

Divorce & Maintenance: A Husband's Rights Under The Hindu Marriage Act

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Abstract:

The Hindu Marriage Act, 1955 provides a way for men and women to seek divorce and maintenance. This article will examine the rights of men to divorce on the grounds of cruelty and desertion as a husband, with supporting case laws. Additionally, I will highlight an often ignored right a husband has to seek maintenance from his wife under certain factual circumstances. Ultimately, Indian law seeks to equalize both parties in matrimonial disputes and provides both parties with a right to seek remedial relief.

Keywords: Hindu Marriage Act, Divorce, Husband's Right, Matrimonial Disputes

1. Introduction

The Hindu Marriage Act of 1955 provides a legal basis for divorce and maintenance. It is usually thought that the Act more often benefits women, but it describes rights available to men, and remedies available to them. We will look at these rights, focusing on divorce based on cruelty and desertion, and the sometimes-forgotten right of a husband to maintenance

2. Legitimate Ground for Divorce: Cruelty and Desertion from a Husband's Perspective

2.1. Cruelty

Cruelty can take many forms, including mental abuse as outlined in the definition found in Section 13(1)(ia) of the Hindu Marriage Act, 1955. Cruelty is a valid ground for divorce, which consists of mental and physical abuse. As a husband, cruelty can be shown by demonstrating the wife's repeated and consistent actions towards him that cause him a considerable amount of distress - considering the reaction as to whether it would be unreasonable for him to remain in the marriage, considering the myriad of factors, including desire or need for peace or happy cohabitation. The word, "cruelty" includes both mental and physical abuse. Judicial Precedents have laid a foundation to the claim that cruelty is something that is continuous in nature, held over a period of time and is the habit of an individual instead of a sudden outburst, or an emotional response to the provocation or nominal wear and tear of a marriage.

In *Rosenbaum v. Rosenbaum*¹, it was held by the Appellate Court that "To prove a case entitling a spouse to divorce on the ground of mental cruelty, the evidence must show that the conduct of the offending spouse is unprovoked and constitutes a course of abusive and humiliating treatment that actually affects the physical or mental health of the other spouse, making the life of the complaining spouse miserable, or endangering his or her life, person or health." Held in *Hemwanti Tripathi v. Harish Narain Tripathi*², "Mere trivial irritations, quarrels, normal wear and tear of married life which happens in day-to-day life in all families would not be adequate for grant of divorce on the ground of cruelty. Sustained unjustifiable and reprehensible conduct affecting physical and mental health of the other spouse may lead to mental cruelty."

In the case of *Savitri Pandey v. Prem Chandra Pandey*³, it was remarked that, "Cruelty, however, has to be distinguished from the ordinary wear and tear of family life. It cannot be decided on the basis of the sensitivity of the petitioner and has to be adjudged on the basis of the course of conduct which would, in general, be dangerous for a spouse to live with the other. In the instant case both the trial court as well as the High Court have found on facts that the wife had failed to prove the allegations of cruelty attributed to the respondent." Moreover in *A. Jayachandra v. Aneel Kaur*⁴, the Court observed as under "To constitute cruelty, the conduct complained of should be 'grave and weighty' so as to conclude that the petitioner spouse cannot be

reasonably expected to live with the other spouse. It must be something more serious than 'ordinary wear and tear of married life'.

In *Samar Ghosh v. Jaya Ghosh*⁵: "(xi) If a husband submits himself for an operation of sterilisation without medical reasons and without the consent or knowledge of his wife and similarly, if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty. In *Jagraj Singh v. Birpal Kaur*⁶, Court held that conjugal rights are not only created by the legal statute but it the very foundation of the institution of marriage. Therefore, it is important for the courts to have a much more constructive, affirmative and productive approach instead of abstract, theoretical or doctrinaire. The court should not be the one giving up on efforts of reconciliation on the base that there is no chance to mend the relationship. Therefore, it is just a myth that courts are not concerned or obligated save the sanctity of the institution of marriage. In the case of *Smt. Leelawati v. Ram Sewak*⁷, It was said that the legal provision of Section 23(ii) of the HMA is not absolute. When placing a responsibility on the court to make every attempt to reconcile the parties. However, it's left on the court's discretion by using the qualifying phrase, "in every case where it is possible to do consistently with the nature and circumstances of the case".

2.2. Desertion

A husband may also rely on desertion as a ground for divorce if his wife leaves him wilfully, without reasonable cause, or wilful consent, for a continuous period of two years or more. According to Section 13(1)(ib), of Hindu Marriage Act 1955, the term desertion means to wilfully abandon the other spouse. The essentials include abandonment that's done wilfully, the duration of separation should be at least two years and an intention to never come back for the relationship should be established.

Nandini in the case of *Sanat Kumar Agarwal v. Nandini Agarwal*⁸ left her matrimonial house on December 9, 1978, without any reason or cause and since then never came back to her matrimonial home. According to the court this was a case of desertion. The counsel of the respondent in the case of *Archana v. Ajay Kumar*⁹ proved it through evidence on record that the appellant (wife) with her own willingness has neglected respondent/husband and voluntarily without any reasonable cause has left her matrimonial home. In addition, getting separated from her husband without his consent, therefore amounts to desertion. In the case of *Kumaresan v. Aswathi*¹⁰, the court's view in regard with Section 24 of the Hindu Marriage Act, 1955 was that Maintenance pendente lite can be granted under the condition if the spouse doesn't have enough independent income. However, the respondent had enough income therefore the application was dismissed.

*Manokaran Ramamoorthy v. M. Devaki*¹¹, is the case where the petitioner argued that according to Section 24 of the Hindu Marriage Act, husband is not liable to pay maintenance to his wife if she is financially independent. Since his wife had an independent income, she was not provided with interim maintenance and litigation expenses. Both the husband and wife in the case of *Vijay Kumar Vs. Harsh Lata Aggarwal*¹² had similar qualification and income, therefore there was no justification to grant interim maintenance to the wife. It was observed in the case of *Mamta Jaiswal vs. Rajesh Jaiswal*¹³ that Section 24 of the Hindu Marriage 1955 was enacted to provide monetary assistance to any of the partner who cannot support themselves even after putting in sincere efforts. However, this doesn't mean that the law is supporting idleness with an intention to harass other party or pull money out of them. The section doesn't want to accommodate creating an army of idle people wanting to get maintenance awarded by their partner. Similarly in the case of *Rupali Gupta vs. Rajat Gupta*¹⁴ the claim of maintenance by a financially independent spouse under Section 24 of Hindu Marriage Act, 1955 was discouraged.

The Magistrate in the case of *Shiv Kumar Yadav v. Smt. Santoshi Yadav* has cited sub-section 4 of Section 125 CrPC¹⁵, that says that maintenance cannot be given to the wife if she is the one voluntarily abstaining from going back to her matrimonial house without any sufficient cause.

3. The right of a husband to seek maintenance: Fairness in divorce

Section 24 of the Hindu Marriage Act, 1955, goes against the conventional notion of exclusive maintenance for wives. Here, either spouse can petition for interim financial maintenance and support, when the other spouse can provide accessible support during the pendency of the marriage termination. Additionally, Section 25 of the Act provides for alimony maintenance payable permanently to either spouse after a divorce or judicial separation, which includes a consideration of the circumstances of the case, and the relationship between the parties respective financial position. The case of *K. Srinivas Rao v. D.A Deepa*¹⁶ upheld that the precept notion of infidelity cannot stop a husband to ask for his right of maintenance and restitution.

It is a very traditional concept that maintenance is only the right of wives. However, Since the Indian Law has a foundation laid for equality before the law. Therefore, both the spouse is entitled to claim maintenance. Under Section 24 of the Hindu Marriage Act, 1955 either of the spouse has the right to ask for interim maintenance in the course of matrimony. Its aim is to grant monetary assistance to the other spouse who cannot financial support themselves.

In the 1990 case of *Lalit Mohan v. Tripta Devi*¹⁷, it was underlined that a husband can claim permanent maintenance from him former wife. It was order by the High Court to Tripta Devi to pay Rs. 100 per month as permanent maintenance and Rs.500/- in lump sum incurring the expense of the litigation. On the other hand, Section 25 of the Hindu Marriage Act, 1955 permits permanent alimony and maintenance, to either of the partner, taking the condition of case into consideration which includes financial stability of both the spouse. Especially when the Court has granted decree of divorce or judicial separation to them.

Even though the facts of the Chand Dhawan¹⁸ case had different facts however, the interpretation of Section 25 of the Hindu Marriage Act was similarly underlined that any of the spouse can invoke it where a decree of any kind governed by Sections 9 to 13 is passed and the marriage is broken. After looking at the facts and circumstances the Trial Court in the case of Rani Sethi v. Sunil Sethi¹⁹, the court directed the wife to pay Rs 20,000/- as maintenance and Rs 10,000 as expense for court proceedings, in addition with the Zen car for the use of the husband. Likewise, before the Kerala High Court in the case of Nivya V M v. Shivaprasad²⁰, the wife was asked to pay monthly maintenance of Rs 6000 to her husband as a penalty to spoil his career by falsely accusing him of raping her.

There have been a number of court decisions confirming a husband's right to seek maintenance. The courts have also reiterated that if a husband is unable to maintain or support themselves due to unfortunate circumstances or lack of financial means can launch a claim for maintenance against a wife if they are available and able to support him financially. Further, a husband who has been subject to cruelty or abandoned by a wife may be able to seek maintenance from the wife as part of reparation.

4. Conclusion

The public often discusses the rights of women in terms of divorce and maintenance, but the Hindu Marriage Act, 1955 explicitly declares and provides for the rights of men. Husbands experiencing cruelty or desertion can petition for divorce. Husbands suffering financial disgrace will receive maintenance from their wives. The Hindu Marriage Act stresses equality before the law, giving both parties a means to fair treatment regarding disputes.

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