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**DIVISION OF ASSETS UPON DIVORCE: IS THIS ISSUE TREATED
FAIRLY BY DIVORCE LAWS?**

ABSTRACT

Divorce means the separation of the spouse from a matrimonial relationship. The Indian laws have prescribed a good procedure for the divorce trial. Besides the procedure, the laws have also prescribed different kinds of grounds upon which a party can divorce, for example- divorce by mutual consent, divorce by desersion by a party, divorce by doing adultery by one spouse, etc. all of us know that getting divorced is a process that involves emotional breakdown, trauma, financial problems, and deep thinking. The whole divorce procedure consists of many stages but one of the important stages is the “settlement”, it is the process of dividing things like property and other assets between both the parties. It can take a lot of time as both parties will have different conditions which they want to get fulfilled. Indian laws have majorly given the advantage to the women in regard to the divorce cases, when divorce occurs the court do the division of assets between the spouses, we can say that it is true that sometimes the divorce laws themselves discriminate between the spouses. In this article the light has been drawn to the topic of division of assets upon divorce, further we will discuss the advantages and disadvantages of these laws, whether these laws treat fairly both the parties at the time of dividing assets?

INTRODUCTION

As discussed above, divorce is a legal dissolution of marriage, which means the separation of the couple legally. The partner can take divorce through different laws in India as different

laws have been made for all the cultures and religions. Partners from different caste and religion can take divorce with the help of laws mentioned in the Special Marriage Act 1956, Hindus can take divorce by Hindu Marriage Act, and the Foreign Marriage Act 1969 can be used when one of the partners have a different nationality.

The distribution of assets or property during a divorce is not an easy task. It takes a lot of time to come to a conclusion on which both the parties will agree. In most of the cases, a party wants to go away with all the property they have in their name. The court has to take into consideration all facts of financial condition as well as family conditions. Such assets need not be tangible but it can also be intangible. The contribution to a particular asset by a party is also considered, the contribution can be financial or non-financial (that means love or care). The court has to consider the principle of contribution.

The principle of contribution is derived from Section 7 of the Matrimonial Causes Act that states that the magistrate court and the High court have the power to distribute property in divorce by accounting all the assets of parties and distributing them by seeing individual contribution. This principle was become clearer by the case Makani vs. Makani.¹

The bill called “Marriage Law’s (amendment) bill 2010”, that was passed by the cabinet, do few changes in marriage laws in India but it is pending till now in the Parliament. It gives the provisions on how property will be divide after the divorce. The biggest change that the bill will come with is that the share of wife after the divorce will be 50 percent in the husband’s residential properties and in other assets the share of wife will be decided by the court itself.

MARRIAGE LAWS AMENDMENT BILL, 2010

The Marriage Laws (amendment) bill 2010² was presented by Lok Sabha on August 4, 2010, by the ministry of law and justice by Shri Veerappa Moily and then referred to the standing committee. This bill is still pending in the Parliament of India and it basically amends all the acts related to marriage in India. But what are the major changes that will come into force by this bill in divorce laws? They are-

- Before the bill, a wife was entitled to have shared in her husband’s property without any fixed value but by this bill, 50 percent of the total residential property owned by

¹ HH 74 10

² PRS legislative research, Bill Summary, the Marriage laws (amendment) Bill, Sep 6, 2020. (https://www.prsindia.org/sites/default/files/bill_files/Marriage_Laws_amendment_Bill._Summary.pdf)

the husband will be her share after divorce but the value depends on the case to case. The property can be that property that is acquired by the husband before or after the marriage.

- If the property is mutually owned by her husband and wife then the wife will entitle to have 75 percent of such property as she is keeping the property which is owned by her and half of the property which is owned by her husband.
- Apart from the residential property, the wife will also entitle to have shared in other assets.

DIVISION OF ASSETS AT THE TIME OF DIVORCE

At present, the Indian laws state that a husband who files a divorce petition against his wife gives him an immunity that her wife will not be able to claim right by him, which means his wife will not have any right over the husband's owned property. The wife is entitled to have maintenance or alimony from her husband. Sometimes this can cause exploitation of women and can be unjust to her, therefore amendments are needed in the old laws. Now the basic question that would arise in the minds that how assets are being distributed among the partners?

³Let us discuss the method under which various assets are distributed among partners-

A) Inheritance and ownership-

The distribution of property takes place only when there is no prior contract made before the marriage between the partners. The first question at the time of distribution of property by the court comes into picture is that who has owned or inherent a particular property. Owned means to buy something and then that thing belongs to the owner whereas inheritance means that a person becomes the owner of a property that he/ she gets from loved ones who have died, he/ she hasn't bought it.

Generally, a property that is ancestor property which means the inherent property is not divided among the partners at the time of divorce, even a property fully owned by one can't be divided.

³Forbes, Jeff Landers, Understanding how assets get divided in divorce, April 12 2011, (<https://www.forbes.com/sites/jefflanders/2011/04/12/understanding-how-assets-get-divided-in-divorce/#2aba7a212b66>)

B) Property bought in equity-

Bought means buying something with the money owned by doing the economic activity, the property which is bought by both the partners jointly is known as property bought in equity. This kind of property has two owners and two person's right over it. This kind of property is divided with the help of share that means the value of the right proportion will be distributed among both spouses at the time of divorce. The contribution of each spouse in that property will be considered by the court, it can be a monetary contribution, labour contribution, care, or love contribution also.

C) Alimony and Streedhan-

Alimony is the money that a husband has to pay to his former wife after getting a divorce and it is enforceable by law. The Supreme Court of India has decided that a Husband needs to pay 25 percent of his gross total income to his wife but it is not mandatory that he have to pay 25 percent, it can vary cases to cases. In some cases, one-fifth or one-third of the husband's net worth has allowed being given as alimony by a court of law.

Streedhan can be anything that belongs to the wife, which is gifted to her at the time of marriage, before the marriage or after the marriage. It can be given by in-laws, her parents, relatives, or friends. For example- it can be jewellery, gold, silver, stones, property, furniture, electronics, paintings, etc. the earning by the employment of women also comes under streedhan. The distribution of Alimony and streedhan can vary because of the following reasons-

- I. **If the wife is employed-** whether a woman is employed, the court has to assess the difference of income or net worth of both husband and wife, then the court will give judgment by announcing the amount of alimony that the wife will need to live her standard of life. Streedhan will always retain by the wife whether she is employed or not.
- II. **If the wife is unemployed-** when a woman is unemployed, then the court has to consider the woman's age, her qualification of education, ability to get a job, etc. By considering all these factors the percentage of rate or amount of alimony is decided. Streedhan as discussed above Streedhan will always retain by wife whether she is employed or not.
- III. **If the couple has a child-** ideally speaking alimony doesn't consist of the amount of child support. The maintenance of the child has to be given by the father along with

alimony. However, if the wife is working then she too has to give maintenance for child support for the child's welfare.

- IV. **If the husband is disabled-** physical or mental disability can be a cause of no alimony, then in that case the husband is entitled to receive alimony from the wife if he is incapable of earning due to his disability and if his wife is earning.

WHETHER DIVISION OF ASSETS AT DIVORCE IS FAIR OR NOT?

The division of assets in the eyes of law is fair but sometimes it becomes unfair laws for one of the spouses. It can become anti-male or anti-female laws, let us discuss this division of the assets at the time of divorce is fair or not-

How the division of assets is fair?

The following are the points that proofs that the division of asset is fair and not partial-

- The laws are fair as it provides many provisions who encourage the empowerment of women, as she will be secure from the evil eyes of society and their cultural norms. The division tries to secure women from any exploitation so that she can live peacefully and happily. In the past women have faced a lot of discrimination, therefore these kinds of laws in the division of assets are a must to up bring society and make it modern.
- The division of assets at the time of divorce curtails the exploitation of women while getting a divorce as sometimes a divorced woman has to suffer cultural norms of this society as no one accepts her, even her parents which is wrong. In this kind of situation, a woman needs to live her life so alimony is the best source that helps her to live properly.
- The division of assets ensures that the child who has been resulted in the relation of husband and wife who are getting divorced should not suffer because of the separation of his/ her parents. The child support money has to be contributed by both the parents if the mother is working or if the mother is a non-working woman then the whole responsibility relies on the father alone. Therefore division of assets ensures that the child should not suffer.
- The division of assets by the court works as an agreement between the parties, it cuts down all the expectations and obligations of parties towards each other. Moreover, it also secures future obligations between the parties.

- At last, the division of assets maintains equity among the parties, so that they can live happily and with dignity.

How the division of assets is not fair?

- The division of assets can become an anti-male division or anti-female division sometimes. It becomes anti-male it violates the dignity of men and becomes anti-female when it violates the dignity of women.
- Even the wife is working, the husband still has to contribute to the alimony after the divorce or have to provide maintenance. It becomes unequal as if the wife is capable of earn by herself and lives her life then she should, why the laws discriminate among both partners.
- There is no such provision that the wife will give maintenance or alimony to the husband if a husband is a disabled person and she is working, it is immaterial that if the husband has a financial crisis but normal then he still has to give alimony to his former wife.
- Whether a child lives with one parent, the other has to provide maintenance for the child, but here comes an exemption to the women that if she is working then it is her obligation to give maintenance if she is not then there is no such obligation.
- It is a provision that the division of assets only takes place only when the case of divorce is not filed by the husband, the wife will not be able to entitle any alimony if her husband has filed a petition of divorce which is wrong. The country like India has many discriminated practices against women because of this provision.
- The streedhan whether given by in-laws to the woman will retain her even after the divorce, but why? If the gift is given to the woman by the woman's family to the man's family then those give will be taken back at the time of a divorce but the gifts that belong to the man's family will be retained by the woman.
- At last, we can say that many laws favour only women and some only men that is not constitutionally correct, there should be equality in-laws if the state wants to maintain equality among its citizens.

CONCLUSION

Divorce in Indian society has always been considered as separation of a sacrament relationship. The Indian laws have made a very rigid society, they should be amended as per the new norms of this modern society. The procedure of division of assets upon divorce should get altered or

replaced by those kinds of rules and regulations that will maintain flexibility and equality among both the partners. Therefore, with due respect to every gender, it will be great if there will be balanced laws.



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