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Even a solitary instance of adultery could be a basis of judicial separation but for divorce the other spouse must be guilty of a course of adulterous conduct.

In a petition for divorce it was required to establish that at the time of presentation of petition the respondent was living in adultery. With the amendment in Section 13 of the Hindu Marriage Act, by the Marriage Laws (Amendment) Act, 1976 a single act of voluntary sexual intercourse with any person other than his or her spouse has been made a ground for divorce. The term 'living in adultery' has been replaced by the expression voluntary sexual intercourse. All petitions of divorce have to state the matrimonial offence charged, set in separate paragraphs with the time and place of their alleged commission and to give particulars of the acts of adultery and further to implead the alleged "adulterer" as a party. Prior to the Amendment Act of 1976, 'living in adultery' was required to be proved for divorce, according to a judgment of Bombay High Court, a clever respondent could defeat the very basis of this ground of divorce by indulging into acts of adultery for some time and then discontinuing it for a certain period. Indeed the intention of the legislation lay in the fact that the petitioner gets rid of a torturous life led with the respondent.

The past life of adultery led by the respondent could not afford a ground of divorce. But after the commencement of the Amendment Act, 1976, it is no more necessary to prove a continuous course of adulterous life for divorce. Now only this much is required to be established that the respondent has wilfully indulged into sexual intercourse with a person other than his or her spouse. The burden of proving adultery in a matrimonial case is on the

person who made the allegation. The standard of proof is as in a civil case and not as in a criminal case, i. e. by preponderance of probabilities and not by proving it beyond reasonable doubt.

No direct evidence of adultery is expected as no such evidence is generally available and so depending on circumstantial evidence the necessary inference could be drawn. Where the person having illicit relations with the wife of the petitioner does not disown the letters written to her and adultery is suggested by the recital of those letters, the court is justified in concluding the wife's adulterous relations and granting a decree of divorce to the petitioner. In another case of Sanjukta Pradhan v.

Laxmi Narayan Pradhan' a charge was levelled against the wife, that she went away with some other person one evening from her husband's home and was seen moving with him on a motor cycle, after which at 1 a. m. in the night they were again seen returning together on a motor cycle from a lonely place. In this way she was away from her parental home and when her father-in-law went to call her back she bolted herself inside in a room and visited her marital home no further. The Court, under the circumstance, found sufficient circumstantial evidence for adultery and granted the decree for divorce. It was rightly observed by the Madhya Pradesh High Court: " In India, it is not usual for a young man and woman to live together in a house when they are neither related to each other.

Society being very much more conservative here than elsewhere, it would not be unreasonable to infer adultery from the facts— (1) That only the respondent and co-respondent stayed in one house together for a long time,

(2) That the respondent had refused to go back to her husband, (3) That the respondent and the co-respondent had not the courage to come into the witness box to deny the charge of adultery, and (4) That they had ample opportunity to commit adultery by being alone in the house and their stay together cannot be accounted for on any other reasonable innocent hypothesis.”

(2) Cruelty:

In *Shoha Rani v. Madhukar Reddi*, the Supreme Court observed that the word “cruelty” has not been defined in the Act; the word is used in Section 13(1) (ia) of the act with reference to human conduct or behaviour in relation to or in respect of matrimonial duties or obligations. It is a course of conduct of one which is adversely affecting the other. After passing Marriage Laws (Amendment) Act, 1976 cruelty has been a ground of divorce.

Prior to this Amendment cruelty was a ground for judicial separation except in the State of Uttar Pradesh. Earlier cruelty had to be such which would affect the physical or mental health of other spouse. Section 13(1) (i-à) of the Act now requires that the other party has, after the solemnisation of marriage treated the petitioner with cruelty. It is no more required that cruelty must affect the physical or mental health of the party. Thus it is now sufficient to establish cruelty as a ground of divorce and it has been left to the courts to determine on the facts of each case, whether the conduct amounts to cruelty. Though the word ‘cruelty’ has not been defined in the Hindu Marriage Act, ‘cruelty’ contemplated under clause (ia) of Section 13 (1) neither attracts the old English doctrine of danger, nor the statutory limits embodied in the old Section 10 (1) (b) of the Hindu Marriage Act. After <https://assignbuster.com/even-for-divorce-the-term-living-in/>

the Amendment of 1976, 'cruelty' contemplated by Section 13 (1) (ia) is a conduct of such type that the petitioner cannot reasonably be expected to live with the respondent or that it has become impossible for the spouse to live together.

Cruelty complained of must satisfy the conscience of the court to believe that relations between the parties had deteriorated to such an extent due to the conduct of one of the spouses that it has become impossible to live together without agony, torture or distress or that the atmosphere in the house is so surcharged that it is not conducive for the mental or physical health of any of the parties. In *A. Jyachandra v. Aneel Kaur*, the Supreme Court has expressed the view about cruelty. The expression "cruelty" has been issued in relation to human conduct or human behaviour. It is a conduct in relation to or in respect of matrimonial duties and obligations. The cruelty may be mental or physical, intentional or unintentional. If it is a physical, the Court will have no problem in determining it.

It is question of fact and degree, if it is a mental, the problem presents difficulties. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. In *Anita Krishna Kumar Kachba v.*

Krishna Kumar Ram Chandra Kachba, the court stated that "cruelty" is a relative term. It varies from person to person, and case to case. The allegation and conduct of one particular type may not amount to cruelty in all the cases.

It depends upon the status of the spouses and the atmosphere in which they live, that has to be understood by seeing neatly the background behind it

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and effect which is likely to be caused by such allegations and conduct.

Cruelty implies and means harsh conduct and of such intensity and persistence, which would make it impossible for the spouse to operate the marriage. Cruelty, though not defined in the Act, is to be determined on the basis of proved facts and circumstances of the case.

No fixed formula can be had for cruelty. The concept of cruelty has varied from time to time and from place to place and from individual to individual in its application according to social status of the persons involved, their economic conditions and other matters. The question whether the act complained of was a cruel act is to be determined from the whole fact and the matrimonial relations between the parties. In this connection the culture, temperament, status in life and many other things are the factors which have to be considered. Condonation: Condonation means forgiveness of the matrimonial offence and the restoration of the offending spouse to the same position as he or she occupied before the offence was committed. To constitute condonation, there must be, therefore, two things, forgiveness and restoration. The Delhi High Court in *Satinder Lal Gupta v. Swarana Lata Gupta* held, " Mere casual intercourse with the husband does not constitute condonation of cruelty.

Condonation means resumption of cohabitation and resumption involves a bilateral intention on the part of both spouses to set up matrimonial home together. It would be contrary to public policy to treat a temporary stay at wife's house, for the purpose of exploring the possibilities of genuine reforms, as a resumption of cohabitation. The husband demanded intercourse when in drink. The wife had no choice; it could not be regarded

more than a casual connection and certainly not as a bar to the legal right to relief.

(3) Desertion:

Before Marriage Laws (Amendment) Act, 1976, desertion was only a ground for judicial separation under Section 10(l) (a), but now it has been made a ground for divorce as well. The language of Section 10(l) (a) has been reproduced in Section 13 of the Act providing for divorce. The desertion for a continuous period of not less than two years immediately preceding the presentation of the petition is now a good ground both for judicial separation and divorce.

In its essence desertion means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent and without reasonable cause. It is a total repudiation of the obligations of marriage. The meaning and purport of desertion is to be understood in the same sense in which it finds mention under the heading judicial separation. Where the petition against wife is presented on the ground of cruelty and desertion and the wife offers to live with the husband, the petition would fail in the event of failure to prove cruelty.

As stated above, with the creation of identical grounds for judicial separation and divorce since 1976 only the petition for divorce is now being preferred in all kinds of cases. In *Yuvrani Lok Raj lakshmi v. Yuvraj Brijendra Kishore* the Patna High Court has said that the expression "desertion" has not been defined anywhere so far, nor can it be formulated in a specified way. It is being interpreted in the light of standards adopted in England and so the

decisions given by the English court are relevant to us. As per Section 13(1) so far deserting party is concerned his or her separate living and his or her intention to bring marital relations permanently to an end, make two essentials. So far deserted party is concerned the absence of his or her consent and want of such conduct on his or her part which justify the separate living of the other side make the two conditions essential.

(4) Conversion:

If the respondent ceases to be a Hindu by change of religion, the petition for divorce can be granted on that score. For Hindu, conversion to another religion means non-Hindu religion such as Christianity, or Mohammedanism. Conversion to Buddhist, Jain or Sikh is not conversion to another religion because the Act deems Buddhists, Jains and Sikhs to be Hindus. Conversion to another religion does not ipso facto dissolve the marriage.

The petitioner is required to obtain a decree of divorce on that ground from a competent court. Conversion of a Hindu wife to Islam does not " ipso facto dissolve the marriage with her husband. She continues to be his wife unless the court passes the decree of divorce and she is entitled to maintenance.

Merely ceasing to be a Hindu would not amount to change of religion. It is only when he or she embraces other religion after renunciation of Hinduism that the decree of divorce is obtainable on that ground. The marriage which can be dissolved on this ground is a marriage solemnised under the provisions of this Act or according to old Hindu law. Marriage solemnised under special statutes cannot be dissolved and are not covered by the provisions of this Section.

(5) Unsoundness of Mind:

An incurable unsoundness of mind in either party to the marriage constitutes a ground for divorce. Unsoundness may be continuous or intermittent and to such an extent that the petitioner cannot reasonably be expected to live with the respondent. Under the Amendment Act of 1976, incurable unsoundness of mind or continuous or intermittent mental disorder of such a nature as to disable the petitioner to live reasonably makes the petitioner eligible to get a decree of divorce.

To succeed in the divorce cases based on unsoundness of mind the petitioner has to produce the evidence and prove it beyond reasonable doubt that the mental disorder viz. " Schizophrenia" of respondent was of such a kind and to such an extent that the petitioner can't live safely with the respondent. The expression " mental disorder" has been explained in the Act itself and it means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia. Schizophrenia has been defined in Livingstone's Medical Dictionary, " as a group of mental illness characterised by disorganisation of the patient's personality, often resulting in chronic lifelong ill-health and hospitalization. In its simple form the patient is dull, withdrawn, solitary and inactive. Many patients exhibit delusions, usually of a bizarre type and hallucinations." The expression " psychopathic disorder" has also been defined in the Act itself and it means a persistent disorder or disability of mind (whether or not including sub-normality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the

other party and whether or not it requires or is susceptible to medical treatment. In Ram Narain Gupta v.

Smt. Rameshwari, the Supreme Court elaborately examined the degree of mental disorder which will enable an aggrieved party to a marriage to obtain a decree of divorce. It held that the context in which the idea of unsoundness of 'mind' and "mental disorder" occurs in the section as grounds for dissolution of a marriage require the assessment of the degree of the mental disorder. Its degree must be such as that the spouse seeking relief cannot reasonably be expected to live with the other. All mental abnormalities are not recognised as grounds for grant of decree. If mere existence of any degree of mental abnormality could justify dissolution of a marriage, few marriages would, indeed, survive in law.

(6) Leprosy:

Where the respondent is a victim of serious leprosy in its incurable and virulent form, a decree of divorce will be passed in favour of petitioner.

Virulent means that the disease is considered to be extremely poisonous when it is of malignant type. Every form of leprosy is not virulent but that which is malignant or venomous is virulent. Leprosy is a loathsome disease of the body and is chronic and infectious due to bacillus lepra. Lepromatous leprosy is virulent and incurable and entitled the other spouse to a decree for divorce. No person can be forced to undergo a medical examination but if he or she refuses to do so, it raises a presumption against that person.

(7) Venereal Disease:

Where the respondent has been suffering from venereal disease in a communicable form, a decree of divorce will be granted in favour of petitioner. The period of duration has been dispensed with by Marriage Laws (Amendment) Act, 1976.

Syphilis, gonorrhoea or soft chancre are mentioned as venereal diseases under the English Venereal Diseases Act, 1917. The present section requires that the disease must be in a communicable form. The venereal diseases are only such diseases which are communicated by sexual intercourse. The petitioner may not be forced to subject himself or herself for medical examination but on his or her refusal the court may draw an inference against him and may refuse to grant the relief under Section 23 of the Act.

(8) Renunciation of the World:

This clause lays down that a husband or wife can seek dissolution of marriage, by a decree of divorce on the ground that the respondent has renounced the world by entering any religious order. " A person cannot be said to have adopted a religious order by merely declaring himself to belong to such order.

He must have performed the requisite ceremonies and formalities of the particular religious order. A person who wants to renounce the world by becoming a Sanyasi, can be held to have entered that order only if he has performed the necessary rites and ceremonies prescribed by the Shastras. The mere facts that he calls himself or is described by others as such is not enough, and the mere adoption of the external symbols of Sanyasa as the

wearing of coloured clothes or shaving of the head is not sufficient to make him a Sanyasi. The renunciation of the world which is a postulant for Sanyasa requires relinquishment of all property and worldly affairs." Under the Hindu law, according -to the Supreme Court, renunciation of worldly affairs followed by entrance into a religious order generally operates as a civil death.

It is necessary that all the required ceremonies for entering the religious sect or order are proved satisfactorily. Where a person has left the world but did not enter into any religious order he can be held guilty of desertion or neglect and a decree of divorce can be obtained against him on that ground. No one can claim to be a Sanyasi merely on account of being a disciple of a Sanyasi.

(9) Presumptive Death:

This clause provides that where there are reasonable grounds for supposing the other party to marriage to be dead, the petitioner may seek divorce on this ground.

This supposition could be drawn where the other party has not been heard of as being alive for a period of seven years or more by persons who would naturally have heard of him or her had that party been alive. The principle, on which this presumption is drawn that if he or she were alive, he or she would probably have communicated with some of his friends and relations. When the near relations of a person establish by evidence on oath that, he has not been heard of for seven years that person is presumed to be dead and the petitioner be granted a decree of dissolution of marriage by divorce. When the court is satisfied that sufficient enquiries have been made as to

the existence or the whereabouts of the respondent and there is no reason to think that he or she was alive, the decree of divorce may be passed.

However, if the respondent returns after passing of the decree, the marital relationship cannot be restored.

(10) Non Resumption of Cohabitation after the Decree of Judicial Separation:

According to this clause either party to marriage whether solemnised before or after the commencement of this Act, may present a petition for the dissolution of the marriage by a decree of divorce if there has been no resumption of cohabitation as between the parties for a period of one year or upwards after the passing of the decree for judicial separation in a proceeding to which they were parties.

It is obligatory on the court to pass a decree for divorce when cohabitation has not been restored within one year of the passing of the decree for judicial separation. Prior to 1964, failure to resume cohabitation for a period of two years or more after passing of the decree of judicial separation against that party or failure to comply with the decree of restitution of conjugal rights, for a period of two years or after the passing of the decree, provided a ground only to the party who had obtained such decree to seek divorce after the expiry of the prescribed period. In 1974, there was a radical departure. By amending the Act clauses (viii) and (ix) were omitted and instead sub-section (1A) was introduced into Section 13. The amended section provided that either party could seek divorce on non-resumption of cohabitation or non-restitution of conjugal rights for a period of two years or more after passing of the relevant decree.

In 1976, the Hindu Marriage Act was again amended and liberalised the ground for divorce. Under the Amendment the period prescribed by Section 13 (1A) has been reduced from two years to one year. “ The effect of amended clause seems to be that where the period of one year or more has expired after the passing of the decree of judicial separation, it would be irrelevant and unnecessary to examine whether one or the other spouse has been responsible for not resuming cohabitation after the passing of the decree. The mere fact that the spouse who obtained the decree or the spouse against whom the decree had gone had not expressed desire or willingness to resume cohabitation or even had been opposed to and declined offer of resumption of cohabitation, would not be a ground for refusing to him or her now under this clause for granting relief even to such spouse would inter alia seem to be purpose of this change in law.” In *Bimla Devi v. Singh Raj*, the Punjab and Haryana High Court observed: “ The question is no longer who obtained the decree for restitution of conjugal rights or for judicial separation or who was at fault previously or who is at fault now? The question is not one of fault at all.

The question is not one of apportioning blame. The question is, have the parties been able to come together after the decree was passed, if they have not been able to come together, either party may seek divorce, irrespective of whose fault it was that they did not come together. Section 23(1) (a) applies to cases based on concept of wrong disability and not to Section 13(1A) which is not based on that concept.” The period of one year mentioned in the clause would commence from the date of passing the decree by the trial court and the same would be the date of commencement of the period when

there is an appeal and the decree is confirmed. In case, where the Trial Court has rejected the petition and in appeal a decree of judicial separation is granted, the period of one year would start from the date of the decree of the appellate court.

(11) Failure to Comply With the Decree of Restitution of Conjugal Rights:

Either party to marriage would be entitled to a decree of divorce also when a decree for restitution of conjugal rights has been passed and it has not been complied with within one year of passing of such decree of restitution. Thus in a case covered under Section 13(1A) (ii) either of party can apply for dissolution of marriage by a decree of divorce if it is able to show that there has been no restitution of conjugal rights as between the parties to a marriage for one year or upwards after the passing of the decree of restitution. In *A. V. Janardhana Rao v. M.*

Aruma Kumari, the husband moved the petition under Section 13(1-A) (ii) of Hindu Marriage Act for dissolution of his marriage with his wife on the ground that there was no resumption of cohabitation between the parties, after the marriage for a period of one year and upwards. After passing of a decree for restitution of conjugal rights, the both parties were not willing to reach to a compromise for leading marital life jointly. The court observed that the non-compliance of the decree to be not justified so that husband is entitled to decree of divorce.

In *Dharmendra Kumar v. Usha* the wife after a little over two years of passing of decree of restitution of conjugal rights in her favour, applied for dissolution of marriage. The husband in his written statement alleged that the wife

refused to receive or reply the letters written to her by him nor did she respond to other attempts to make her agree to live with him. The court held that this allegation, even if true, did not amount to misconduct grave enough to disentitle the wife to the relief she asked for.