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**MATRIMONIAL LITIGATION CAN BE DEVASTATING FOR THE
FAMILY**

ABSTRACT

Divorce and child custody have swamped the family courts across the country. Divorce also symbolizes the legality of a couple's dispute, as well as a reorganization of the family structure and parent-child relationship. This scenario can cause all family members to feel anxious and unsure, jeopardizing their personal stability and triggering changes in the family dynamics as a whole. Divorce is a particularly stressful period in a person's life since it interrupts the entire lives of two individuals, and it is made much more so if they have children.

INTRODUCTION

Marriage is regarded as a holy institution. Some of their aspirations are based on their childhood experiences, prior relationships, and so on. These objectives shift during the course of the marriage. As a result, there are disputes over how the marriage should work. When such differences persist, they breed envy, mistrust, and strife. The strength with which a person feels about their objectives is determined by their priorities, which are affected by their self-interests. These self-interests obstruct the resolution of disagreements and any progress toward an accord.

There has been steady growth in the numeral of matrimonial litigation cases due to divorce cases in the recent years. Divorce and child custody have swamped the family courts across the country. Divorce also symbolizes the legality of a couple's dispute, as well as a reorganization of the family structure and parent-child relationship. This scenario can cause all family members to feel anxious and unsure, jeopardizing their personal stability and triggering changes in the family dynamics as a whole. Unresolved or badly resolved marital difficulties often leak down and impact post-marriage communication and relationships, resulting in a lack of mutual respect and harming the children's physical and emotional well-being.

BACKGROUND

There are many ways in which Muslim and Hindu Family can be dissolved.

Muslim Law of Separation:

1. **Talaq-UI-Sunnat:** Also known as Talaq-ul-raje. This is a volatile form of talaq because consequences of this talaq are not final at once.
2. **Talaq-UI-Biddat:** Also known as Talaq- ul- Bain. This form of divorce is unauthorized and irrevocable. Supreme Court held Talaq-UI-Biddat unconstitutional in *Shayara Banu vs. Union of India*¹.
3. **Ila:** The husband swears not to have sexual relations with his wife. Following this pledge, if “the husband has abstained from sexual intercourse” for four months and there is no consummation, the marriage breaks completely after the fourth month.
4. **Zihar:** The husband compares the spouse within the prohibited relations like mother and sister. In *Masroor Ahmed vs. State (NCT of Delhi)*², Delhi High Court observed that Zihar is non-existent in India.
5. **Talaq-i- Tafweez:** It is a sort of disunion in which, a husband delegated his divorce rights to his wife or a third party. The delegation might be made during the marriage ceremony in the Nikahnama or at a later date.
6. **Khula:** Type in which a woman can divorce her husband by returning the dower or whatever else she got from him, or without returning anything, as agreed upon by the spouse.

¹ *Shayara Banu vs. Union of India* (2017) 9 SCC 1

² *Masroor Ahmed vs. State (NCT of Delhi)*, 2008 (103) DRJ 137

7. **Mubarat:** In this both the partners want divorce, hence, mutual consent is an essential point. Both the husband and wife are relieved to be rid of each other.

Hindu Law of Separation

1. **Judicial Separation:** The Hindu Marriage Act of 1955, Section 10, makes this provision. This can be done at any time after the marriage. This can only temporarily suspend the marriage. Grounds of separation could be adultery as held in *Revathi vs. Union of India and Ors*³, cruelty, conversion like in *Suresh Babu vs. Leela*⁴ wife demanded divorce because husband converted to Muslim, unsound mind, venereal disease, civil death, bigamy etc. Section 13 (1A) (ii) states that if parties have not resumed cohabitation for one year after a judicial separation decision, either party may seek divorce.
2. **Divorce:** The Hindu Marriage Act of 1955, Section 13, makes this provision. Only after one or more years of marriage can a petition be filed for this. This puts the marriage on hold indefinitely. The partners must be living in an adulterous relation then only a party can file for divorce.

There are some theories that have arrived as a result of very basis of marriage:

1. **Guilty or Faulty Theory** - The Guilty Theory, on the one hand, indicates a guilty person, but then on the other, it denotes that the other party is innocent, i.e., not a party to or liable for the conduct of the accused. As a result, if one party condones the guilty party's actions, no divorce can be granted. Divorce will also be denied if cruelty is provoked. The barriers to matrimonial relief evolved in this manner. Recognizing grounds such as insanity and epilepsy resulted in the designating of the guilt theory as the fault theory. If even one of the parties has a flaw, whether it is a conscious or providential flaw, the marriage may be annulled.
2. **Free Divorce or Consent Theory** - According to this theory, the parties to a marriage have the same freedom to end it as they do to enter it. The freedom to marry implies the freedom to divorce. Divorce by mutual consent creates a strong incentive for a hasty and ill-considered divorce. Divorce is impossible to obtain because it requires the agreement of

³ *Revathi vs. Union of India and Ors.* AIR 1988 SC 835

⁴ *Suresh Babu vs. Leela* 2006 (3) KLT 891

both the parties, and if one of the parties refuses to consent, then divorce is impossible to obtain.

- 3. Breakdown Theory** – This notion embodies the current divorce theory. The court recognition of the idea that the objective of the divorce law was not to penalize the guilty but to safeguard the innocent spouse marked a significant shift in policy⁵. If a marriage is irreparably damaged, it should be ended without further research into the causes of the breakdown and without assigning blame to either partner. Even if one of the participants to the marriage does not want it, such a marriage should be dissolved. The empty shell is to be demolished with the utmost impartiality and the least amount of bitterness, grief, and disgrace⁶.

ANALYSIS

Reasons of Matrimonial Litigation.

1. Domestic Violence

Domestic violence is defined as a pattern of aggressive and unwanted physical and mental conduct by one family member towards another. This causes unwelcome difficulties in family interactions between spouses.

2. Infidelity

Infidelity is a factor in roughly one out of every five divorces. If a partner has another man or woman in his or her life, he or she is not in a committed relationship, and the marriage is in trouble.

3. Finances

If one spouse is a spendthrift and the other is a saver, there will undoubtedly be problems. In a marriage, different financial methods and ideologies might generate friction.

4. Control

Exercising excessive control and wanting to "do things your way" is an issue that affects both men and women in marriage. It's the kind of thing that can ruin a relationship.

⁵ William v William (1963)2 All ER 994

⁶ Law Commission of India, 71st Report, Reforms of the Grounds of Divorce

Devastating Effects

The divorcing couple is no longer required to live together and must live separately. The spouses are no longer forced to accommodate one another; nonetheless, the husband is obligated to reimburse the wife's form maintenance if she is unable to afford her home circumstances on her own. But after divorce, both the spouses have the right to remarry.

Divorce is a highly terrible sector in someone's life because it disrupts the entire existence of two people, and it is made even more traumatic if they have children. The breakup of a marriage creates significant disturbances to the family unit. This insecurity may be scary, especially for youngsters, and it can have long-term consequences for them. Many of them are unsure how to handle circumstances in which one parent disparages the other or when the parents quarrel about everything right in front of them. These events may have a detrimental impact on the children's personalities, making it difficult for them to find a mate in the future. The family is essential for a child's "survival, health, education, development, and protection". Families offer emotional attachment as well as socialization for their children. In times of need, family "gives stability and support; in times of stress, it provides love, care, safety, and shelter". Because of the dropping of parental attachment and monetary deprivation, children experience psychological and behavioral adjustment difficulties as well as significant emotional stress when their parents' divorce. Furthermore, when the parents are embroiled in bitter legal fights, the children's best interests are sometimes overlooked.

Because community and well household are intertwined, and because the bulk of social issues stem from dysfunctional families, a prosperous community's and state's efforts are focused on the conservation of wedding and the family unit.

CONCLUSION

Some of the solutions can be Counseling, Mediation and Reconciliation. *Counseling* is a unique technique for resolving divorce issues via the use of councilors who attempt to resolve the matter between the opposing parties and give justice quickly and cheaply. *Mediation*, often known as "assisted negotiation", is a decision-making process in which all sides participate. The third neutral person, often known as a mediator, simply assists the parties in the negotiating process by facilitating the process. *Reconciliation* with the assistance of a neutral person entails his assessing each side and assisting them in entering into a dialogue to settle their issues.

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