

Divorce on the ground of Adultery

By- Om Kumar

- **What is Adultery**

- Adultery is an act of voluntarily indulging into sexual intercourse out of marriage i.e. any person who is not the spouse of the respondent.

Adultery under Hindu Marriage Act, 1955

Section 10 of Hindu Marriage Act, 1955 says Adultery is defined as a ground for judicial Separation.

- The section states that the parties can file a suit for judicial Separation or Divorce, because this ground is mentioned under Section 13(1) of the Act.
- However, it is irrespective of the fact that before or after the commencement of Adultery, marriage being solemnised.

Joseph Shine Versus Union of India

W.P. (Criminal) No. 194 of 2017

decided on 27-09-2018

- In this judgement the Hon'ble Supreme Court decriminalising the act of adultery and stated that- wife is not chattel of husband.
- It must kept in mind that the deletion of these provisions does not mean that there are no legal consequences for engaging in adultery. These consequences need not be criminal and a remedy may be found in civil law, where adultery already has a place.
- It is a ground for divorce in personal laws.

Jaideep Shah vs. Rashmi Shah

AIR 2011 MP 216

- S. 13(1)(i) HMA and O. 1 R. 10 C.P.C.-
Dissolution of marriage on the ground of adultery-
- Person with whom the Adultery was committed by the respondent spouse is a proper party to the petition.

Proof of Adultery

The burden of proving adultery in a matrimonial case is on the person who makes allegation.

- The Standard of proof in proceedings under this Act being initially of a civil nature is by preponderance of probabilities and not by proving it beyond reasonable doubt.

- **Instances of Adultery**

- **In following cases the plea of adultery has been upheld by the courts:**
 - Wife had been absenting herself from her house for some times and seen in the company of a stranger to the family of her husband without reasonable explanation or any explanation.
 - A solitary instance of voluntary sexual intercourse by wife with other person is enough.
 - Unrelated person found alone with wife after midnight in her bedroom in actual physical juxta-position.

- Child born beyond the period of twelve months after the cessation of marital consortium between the spouses.
- Evidence on post-suit adultery is admissible to prove and explain other evidence given in the case and to show the character and quality of the previous acts.
- Paramour's letters indicating facts of illicit relationship
- Testimony of disinterested witnesses to the effect that they had seen the respondent sleeping together with another person in nights is sufficient to prove adultery.

- Instances of no adultery

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- Where the wife was found going on the scooter of some other person or talking with someone other than her husband
- Mere presence of the alleged adulterer in the bedroom of the parties does not constitute an adulterous act
- Where the husband files the petition for divorce 8 years after he came to know that his wife has committed adultery and has not explained the reason for the inordinate delay alone.

- **Condonation of Adultery**

The fact that the husband cohabited with the wife even after the knowledge that she had been guilty of cohabitating with another person would be sufficient to constitute condonation.

- The husband's condonation of adultery disentitles him to decree of divorce, even if such condonation is for the sake of dignity of the family.

The End

Thanks