and privileges that come with marriage, such as spousal benefits and inheritance rights, which are normally lost in the event of a divorce. It also offers a less dramatic option for couples who are unsure about calling it quits on their marriage, allowing for a time of separation that may result in reconciliation or, if required, a more educated choice to file for divorce. This transitional stage is a helpful tool for couples managing marital troubles since it can lessen the emotional and psychological trauma that comes with a sudden divorce.

III. LEGAL FRAMEWORK OF JUDICIAL SEPARATION

Section 10 of the HMA allows for judicial separation. It provides that either spouse to a marriage may submit a petition for judicial separation on certain reasons. Once the court orders judicial separation, the parties are no longer required to cohabit.³

Marriage is considered a sacred sacrament in Hinduism, which means it is unbreakable and everlasting. It is respected not only for this life, but also for many future lives. Manu, the ancient lawgiver, holds that marriages cannot be dissolved. However, as new obstacles occurred in a person's modern life, Hindu law underwent a number of changes. Marriages are no longer considered binding in nature. In the case of a quarrel or for other reasons, the parties to a marriage can divorce or seek judicial separation.⁴ Both husband and wife can live apart. The decision to live separately or together is up to the spouse.

Grounds For Separation

1. Adultery

It is defined under S.13(1)(i) of HMA, 1955. Hindu law defines adultery as the voluntary establishment of a sexual relationship between a husband and wife and anybody other than their partner. The person that feels wronged is entitled to file a petition with the appropriate court.

Under IPC, 1860 it is defined under S.497 which states whoever Without the consent or collusion of that man, anyone who engages in sexual activity with a person who he knows or has reasonable suspicions is the wife of another man commits adultery. This type of behaviour does not qualify as rape and is punishable by either type of imprisonment for a maximum of five years, a fine, or both. In this situation, the wife won't face penalties for aiding and assisting.

³ The Hindu Marriage Act, 1955

⁴ Pragya Agrahari, Judicial separation, ipleaders, August 20,2022, <https://blog.ipleaders.in/judicial-separation/>

Joseph Shine V Union of India under the influence of this case the Hon'ble Supreme Court has struck down the provision of adultery under S.497 of IPC and held it as unconstitutional. It was founded on gender inequity and violated the constitution. However, adultery is currently not seen as a crime but rather a reason for divorce.⁶

2. Cruelty

It is defined under S. 13(1) (i-a) of HMA, 1955. Generally speaking, cruelty refers to a married act that causes another person any form of suffering or distress—physical, emotional, or financial. Cruelty is a subjective idea that is always contingent upon the specifics of the event, including the person, location, and time of the incident. Thus, something that we now view as cruelty may not have been regarded as such a few years ago, or something that we do not now consider cruel may eventually be recognized as such. For this reason, the lawmakers purposefully avoided defining the term "cruelty" in The Hindu Marriage Act, 1955, leaving it up to the courts to make that determination.⁷

In *Shyamsundar v. Santadevi*⁸, the woman suffered severe physical and psychological abuse at the hands of her husband's family after marriage, and no steps were done to shield her. The Court determined that the husband had committed cruelty when he neglected to safeguard his wife.

In a landmark case of *Narayan Ganesh Dastane V. Sucheta Narayan Dastane*⁹ The court in this instance examined cruelty as a basis for divorce. The Court did, however, also declare that the issue should only be decided based on the merits of cruelty in this particular instance. Except for the two phrases "persistently or repeatedly" that were inserted, there was no distinction made between judicial separation based on cruelty and divorce based on the same grounds after this Act was amended. Furthermore, showing cruelty was a reason for judicial separation was not as important as establishing it as a ground for divorce. Under section 10(1) of the Hindu Marriage Act, this reason was introduced, and the meaning of "cruelty" has been expanded to stand alone.

⁵ Indian Penal code, 1860

⁶ Joseph Shine v Union of India (2019) 3SCC39, AIR 2018SC 4898

⁷ Shalu Gothi, Cruelty under hindu law, ipleaders, March 11,2020, <https://blog.ipleaders.in/cruelty-under-the-hindu-law/>

⁸ AIR 1961 All 563

⁹ 1975 AIR 1534, 1975 SCR (3) 967

3. Desertion

It is defined under S.13(1) (i-b) of HMA, 1955. According to this paragraph, if the other spouse departs them for whatever reason and doesn't tell them for at least two years before the other spouse files a petition, the injured party is entitled to seek judicial separation relief.¹⁰ In the case of ***Guru Bachan Kaur v. Preetam Singh***, the husband moved for divorce following seven years of stated desertion, claiming he had no idea what issues the working wife was having. However, the woman was open to moving in with her spouse at her home while she was employed. According to the ruling of the High Court, mutual desertion does not exist. Desertion requires the culpability of one party.

4. Conversion of Religion

It is defined under S.13(1)(ii) of the act. In the event that one spouse converts to a faith other than Hinduism, the other spouse may petition for a divorce.

5. Unsoundness of mind

It is defined under S.13(1)(iii) of the act. In case one partner in a marriage has a mental illness that makes it impossible for the other partner to live with the sufferer. The other spouse may request judicial separation as a means of remedy. In the case of ***Suresh Babu v. Leela***¹¹, the husband marries a different lady after converting to Islam. Here, Leela, the wife, submitted a petition, and the court granted a divorce due to her religious conversion.

6. Other relevant grounds

a) Bigamy

b) It is defined under S.13(2)(i) of the act. This implies that both of the husband's wives have the right to file a petition for judicial separation in the event that he remarries while still married, provided that the other wife is still living at the time of filing.

c) Rape or Sodomy

It is defined under S.13(2)(ii) of the act. If her spouse is found guilty of crimes like sodomy, rape, or bestiality after the marriage, the woman is entitled to submit a petition for judicial separation.

d) Not being heard alive for the period of seven years

After a lawful marriage, the court will proclaim a spouse's civil death and the aggrieved party

¹⁰ Chandan Kumar Pradhan, Judicial Separation under Hindu Marriage Act, 1955, ipleaders, February 22, 2020, <https://blog.ipleaders.in/judicial-separation-under-hindu-marriage-act-1955/>

¹¹ AIR 2006(3) KLT891

may request a judicial separation judgment if, for a minimum of seven years, it remains unclear if the spouse is alive.

IV. COMPARATIVE ANALYSIS OF JUDICIAL SEPARATION AND DIVORCE

Definition and inequalities Judicial separation allows couple to live apart, but does not dissolve a marriage like divorce does. Sometimes, couples who wish to reflect on their marriage without ending it entirely seek legal separation.

Disparities in Law and Administration The processes involved in filing for judicial separation are similar to those in filing for divorce. However, judicial separation offers the possibility of reconciliation because the marriage is still legally acknowledged. A divorce, on the other hand, is final and irreversible.

Location and Scope of Marital Reunions One of the key benefits of judicial separation is the potential for reunion. Couples can utilize this period to seek treatment and mediation, which could preserve their marriage.

Consequences for Social and Psychological Different social and psychological effects might result from judicial separation. It can lead to confusion and emotional strain, even while it could ease tension in a relationship.

V. PROCEDURAL ASPECTS RELATED TO JUDICIAL SEPARATION

Submitting a judicial separation petition Either spouse may submit a petition for judicial separation in a district court or family court with the proper authority. The grounds for requesting judicial separation must be included in the petition.

Authority and Appropriate Courts The family courts or district courts at the respondent's home, the couple's last joint residence, or the location of the marriage ceremony have jurisdiction.

Legal Counsel and Judicial Processes Legal representation in court may be requested by the parties. The court holds hearings, files written declarations, serves notifications, and handles other processes just as in divorce proceedings.

Orders and Reliefs in Transition While the petition is pending, the court may issue temporary orders for child custody, maintenance, and protection from domestic abuse.

JUDICIAL SEPARATION	DIVORCE
Defined under S.10 of Hindu marriage	Defined under S.13 of Hindu marriage

act,1955	act,1955
A procedure that allows a married couple to remain legally married while going through a formal separation.	The formal dissolution of a marriage, which puts a stop to the partnership.
Spouses' property rights are unaffected until the court orders differently.	Property rights are allocated in accordance with a court ruling or divorce settlement.
Until a will or court decree alters this, spouses are entitled to inherit.	Usually, inheritance rights are broken up between ex-spouses.

Pros and Cons of Judicial Separation

1. PROS OF JUDICIAL SEPARATION

- i. The parties have the option to heed the counsel of their parents, relatives, or any other knowledgeable individual who may provide guidance on divorce or a brighter future.
- ii. To get a divorce, you can also use the judicial separation decree.
- iii. It is possible to retain military benefits.

2. CONS OF JUDICIAL SEPARATION

- i. Divorce is as complicated as this.
- ii. Couples experience an equal amount of stress as divorce.
- iii. It might not be essential for the partnership.

VI. ROLE OF MEDIATION AND COUNSELLING

The Value of Mediation in Divorce Cases In order to settle marital conflicts in an amicable manner, mediation is essential. It offers a forum for honest dialogue, assisting partners in appreciating one another's viewpoints and coming to solutions that work for both of them.

Centres for Court-Annexed Mediation In order to aid in the settlement of disputes, several family courts have set up mediation facilities. In an effort to ease the load on the courts and foster peace, these institutions provide expert mediation services.

Counselling's Effect on Judicial Separation Cases Counselling services can help with underlying marital difficulties such emotional disputes, financial stress, and communication breakdowns. Reconciliation may result from effective therapy.

Implications of Judicial Separation

Consequences for Law Different legal rights and responsibilities are impacted by judicial separation:

- **Maintenance:** During the separation time, any spouse may be eligible for maintenance.
- **Child Custody:** Taking into account the child's best interests, courts may award custody of children to one spouse.
- **Property Rights:** Although interim orders may address financial arrangements, judicial separation does not change property rights.

Impact on Society and Culture Significant social and cultural ramifications may result from judicial separation. Separated people may experience social exclusion and shame in conservative countries. Judicial separation, however, also reflects shifting perspectives on married life and personal liberty.

Effects on the Mind The effects of judicial separation on psychology differ. It might ease marital strife, but it can also lead to confusion, worry, and mental suffering. A major part of treating these impacts is providing counselling and support services.

VII. NEED FOR REFORMS AND RECOMMENDATIONS

Reforms in the Law Are Needed Legal reforms must be ongoing in order to handle new problems with marriage legislation. Procedure simplification, promoting gender parity, and defending the rights of those in disadvantaged situations should be the main goals of reforms.

Improving Legal Aid and Counselling Service Accessibility Those pursuing judicial separation must have access to counselling and legal advice. NGOs and the government should endeavour to offer services that are both accessible and reasonably priced.

Increasing Conscience and Educating Making people aware of judicial separation and its effects can aid in their ability to make wise judgments. Legal rights, counselling services, and conflict resolution procedures are to be the main topics of educational initiatives.

VIII. CASE LAWS FOR JUDICIAL SEPARATION

I. Bipin Chandra v Prabhavati ¹²

This decision established the requirement that it be demonstrated that there was a factual separation and a desire to stop cohabitation permanently in order to get a judicial separation or divorce on the grounds of desertion. It made clear what was needed to demonstrate desertion

¹² 1956 AIR 176

under the Hindu Marriage Act.

II. Savitri Pandey v. Prem Chandra Pandey¹³

In this instance, the Indian Supreme Court ruled that if one spouse has been harsh and disloyal, judicial separation may be granted. This case demonstrated that under the Hindu Marriage Act, cruelty and desertion are legitimate reasons for a judge to grant a judicial separation.

III. Hirachand Srinivas Managaonkar v. Sunanda¹⁴

The Court decided that judicial separation may be justified by persistent separation and desertion for a set amount of time. reaffirmed the idea that a legitimate grounds for judicial separation is prolonged abandonment without justification.

IX. CONCLUSION

The Hindu Marriage Act, 1955, allows for judicial separation, which creates a framework for cohabitation without ending the marriage. It provides a chance for reconciliation and acts as a crucial tool for resolving marital strife. This study examined the judicial separation's basis, legal structure, procedural features, and ramifications. In order to help people navigating marital problems, future research and policy-making should concentrate on legislative changes, improving access to resources, and raising awareness. The goal of judicial separation is to provide every individual a chance and to safeguard the interests and future of the married children. Couples want to get back together and live together. The Act prohibits ending a partnership without a good cause. The spouse should only be able to seek for judicial separation or divorce on certain reasons.

¹³ 2002 SC 591

¹⁴ 2001 AIR 1285