DESERTION AS A GROUND FOR DIVORCE- A CRTICIAL STUDY

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INTRODUCTION:

Under the Hindu law, section 13 (1) $(ib)^2$ of the Hindu Marriage Act, 1955 mentions desertion as a ground for divorce. What the section provides for is that the party needs to have deserted the petitioner for a continuous that is to say, uninterrupted period of not less than 2 years immediately after which petition is presented.³ It can thus be inferred that the clause provides for 2 basic necessities to be fulfilled in order to make desertion as a ground for divorce; firstly that such desertion or separation must be for a continuous period of minimum 2 years; and secondly, such period of 2 years should be in immediate continuity with time of presentation of such petition. To make it more clear there should not be a gap between the period of 2 years and presentation of the petition.

The conceptualization of "desertion" is incorporated in the Explanation to section 13(1). The Explanation goes as follows:

"In this sub-section, the expression "desertion" means the desertion of the petitioner by the other party to the marriage without a reasonable rationale and without or against the wish of such party, and includes the willful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly."⁴ In a catena of judgments the honorable judges have counted on the facts and circumstances of each case in defining desertion.

Elementarily defining, desertion can be termed as the negation of the relation to live together which is the nitty-gritty of a matrimonial tie, provided it is indefensible, then it forms a ground for matrimonial relief. Desertion in brevity means an absolute repudiation of marital obligations, i.e

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² Available at www.theindiankanoon.com/2013/06/section-13-hindu-marriage-act-divorce.html (Last visited on 04/03/2016)

³ Section-13 (1)(ib), The Hindu Marriage Act, 1955

⁴ Explanation to Section-13 at the end of clause (1), The Hindu Marriage Act, 1955

putting an end to two-in-oneship and the marital togetherness which is indeed the kernel of marriage. In layman terms desertion can be interpreted as "running away", i.e., to say running away of one spouse from his/her marital obligations. That he actually leaves the home, ceases to cohabit, abandons all his obligations and refuses to perform matrimonial obligations. In **Prabhakar Govindrao Bokade v. Mangala Prabhakar Bokade**⁵, the Bombay High Court held that the term "desertion" cannot be said to have an exhaustive definition and facts and circumstances of every case need to be considered accordingly in order to find out whether desertion is made out within the meaning of section 13(1)(ib) of the Act. In **Bhagirathabaiv.Bapurao Devrao**⁶ it was held that in the Explanation towards the end of Section 13(1) the expression "desertion" with its grammatical variations and cognate expressions means the desertion of the petitioner by the other party to the marriage either without a reasonable reason or against the consent or wish of the other spouse party to marriage and includes the willfully neglecting behavior by that other party to the marriage towards the petitioner⁷. The Supreme Court in **Lachman v. Meena**⁸ interpreted that desertion in its very essence means the intentional permanent abandonment by one spouse of the other without that other's consent and without reasonable or just cause or justification. It was also held to include willful neglect of one of the parties towards the other in a marriage.⁹ This therefore means that one of the parties who intentionally ignores and willfully does not take care of the other party or neglects to fulfil the needs of the other party being fully aware of the fact that such neglect would prove to be negative for that other party is termed to have committed desertion. Further the Explanation so appended makes it clear that the burden of proof of the fact of desertion lies on the petitioner, that is, the petitioner has to prove beyond reasonable doubt that the respondent is guilty of desertion.¹⁰ For proving the offence of desertion the Courts insist upon Corroborative evidence which although is not a rule of law absolutely but still unless the absence of such evidence is accounted to for the Court's satisfaction the Court prefers production of such corroborative evidence. Like in,

⁵ 1992 mah LJ 1098 para 6A Bom

⁶ 1992 Mah LJ 372

⁷ Also held in Smt. Rohini Kumari v. Narendra Singh AIR 1970 All 102 (Available at

indiankanoon.org/doc/119103/; last visited on 04/03/2016)

⁸ AIR 1964 SC 40

⁹ Mangalabai v. Deorao, AIR 1962 MP 193

¹⁰ Devi Singh v. Sushila Devi, AIR 1980 Raj 48

Dr.Malathi Ravi, MD v. B.B Ravi MD¹¹, wherein the husband alleged desertion on the part of his wife and claimed that she did not invite him and his family members even for the naming ceremony of their child and also that she had left without his consent and he hadn't met her for a long period of time, whereas, on corroboration by the Hon'ble Court it was found that all these claims lied in nullity since they could not be proved because corroboration showed that he and his family member willfully refrained from attending the naming ceremony of the child and also that the husband met the wife for 2 days when she was in Gulbarga pursuing her studies. Hence, although not a primary and absolute rule of law the Courts still prefer corroboration on first hand. In *Uma Wanti v. Ram* Dayal¹² it was seen that even if the wife who was the deserting spouse was unable to prove just cause for her to be living away, it was the husband who was burdened with the onus to prove that the living apart of the wife was without any cause. In **Rajalaxmi Ammal v. Jambulinga Mudaliar**¹³, desertion was defined as deliberately withdrawing from cohabitation and abandoning of one partner by the other without the consent of that other. The Hon'ble Supreme Court in **Savitri Pandey v. Prem Chandra Pandey**¹⁴ elaborated and shed light on the concept of desertion. To reproduce what the court said,

"Desertion in order to seek divorce under the Act means the deliberate permanent forsaking and abandonment by one spouse of the other without that other's consent and without reasonable and just reason. In other words, it is an absolute repudiation of the obligations of marriage, it is not the withdrawal from a place, but from a state of things¹⁵. Desertion cannot be made out by a single act but, it is a continuous course of conduct."

Desertion can be viewed as synonym to terms like abandonment, forsaking, relinquishment, abstinence, refraining from marital obligations, total repudiation, separation, renouncement and other such terms.

¹¹ (2014) 7 SCC 640

¹² 1985 (1) HLR 569 (P&H)

¹³ AIR 1956 Mad 195

¹⁴ (2002) 2 SCC 73

¹⁵ Available at www.lawweb.in/2013/01/there-can-be-no-desertion-without.html; Last visited on 04/03/2016

ESSENTIAL ELEMENTS OF DESERTION:

It was in **Bipinchandra Jaisinghbai v. Prabhavati** ¹⁶that the Court elaborated and shed light on the concept of desertion. The following is the reproduction of what was held by the hon'ble Court, "For desertion to be proved, on behalf of the deserting spouse, two essential conditions must be there, they are: (i) fact of desertion and (ii) the intention to end cohabitation permanently. And so are 2 other essentials required to be present on behalf of the deserted spouse; they are:.....(i) absence of consent and (ii) the absence of conduct that gives reasonable ground to the spouse leaving the matrimonial home......Desertion is always to be proved depending on the factual circumstances of every case...... However, desertion is said to initiate as an offence or a wrong when both the essential elements, that is, the fact of separation and animus deserendi exist at the same time. But they need not begin together at the same, it may be the case when separation begins first and intention develops later so when they both exist at same time then desertion will occur."

In order to prove desertion there are 2 elements that are sine qua non, first is the actual fact of separation that is to say, factum deserendi and secondly, the intention to desert or the animus deserendi. Hence, the fact of being separated alone cannot amount to desertion but has to be accompanied with intention to desert as well and same way only the intention or the thought of wanting to separate from the spouse without any actus reus will not amount to desertion. This view was enumerated in **Bhupinder Kaur v. Budhi Singh**¹⁷ wherein it was observed that merely living way for a long time period cannot attribute animus deserendi on that party.

Where a wife stays away from her husband in order to pursue her studies with the fond hope of improving her career and gets a job later on, but, is also willing to leave the job in order to live with the husband, she cannot be held guilty of committing desertion¹⁸. Also where the spouse is living away in order to get medical treatment cannot be held for desertion¹⁹. Further in **Pradip Kumar Kalita v. Hiran Provo Kalita**²⁰ it was held that a wife who left her matrimonial home

¹⁶ AIR 1957 SC 176

¹⁷ I (2002) DMC 735

¹⁸ Vegi Jagadesh Kumar v. V Radhika (2000) I HLR 229

¹⁹ Rajan Damoder Sapre v. Sumidha 2006 (1) Bom CR 483

²⁰ II (2003) DMC 316 Gau

and stayed with parents because of the refusal of the husband to keep her was not guilty of desertion.

In **Manjit Kaur v. Mohan Singh**²¹ the petitioner was an army officer and whenever he used to visit his home on leave, his wife used to accompany him and after he left she used to return back to her parent's house. The Court held this not to be desertion since there was no separation on the wife's side and for desertion the fact of separation has to lie towards the spouse and not the family members of the spouse and in addition to this there was also not seen any intention of the wife to desert since on every occasion of the husband coming back on leave whenever she got an opportunity she used to make full use of it and used to stay with him.

Where a wife was seen to have left the matrimonial house under a delusion that it would be unsafe to live with her husband, she was not considered to have deserted her husband since she did not possess the mental capacity to form the sine qua non that is, animus deserendi²². In Sucha Singh v. Paramjit Kaur²³a husband sought divorce alleging wife's desertion, he alleged that she didn't live with his parents in Hoshiarpur and rather compelled him to take her with him to USA where he was residing. The Court held this not to be desertion and dismissed the petition accordingly. In Om Wati v. Kishan Chand²⁴, the parties married on February 2, 1976 subsequent to which the wife gave birth to a female child who died later on. On May 22, 1981 the wife filed a divorce petition against the husband on the ground of desertion. The findings of the hon'ble Court showed that both the parties were living separately right after 3 years of their marriage but the court could not find the presence of animus deserendi, which came to be proved when the death of their daughter child was informed to the husband and he did not turn up for performing the last rites of his child. The conduct of the husband prima facie showed that he had no attachment left even for the daughter and that he had totally broken up from the family and had forsaken and abandoned them. The husband also refused to pay interim maintenance and litigation expenses in favor of the wife. The Court granted divorce to the wife on the ground of desertion.

²¹ AIR 2007 (DOC) 66 (P&H)

²² Pery v. Pery (1963) 3 All ER 766

²³ AIR 2002 P&H 46

²⁴ AIR 1985 Delhi 43; 1984 RLR 363

If combined the major elements constituting desertion would be i) the fact of separation; ii) the intention to desert or animus deserendi; iii) such desertion being willful; iv) such separation sustaining for a period of continuous 2 years; likewise there are 2 more essentials which need to be fulfilled on the part of the deserted spouse, they are, i) the absence of consent on the part of deserted spouse and; ii) absence of such conduct giving reasonable cause for the deserting spouse to desert. The latter two elements being essential on the part of the deserting spouse have been a very important mandate for the Courts to decide cases of desertion.

In **Indira v. Shailendra**²⁵ it was observed that where a wife was living with her parents in order to pursue her studies could in not be held for desertion. In **Bishwanath Pandey v. Anjana Devi**²⁶ wife lived away from husband in a room that was husband's quarter and was not living with her parents, the husband charged her of having illicit relations with other males which was absolutely false. The Court held the wife not guilty of desertion.

In **P. Kalyanasundaram v. K Paguialatachamu**²⁷ the wife stayed away from husband for 14 years but somehow agreed to come back on a request made by the husband. But she did not join him even for a single day. The husband filed suit for restitution and she filed a suit for separation. The Court here found that it was clear case of desertion by the wife since her filing of separation suit revealed her intention to never return to husband (*animus non revertendi*).

It can be summed up that for desertion to occur, coexistence of the factum and animus are a mandate, occurring of one without or in exclusion to other will not amount to desertion. In **Lepre v. Lepre**²⁸, the same was held that the factual separation and the intention must coexist with each other and only then can desertion be said to have taken place. In a case²⁹, a wife had deserted her husband for an unbroken period of 2 years and subsequently went to her in-law's house and collected all her belongings from there, the animus was seen to be proved by this act of hers. Subsequent act confirmed her intention to desert and hence both elements came to coexist and thus, desertion was said to have taken place.

²⁵ AIR 1993 MP 59

²⁶ (2002) II DMC 397 (Jhar- DB)

²⁷ AIR 2004 Mad 43

²⁸ 1963 2 All ER 49

²⁹ Praffula Kumar v. Sarla, AIR 1998 MP 285

THE PERIOD OF 2 YEARS:

The period of 2 years does not mean an aggregate period of 2 years but it mean an unbroken continuous period which started off when the parties began to live apart and did not live together during this continuous stretch. This however implies that desertion will continue even if parties continue to live apart for more than 2 years and will not be actionable per se until and unless a petition for separation or divorce making desertion a ground would not be filed. Hence, desertion is inchoate and will only ripen when a petition is filed in the Court of law. If for example, the parties continue to live apart for a period of 10 years and thereafter they decided to join back the company of each other and resumed living as husband and wife thereby fulfilling marital obligations then, desertion will stand as null and void since no petition was ever filed making desertion a ground for divorce. In *Nash v. Nash*³⁰ the Court held that a petition filed for judicial separation before the expiry of 2 years would be premature and will be dismissed.

Also in **Eveline v. Eveline Joseph**³¹ it was held that even if the period of 2 years completes before the hearing, it would still not cure this defect. Likewise was held it **Santosh Kumari V. Shiv Prakash Sharma**³² the Court laid that where the prescribed period in the statute did not elapse since the alleged desertion the petition for divorce on this ground will not be entertained.

In **Satgunj v. Rahmat Dil Murad**³³ the Court held that 2 years does not mean several short periods of refusal to live together in aggregate but an unbroken period of 2 years. Payment of maintenance amount by the husband towards his wife would not constitute an interruption to the 2 years period of desertion.

There was another case of **Rakesh Ranjan v. Dr. Anita Sood** ³⁴ which showed that mere living away of the spouses for a continuous period of 2 years would not prove desertion. In this case the wife stayed with the husband for about 3 to 4 days after marriage, after which the husband went to Kanhwara in Katni district in order to resume his duties and thereafter 25 day the wife got herself shifted to the hostel of her Medical college and after her course completion she joined a Hospital

³⁰ 5 Burma LT 85 : 15 IC 353

³¹ 6 BUR LT 177 : 7 BLR 377 : 32 IC 230

³² AIR 2001 Del 376

³³ AIR 1946 Sind 48

³⁴ 1989 (1) HLR 160 : 1989 (1) DMC 71 (MP)

also. She had written letters to the husband stating clearly that she was willing to live with him as his wife but she only didn't want to live with his entire family since the house was congested. The court here found absence of animus deserendi and thus held it not to be desertion.

Also, the deserting spouse has the right to revoke such desertion and to withdraw from the state of desertion hence he or she has the locus poenitentiae and can purge the after effects of desertion by offering the deserted spouse to live with him or her that is, the deserting spouse with the deserted spouse³⁵.

KINDS OF DESERTION:

Primarily desertion is classified into 2 kinds which are Actual desertion and Constructive desertion. However, concepts of Mutual desertion and Supervening desertion are also seen to exist.

• Actual Desertion

Actual desertion is said to happen when the spouse in the literal sense "runs away" from his matrimonial obligations. It means where the spouse explicitly refuses to perform his matrimonial obligations, acts in disobedience to the other spouse or ceases to cohabit with the other spouse. Here factual separation. To be precise it means when a spouse actually shoves away with all his matrimonial duties and in actual runs away or leaves the matrimonial home permanently. It can also be said that when the fact of separation and animus to desert lies on the part of the same spouse, then it is said to actual desertion.

• Constructive Desertion

Constructive desertion is where the conduct of one spouse makes it impossible for the other to live with the former. This doctrine lays that the conduct of the respondent is such that it cannot be reasonable expected from the petitioner to reside with the respondent. It can be termed as

³⁵ Ashim v. Anusree 1991 (1) HLR 611 : 1991 (2) DMC 41 (Cal) (DB)

compulsive desertion wherein the petitioner is in a way impelled to withdraw from the normal course of matrimonial life.

A fact that gained clarity here was that it is not necessary that every time the spouse who leaves the matrimonial house would be the deserter. This may be the case in actual desertion where this leaving would be accompanied by the intention to desert as well. But, in the case of constructive desertion, one spouse makes it absolutely impossible for the other to spouse to live in a combined marital household and thus the deserting spouse can be seen to have been impelled by the other spouse to withdraw from the household. Thus, the deserting spouse although has fact of separation but lacks intention to separate because such factum occurred due to the intention of other spouse who forced the former to leave the house. Thus, where one spouse by way of his words and conduct forces the other spouse to leave the matrimonial house, then even if the latter spouse has physically separated but still the former spouse will be held for constructive desertion because of whom the other spouse has left the matrimonial home³⁶. It was held in **Stickert v. Stickert³⁷**, that desertion is not determined solely on the basis of the fact that who left the matrimonial home. In **Sadananda v. Indra Devi³⁸**, a wife keenly wanted to come back but the husband was not interested in rehabilitating her. It was held, that the husband cannot hold wife guilty of desertion because this was a case of constructive desertion.

If one spouse is obligated by the conduct of the other spouse, to leave the home then the former spouse responsible for driving out the latter would be held guilty of constructive desertion³⁹. In *Lang v. Lang*⁴⁰ the Privy Council laid,

"Since 1860 in England it has been recognized that the party who is truly guilty for breaking off the home is not inevitably or in all cases the party who first initiates the departure. The party who stays behind (their Lordships will assume this to be the husband) may by such conduct on his part making it unbearable for a wife with reasonable self-respect, dignity or powers of endurance, to

³⁶ Bipinchandra Jaisinghbhai Shah v. Prabhavati, AIR 1957 SC 176 at 187-8 : 59 Bom LR 323 : 1956 SCR 838

³⁷ (1899) P. 278 at 284; Buchler v. Buchler, (1947) I All ER 319

³⁸ (1995) II DMC575 : CXI –(1995-3) PLR164 (P&H)

³⁹ Sharda v. Kiran 1985 (2) DMC 257 (Del)

^{40 (1955)} AC 402

stay with him, so in such case, he is the party, really responsible for the breakdown of the marriage. He has deserted her by way of expulsion and thus, driving her out."⁴¹

In **Le Broco v. Le Broco**⁴², the wife turned out the husband from combined marital bedroom by bolting the door from inside. There existed no communication between the 2 spouses yet the wife continued to cook meals for him and husband continued to pay her weekly sum for the purpose of house-keeping. It was held not to be desertion. The Court observed, " there was separation of words spoken, separation of their hearts, separation of their bedrooms, yet one household was seen to be carried on…"

In **Roi v. R. Naik**⁴³, the husband after few of year of marriage brought a woman into the matrimonial home with whom he had relations and compelled for that woman to live in the same household, when the wife asked the husband that either she would stay in the house or will that woman, the husband very calmly asked her to leave. The wife then went away and never again resumed cohabitation with the husband. Thus, here the husband was said to be guilty for constructive desertion.

In **Ashok Kumar v. Shabnam Bhatnagar**⁴⁴, the husband and in-laws harassed the wife by making demand for dowry and eventually the husband abandoned the wife. The wife was left with no option than to leave the matrimonial home due to such constant harassment and abandonment. The wife not held to be in desertion although she was the leaving spouse because the conduct of husband and in-law amounted to constructive desertion.

The husband got a mistress in the house in spite of the wife's protest is **Rengaki v. Arungiri**⁴⁵, he had sex with the mistress in wife's presence to which the only resort left with the wife was to leave the marital home. The Court held wife was not in desertion since the exculpatory behavior of the husband left wife with no option than to leave the house holding husband for constructive desertion. Where a wife lived away from husband for 30 years but was still willing to join his

⁴¹ Available at indiankanoon.org/doc/261428/ as lang v. lang considered in Manglabai v. Deorao Gulabrao AIR 1962 MP 193

⁴² (1964) I WLR 1085

⁴³ AIR 1930 Mad 140

⁴⁴ AIR 1989 Del 121

⁴⁵ AIR 1993 Mad 174

company but was driven out of the house by her husband, the husband was held guilty for constructive desertion⁴⁶.

The only point of difference would be that in actual desertion there is actual abandonment or actual running away from the marital obligations whereas in constructive desertion it would be the expulsive conduct of one spouse.

In **Asha Handa v. Baldev Raj Handa**⁴⁷, there existed a separation agreement between the 2 spouses of which the husband was taking the plea, but the Court however, found out that the agreement also existed due to the harsh, selfish, expulsive, self- indulgent behavior of the husband because of which there was no way out for the wife but to agree to this agreement, hence, the Court held that husband was guilty of constructive desertion and could not be permitted to take the plea of the separation agreement.

The Court in **Dharm Dev Malik v. Rajrani**⁴⁸, held that where a husband prevented the wife from coming back to matrimonial home he cannot take the plea of wife being in desertion, it would be the husband who would be responsible for constructive case. In this case the husband surmised the faithfulness of his wife and sent her to her father's house after a year and 3 months of marriage. The wife stayed with her father for 15 years and the husband did not make any effort to bring her back. Thereafter, a petition for divorce was filed by him on the ground of desertion. Rejecting which the Court held the husband guilty and not the wife.

• Supervening Desertion

The term 'supervene' means arising of impossibility after formation of a contract but before it's performance is due.⁴⁹ Supervening desertion means earlier there was only physical separation with clear intention to come back and re-join the marital household but subsequently, there is development of an intention to desert. For example, when a spouse leaves the house for work purpose having clear in mind that s/he will return back to the marital home but subsequently, s/he develops an intention to desert, at this stage since physical separation was already existing, the day

⁴⁶ Rajesh v. Rukmani, AIR 2000 MP 227

⁴⁷ AIR 1985 Del 76

⁴⁸ AIR 1984 Del 389

⁴⁹ Black Law's Dictionary Page 772, Eighth Edition, Editor in chief Bryan A. Garner, published by Thomson West

intention comes to take place the spouse becomes the deserter and the other spouse can file a suit for desertion as a ground for divorce.

In this case the statutory period for desertion will begin from the date on which the intention to desert was formed and not when the spouse had left the matrimonial home. The other party thus, after having knowledge of such intention to desert being formed can sue for desertion. This was held in **Pardy v. Pardy**⁵⁰.

Till now there has been no Indian case on this kind of desertion. And lastly, this kind can also include spouses who are in prison.

• Mutual Desertion

Mutual desertion is that when both the parties irrespective of each other's consent, without taking care to obtain such consent live separately, while there is no such thing as mutual desertion and the Hindu Marriage Act, 1955 instead provides for mutual consent as a ground for divorce and also when parties live separate from each other for 1 year or more, so when such ground already exists then what is the need to incorporate mutual desertion separately.

In an English case of **Price v. Price**⁵¹, the English Court held that the parties should be seen to have deserted each other and must be granted divorce on this ground, provided such desertion exists, without mutual consent, is permanent and both spouses are living independent of each other. However, it should also be noted that English law does provide for divorce by way of mutual consent if the parties are found to be living away from each other for 2 years.

Now focusing on the view taken by the Indian Courts, the Allahabad High Court in **Guru Bachan Kaur v. Preetam Singh**⁵², absolutely nullified the concept of mutual desertion and held that no such concept exists. It laid that there has to be one party who will be guilty. In this case, the husband after 7 years alleged desertion on the wife. The court found that husband was never in favor of accepting the reasonable wishes of a working wife and also had not made any efforts whereas the wife was still ready to live with the husband in her flat located at the place of her

⁵⁰ (1939) 2 All ER 779

⁵¹ (1968) 3 All ER 543

⁵² AIR 1998 All 140

service. So it was constructive desertion wherein the husband made it impossible for the couple to live together, and not of mutual desertion.

DESERTION AS GROUND: A PRAGMATIC VIEW

Desertion as A Ground For Divorce:

By now, it is very clear that desertion can be a ground for divorce and a petition for divorce can be filed making desertion a ground. It is also clear that the onus to prove the act of desertion lies on the petitioner. But, divorce will not be granted if the petitioner is found to be guilty or if the conduct of the respondent having deserted the petitioner is well justified. The plain and simple rule of "who is guilty" would be taken.

In **Leela Devi v. Suresh Kumar**⁵³, a divorce petition filed by the husband, which he withdrew on receiving an assurance from the wife that she would be joining his company but she didn't live with him even for a single day. There was then again a fresh petition filed by the husband for divorce. In addition the wife had left the home and also stated unwillingness to live with the husband. Her conduct of leaving the house showed an implied intention of not to live and expressing unwillingness was an explicit expression to her intention to leave. The husband was therefore granted divorce on the ground of desertion.

Vinay Kumar v. Nirmala⁵⁴, was a crystal clear case of intention to desert. The wife was unable to adjust with the husband and in-laws. She used to be abusive and violent towards them, once she even threatened to put the matrimonial house on fire. She then left her matrimonial home and did not return. Looking at her conduct while she was living in the matrimonial home her intention to desert could be clearly construed and thus, the husband was granted divorce.

In **Chintala Venkata Satyanarayana Rao v. Chintala Shyamla**⁵⁵, the wife left the marital home with the intention to permanently forsake the marital ties. The Court found husband entitled to get divorce based on wife's desertion. The Court took into consideration **Bhagat v. D.Bhagat**⁵⁶. In

⁵³ AIR 1994 Raj 128

⁵⁴ AIR 1987 Del 79

⁵⁵ AIR 2003 AP 322

⁵⁶ AIR 1994 SC 710 : 1994 AIR SCW 45

Neelam v. Vinod Kumar⁵⁷, the husband and wife resided together for sometime and then the wife left the matrimonial home. Subsequently, a petition for recovery of dowry articles was filed by her. The Court held that filing of this petition was a clear indicator of her intention to desert.

In **Geeta Jagdish Mangtani v. Jagdish Mangtani**⁵⁸, the husband was deserted by wife stating that he had low income. The wife shifted from her matrimonial house in Bombay to her parent's house in Gujarat and also gave birth to a child there. The wife being prior to marriage was aware of low income prior and did not serve as a reasonable cause to desert. The husband was thus, held entitled to a decree of divorce on account of wife's desertion.

In **N.B Rukmani v. P.M. Srivastava**⁵⁹, the wife left the marital home without giving any information to the husband. 2 years thereafter, she came in a car and withdrew all her belongings along with jewelry from the matrimonial home and again left without informing or meeting the husband. This was considered to be a clear case of desertion by the wife.

In **Deo Kumar Sah v. Anjali Kumari Sah**⁶⁰, the wife was found living apart from the husband for a period of 26 years. The Court held that at this juncture, the wife cannot claim resumption that she now intends to resume cohabitation with husband. The Court therefore, granted divorce to the husband.

Where the conduct of the wife would lead to a sequence of acts clearly depicting the happening of such events that point towards the wife's clear disobedience towards the marital tie; in *Jasinder Kaur v. Gurbaksh Singh*⁶¹, the wife at first took away all her articles and belongings from the matrimonial home and thereafter got herself enrolled in a nursing college quite far from her marital home. This conduct therefore, clearly depicts her intention to desert.

Desertion can usually be seen to exist when one spouse tends to develop an untenable demeanor towards the other spouse which in the eyes of law does not prove to be a reasonable or sufficient reason. In **Kashmir Kaur v. Prem Singh**⁶², the husband had a son from previous marriage and

⁵⁷ AIR 1984 Kant 131

⁵⁸ AIR 2005 SCC 3508: 2005 (8) SCC 177: 2005 (7) SCALE 382: 2005 AIR SCW 4755

⁵⁹ AIR 1984 Kant 131

⁶⁰ AIR 2009 Pat 4

^{61 1983} HLR 509 (P&H)

^{62 1990 (1)} DMC 594 (P&H)

the present wife was unable to cope with the fact that she had to take care of the husband's child from his former wife, the Court considered this not to be a just ground for desertion. In *Jasbir Kaur v. Ranjit Singh*⁶³, the wife had a strong apprehension that the husband may marry second time and therefore kept herself excluded from his company, this definitely was not held to be a justifiable reason for the wife to live apart.

In **Jagannath v. Krishna**⁶⁴, the wife became a Brahma kumari. She left the matrimonial home. Husband was thus, granted divorce. This unique case portrays that there is not always necessary for the spouse to have complaints against the other spouse, but sometimes there can be such spiritual and religious reasons too that can lead to end of a marriage.

Desertion as Not A Ground For Divorce:

For desertion to be proved, 2 necessary elements of i) factum of separation ad; ii) intention or animus to desert need to be proved. Where only one of the two elements exist, desertion cannot be said to have taken place and hence, not a ground for divorce.

In **Sanghamitra Singh v. Kailash Chandra Singh**⁶⁵, it was held that where the wife was in service at a place other than her marital home, she appeared to have no intention to snap the marital bond was not in desertion and desertion could not be pleaded as a ground for divorce.

In **Shanti v. Ramesh**⁶⁶, Justice Katju observed, that just because a wife refuses to resign from her job on her husband's demand, she cannot be held to have withdrawn from his society.

In **Uma Shankar Doshi v. Rajesh Wasi**⁶⁷, it was found that where the spouses were living separately for many years, this living separate could not be treated as a ground for divorce. Such separate living can be a result of many other reasons.

⁶⁶ 1971 All LJ 67

⁶³ 1975 HLR 16 (P&H)

⁶⁴ 82 PLR 83

⁶⁵ AIR 2001 Ori 151

⁶⁷ AIR 1991 Raj 149

In **Teerath Ram v. Parvati Devi**⁶⁸, the Court took note of "good intention". The wife with her minor son was living separately from her husband to lessen her his burden and responsibilities, foster the growth of his career and help him establish himself and build a separate matrimonial home for them, thus, here the Court did not consider this desertion in any form rather in my opinion it would been act of sacrifice on the part of both the spouses in a hope to build a golden future from them and their child as after a marriage it is a very difficult task to stay away and live separately from one's spouse.

In **Kasuri Dhanum Kumari v. Kasuri Venkata Vara Prashad**⁶⁹, the husband and wife entered into an agreement before the marriage that the husband would get a flat near the wife's university in order to foster her research career. But, this was never complied and, the wife lived in a separate house. Wife was always willing to join the company of her husband provided he met this condition and so desertion in the instant matter did not exist.

In **Shyam Sunder Kohli v. Sushma Kohli**⁷⁰, the husband filed a petition for divorce basing desertion as a ground. The evidence showed that the wife was actually forced to leave the house but no desertion could be proved. The Court held that that marriage could not be dissolved on the mere ground of it being broken irretrievably, had desertion been proved then still divorce could have been granted but, that is not the case now.

In **Lakkaraju Pradma Pria v. Lakkaraju Shyam Prasad**⁷¹, the wife on account of her medical ailment, to receive a better treatment she was admitted in a hospital and thus, separated from her husband. It was held that here only the factum existed and because of absence of any intention it was not desertion as alleged by the husband.

Desertion When Or When Not Cruelty:

Often it happens that cruelty becomes the very reason or ground for desertion and vice versa also. Thus, where a spouse is being treated with cruelty and being tortured whether physically, mentally

⁶⁸ AIR 1995 Raj 86

⁶⁹ AIR 1998 AP 225

⁷⁰ AIR 2004 SC 5111: 2004 (7) SCC 747: 2004 (8) SCALE 388: 2005 (1) MPLJ 14

⁷¹ AIR 2009 AP 54

or psychologically, it would be an extremely normal phenomenon if that spouse leaves away the matrimonial household where he or she is subjected to cruelty. It is very obvious and a very basic nature of human beings that none of us want to be controlled by anyone and none of us can tolerate harsh, rigid and more specifically cruel kind of behavior towards us. Hence, it is always better to end or leave such relations which do not give us the space even to breathe.

In **Parimi Mehar Seshu v. Parimi Nageshwara Sastry**⁷², the husband proved that wife treated husband with cruelty, deserted him frequently and hardly ever showed any kind of affection towards him. The Court held, such acts of frequently deserting the husband as per her wishes amounted to cruelty on her part.

In **Dharam Pal v. Pushpa Devi**⁷³, the wife was living apart from husband for about 20 years without any valid justification for such separation and in addition to this, she had filed serious complaints against the husband to higher authorities, which in the perception of the Court, amounted to cruelty. Thereby, divorce was granted.

In **Sheetal Raju v. Raju Malhotra**⁷⁴, the wife was inflicted cruelty upon by the husband but unfortunately, could not present much evidence in the Court in order to prove such charges. In such a case her refusing to join back the matrimonial home was construed to be cruelty by the wife towards husband.

In **Sudershan Bhagra v. Subhash Chandra**⁷⁵, the husband was an army officer and hence he was not living with the family. The wife had agreed to leave her job after their marriage, which she did not do. After marriage, two children were born but still she hadn't quit her job. The children fell very sick and she still continued to going to her office. Whenever the husband used to come to marital home during his leave, there were always ugly scenes and the relationship had become very strained. During the fights, husband often felt humiliated and insulted. In my opinion, such humiliation and strained marital relationship would amount to cruelty upon the husband since he

⁷² AIR 1994 AP 92

⁷³ AIR 2003 Raj 280

^{74 2005 (2)} Mah LJ 250: II (2005) DMC 487 (Bom)

^{75 1978} HLR 425 (del)

had told the wife to leave her service prior to marriage only and to which she had also agreed the, so the, why was she not ready to leave the service now.

In Malathi Ravi, MD v. B.V. Ravi, MD⁷⁶, the husband had initiated the divorce proceedings alleging desertion by the wife. The husband and wife stayed together for 1 and half years post marriage. The husband contended that the wife was non cooperative and arrogant and that her behavior towards the in-laws absolutely unacceptable and that she left the matrimonial home with the child decided not to come back for 3 years. It was further alleged, that she had then left the child at her parent's house and herself took admission in a medical college. The husband further stated that all his efforts to bring her back went in vain since she never replied to the letters written by him and when he went to the home of her parents he was forcibly thrown out. Wife contended that when she was residing in the marital home, his sister and brother in law influenced her husband against her that he should not let her pursue higher studies and should rather be made to stay at home like an unpaid servant. The wife then as per a custom, went to her parental home till the time the child was not delivered. She contended that all through that time the sister and brother in law had succeeded in poisoning the mind of her husband and consequently, neither he nor does any of his family members, even though were properly invited failed to turn up for the naming ceremony of the child. She alleged that all her efforts to go back into the matrimonial home went in vain since the actions of the husband were guided by the ill advice of his sister and brother in law. The wife hence filed a postulation for the restitution of conjugal rights.

The principal Family Judge found that there did not exist any scuffle between the couple and also found instances of husband meeting the child, taking child for vaccinations and spending some time, not to attend naming ceremony was their choice. The husband was also able to recognize his son when the photograph was shown to him which would not have been possible if the husband's assertions be believed. The Family Judge dismissed the husband's petition for divorce and allowed for the wife's petition for restitution of conjugal rights. But, the wife didn't go to the matrimonial home only and when she went she took a relative with her who was a police official. This conduct of the wife showed her unwillingness to join the marital home. The High Court here held that the wife did not have the intention to lead a normal marital life. The case for desertion was however not found to be made, since the condition of statutory period of 2 years was not found to be

⁷⁶ (2014) 7 SCC 640

complete, because, the husband had admitted to have visited the wife for 2 days in 1999. Thus, the Family Court had opined that there was not sufficient evidence on record to bring out a case for desertion and hence looking into the mental trauma and agony that the husband had to face due to the conduct of the wife the ground for divorce was changed from desertion to cruelty and the Court passed a decree of divorce in the favor of the husband.

Termination of Desertion:

Desertion is a very different ground as compared to other ground of divorce like cruelty and adultery. To me it seems like a softer ground which indirectly gives parties time to reconcile as, it is actionable only after a petition is filed with that regard. Desertion will not arise a cause of action until and unless a petition is filed in that respect. Unlike cruelty and adultery, where the cause of action arises the moment they occur, the cause of action will arise only when a party files a petition in this regard. Thus, till the time no such petition is filed, parties are at full freedom to terminate the desertion at any time and resume their cohabitation together. Desertion can be terminated in the following ways:

i) Resuming cohabitation

Resumption of living with the spouse will end the desertion. No matter how long the period of desertion has been, once the parties decide to resume cohabitation desertion comes to an end. There should however be the mutual consent of the parties for such resumption. It should not be that the deserting spouse comes and stays in the matrimonial home for a few days without any intention to reconcile. If this is so then desertion will not come to an end because for desertion to come to an end the intention to reconcile on the part of both the parties is very essential and parties should be mentally prepared to resume cohabitation.

ii) Resuming Marital Intercourse

Resuming the act of having marital intercourse with the spouse proves to be a great deal for termination of desertion. If such intercourse has happened but, yet the parties are not able to live together due to some unavoidable reasons, it would still be treated as a terminated desertion. But, where such intercourse is like a casual act of intercourse and the parties though having participated

have in actual repudiated the relation in all other aspects, it would not amount to termination of desertion⁷⁷.

iii) Offering to reconciliate

Where the deserting spouse expresses the intention to come back, desertion is said to have terminated. Animus revertendi denotes an intention to come back or return. Thus, where this intention is expressed, desertion ends that very moment. However, if the deserted spouse refuses to take back the deserting spouse then, he himself becomes the deserter. Requirements of a valid offer for reconciliation were laid in the case of **Bipin Chandra Jaisingh v. Prabhavati**⁷⁸ as the following:

- a) Offer should be a genuine one: The offer must be genuine and not just only have the intention to resume marital life but also should provide for just means to fulfil such intention. In **Shyam Chand v. Janki**⁷⁹, the husband had by his conduct driven the wife out of the matrimonial home, and when the wife filed petition for maintenance, he agreed to take her back. But, after some time he backed out and when people asked him to reinstall the wife he threatened to initiate proceedings for divorce. He then filed the petition, and the Court found that his conduct was in absolute non consonance with the offer.
- b) Offer must not be accompanied with unreasonable conditions: The offer being genuine must not be coupled with some sort of unreasonable conditions which would act as a hindrance for the parties to live together. In **Krishnabai v. Punamchand**⁸⁰, the wife deserted the husband on the ground that her father-in-law misbehaved with her. She was not able to prove such allegations. To the reconciliation offer, she attached a condition that she would only live with the husband if he lived separately from his parents. The Court therefore, held this condition to be an unreasonable one.
- c) Offeror must not be involved in any other kind of marital misconduct: Desertion will not come to an end where the spouse leaves the other spouse due to a reasonable reason like that of adultery or cruelty. In the above mentioned situations even if the spouse refuses to

⁷⁷ Perry v. Perry, (1952) 1 All ER 1076, per Hadson, L.J

⁷⁸ AIR 1957 SC 176

⁷⁹ AIR 1966 HP 70

⁸⁰ AIR 1967 MP 200

take back the deserter spouse s/he will not be held for desertion⁸¹. The spouse rejecting the offer to terminate desertion must also specify in the reasons for such refusal since such refusal should not be construed without just cause⁸². In **Shingara Singh v. Sukhwinder** *Kaur*⁸³, it was found that the willingness to join on the part of the wife was an extemporaneous design to get away with the crisis of the divorce petition. It was held that this not a genuine offer.

CONCLUSION AND RECOMMENDATIONS:

Desertion in the literal sense means deserting or forsaking or abandonment of one spouse by the other. Desertion can also be said to be negation of living together, i.e. when a marital couple ceases to live together renouncing all their marital duties and obligations. It is provided as a ground for divorce under section 13 (1) (ib) of the Hindu Marriage Act, 1955⁸⁴. It is pertinent to note that desertion can be taken as a ground for divorce only when the abandonment or separation has occurred for a continuous period of 2 years. There must not be any gap i.e. to say, that the period of 2 years should be continuous. The spouses must have been living separately for minimum 2 years in order to make desertion as a ground for divorce. Desertion in order to seek divorce under the Act means the deliberate permanent forsaking and abandonment by one spouse of the other without that other's consent and without reasonable and just reason. In other words, it can be termed as absolute repudiation of the obligations of marriage. Desertion is not withdrawing from a place, but from a state of things. It is pertinent to note that desertion was not recognized as a ground for divorce earlier and it was only after

However after going through in detail and scrutinising desertion to be a ground for divorce, the researcher is left to blow hot and cold at the same time, since on one hand it seems that desertion in many cases proves to be a saviour however in some cases it also proves to be a negative, for example, the condition of fulfilment of the period of 2 years often becomes a deterrent for the deserted spouse. The deserted spouse is left with no option but to wait for the deserting spouse and

⁸¹ Bowron v. Bowron, (1925) P. 187; Edwards v. Edwards, (1948) P.126

⁸² Ogden v. Ogden, (1969) 1 WLR 1425

^{83 1980} HLR 644 (P&H)

⁸⁴ 13 (1) (ib) of the Hindu Marriage Act, 1955

in cases wherein the deserted spouse is aware that the deserting spouse has deserted him or her, he or she still do not possess the qualification to knock the door of the Court for being granted divorce since that 2 year condition sword is hanging which needs to be necessarily fulfilled. A situation like this had arisen in **Darshan Kaur v. Kashmir Singh**⁸⁵ wherein, the husband had left India and gone abroad and for 3 years continued to send the money as maintenance for his wife and child which thereafter he stopped and nothing was heard of him as well. On the wife approaching the Court with a petition for divorce, the Court held that there was no evidence to illustrate desertion and showcase that the husband had permanently brought cohabitation to an end. This case in my opinion put forwards before us that there exists some lacunae pertaining to the clause of desertion and its ingredients to be proved as a valid ground for divorce. Since in the instant matter, the wife would be left to an endless wait for her husband and it would be as per the husband whether to contact her or not, he may even be living with some other lady abroad but the wife here in the eyes of law is entitled to get divorce merely because animus could not be well established and she in her country is left with no right to move forward in life and instead is stuck in that marital bond of which she is neither sure nor of which her husband is fulfilling obligations.

Such instances portrait that in spite of having a well-established legislation there are still loopholes and some missing elements which prevent the legislations from being an absolute success. Another such point that was observed by the researcher was that desertion serves to be like a double edged knife, like in the case of constructive desertion it is the spouse that stays back in the home who incites the deserting spouse to desert by creating such uncongenial conditions that the deserting spouse has no option but to leave, this was observed in **Sunil Kumar Gupta v. Kunti Gupta**⁸⁶ wherein the husband had impelled the wife to physically leave the house by ill-treating her, however, the wife was still ready to return provided the conditions were congenial for her peace and safety. But, the Court held that though physical desertion was made out but there was a failure to determine animus since the wife was pretty much ready to return back provided the conditions were congenial and reasonable. It is pertinent to note that it is actually left up to the whims and wishes of the husband, that whenever he wants he pushes wife out, the wife is neither able to prove desertion nor is she being taken back into the house. First, the husband throws her out and then the

^{85 1 (2002)} DMC 735

⁸⁶ AIR 2003 Jhar 42

wife fears of being charged of desertion in spite of the husband's acts and has to return and then also the husband does not keep her. According to Indian society it becomes very difficult for the wife to sustain herself, her dignity and her self-respect. It is like being the victim and the culprit at the same time. On one hand the wife is being inflicted upon with ill-treatment and being forced to leave the house and on the other hand, upon leaving the house she is the one who is being charged for the offence of desertion.

A very interesting fact that the researcher came across was that under the Mizo customary law which states that when a husband is seen to have abandoned his wife and family his house, property, field everything belonging to him becomes the property of his wife. In fact not just property but the children also go to the wife and she is also entitled to the marriage price of their daughter. Like discussed above under the termination of desertion chapter, herein if the husband wishes to rejoin the wife and family it is completely left up to the wishes of the wife as to whether does she want him back or not and if she doesn't she is entitled to the house and the entire property. Moreover, another point of conflict in the researcher's mind came at the point that when does desertion become cruelty. Like in Sheetal Raju v. Raju Malhotra⁸⁷, the wife had withdrawn from the society of the husband and gave the reason as cruelty for her such act which however could not be established. Now in this case, the refusal of the wife to come back was construed as cruelty upon the husband by the wife. In such cases, the feeble and gutless wives are instead charge with cruelty for being unable to prove the cruelty inflicted by the husband. Now it is very important to see that in such cases how the Court's interpretation starts from desertion and ends at cruelty. Likewise in the case of Malathi Ravi, MD v. B.V Ravi, MD⁸⁸, the husband had alleged desertion by wife as a ground for divorce but on account of failure to prove the ingredients of desertion the Court construed the acts of the wife as inflicting cruelty upon the husband like, the unproved allegations of wife of the sister and brother in law pressurizing the husband to not to allow the wife to prosecute her studies, and to keep her as the unpaid servant of the house, the Court perceived such allegation to be very disturbing and hurtful if seen from a gender sensitive point. Secondly, it was seen that the wife during the course of her pregnancy had gone to her parent's house and did not return even after the birth of the child and in addition to this, she did not even let the

^{87 2005 (2)} Mah LJ 250: II (2005) DMC 487 (Bom)

⁸⁸ (2014) 7 SCC 640

husband bring her and the child back home which reflects her egocentric attitude and non-concern as to how will the father of the child feel. Thirdly, it was observed that the wife had gone to prosecute further studies in Gulbarga was not known by the husband only, and he came to know about it only when one professor told about it, and when he went there despite of repeated requests she showed disinclination towards coming back. Further, on the wife's petition of restitution of conjugal rights been granted she still waited for the last day of expiration period. This reflects a sense of doubt as well as hidden threat and further after staying for 2 months she went and launched 498-A, 506, 34 proceedings against the husband and in laws. The Court therefore held that the husband had reasonable reasons to feel humiliated for allegations made which are untrue, further his relatives were also dragged in the matrimonial controversy. Inferring from the facts mentioned above the Court held that the husband was treated with mental cruelty and granted divorce to the husband on the ground of mental cruelty and not desertion. Hence a question that arises here is that when does desertion amount to cruelty? On one hand the researcher was struck with a question that if at all the concept of desertion also concedes with cruelty then why to have desertion as a separate ground and why should it not be included in the very ambit of cruelty. However, this question was answered after reading instances wherein desertion as a ground for divorce actually stood successfully independent of cruelty and without cruelty as a ground for divorce being seen in a case. Thus to conclude desertion no doubt in few cases ends up being a kind of cruelty being inflicted on the other spouse, but in maximum cases it has proved to be of much importance for allowing the incompatible marital couples to undergo divorce on the very ground of desertion.