



Ayana Legal

THE BUZZ

Vol 02-05

Monthly Newsletter By Team Ayana Legal

Landmark Judgements

Rekha Mathur v. Manish Khanna, AIR 2015 Del 197

It was a composite petition by the wife seeking divorce and annulment under Section 13(1) (i) and Section 12(1)(a) of the Hindu Marriage Act on grounds of cruelty and non-consummation of marriage respectively.

The Delhi High Court clarified the difference between divorce and annulment.

The Court held that after a divorce, the wife's status post the decree is that of a divorcee whereas in the case of nullity, her status would be that of an unmarried person. The status of the parties in an annulment is that there was no marriage subsisting between them.

That this status has different ramifications for the petitioner in society and also future marriage prospects hinge on the nature of relief granted by the court.

ANNULMENT OF MARRIAGE



Marriage is recognized as a sacrament between two people. Annulment is one of the remedies available to individuals who wish to end their matrimony.

Unlike other remedies such as a divorce, in which there is a recognition of the marriage between parties; in annulment the marriage is recognized as null and void i.e. there was no marriage subsisting between the parties. This issue of 'The Buzz' discusses the grounds of annulment under the Hindu Marriage Act.

Grounds of Annulment

Section 11 and 12 of the Hindu Marriage Act discusses the grounds for annulment of Marriage, these include:

I. Bigamy

If one or both the spouses had at the time of marriage a subsisting valid marriage with another person, the subsequent marriage being bigamous will be declared null and void. Marrying again during the lifetime of the husband or the wife is an offence under the Indian Penal Code under Section 494 and 495.

Babui Panmato v. Ram Agya Singh (AIR 1968 Pat 190)

To define what constituted fraud the High Court relied on the definition given in the Indian Contract Act, 1872 and placed reliance on the illustrations under Section 17 of the Contract Act.

Ananth Nath v. Lajjabati Devi (AIR 1959 Cal 778)

It was held that the words “any marriage solemnized...shall be voidable and may be annulled by a decree of nullity on any of the following grounds’ imply that at least one of the grounds must be existing at the time of marriage.” The court pointed out that under Section 12(a), (b) and (d) read with Section 5(ii) of the Hindu Marriage Act the words ‘at the time of marriage’ appear.

Thank You

In these unpredictable times, we hope that you are taking care of yourself. Team Ayana Legal thanks you for the trust. Till we are back with our next edition, stay safe and keep smiling.

Disclaimer

This newsletter is solely for the purpose of providing information and the content provided is not and should not be construed as legal advice.

II. Impotence

To get a marriage annulled on the ground of impotence the burden of proof lies on the petitioner. In the case of Samar v. Snigdha, AIR 1977 Cal 213 it was held that the curability of impotence is not a consideration for the purpose of deciding whether a marriage is voidable under Section 12(i) (a).

III. Unsoundness of Mind

Section 5(ii) of the Hindu Marriage Act, 1955 at the time of the marriage, neither party should be (a) incapable of giving a valid consent to it in consequence of unsoundness of mind; or (b) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or (c) has been subject to recurrent attacks of insanity, else the marriage is voidable under Section 12(i)(b) and may be annulled by a decree of nullity.

IV. Consent Obtained by Force or Fraud

In Kunta Devi v. Siri Ram Kaluram (AIR 1963 PU 235) it was held that “It is no marriage in law where one of the parties was induced to enter into a matrimonial alliance under coercion, duress or fraud, evidencing want of free consent. A marriage procured by abduction, terror or coercion has no sanctity..”

V. Pre-marriage pregnancy

If the wife was at the time of the marriage pregnant by some person other than the petitioner then under Section 12(2)(b) the court must be satisfied that the (i) that the petitioner was at the time of the marriage ignorant of the facts alleged; (ii) that proceedings have been instituted within one year from the date of the marriage; and (iii) that marital intercourse with the consent of the petitioner has not taken place since the discovery by the petitioner of the existence of the said ground.