

Judicial Resolution of Marital Conflict Problem

GENERAL PERSPECTIVE OF MATRIMONIAL FAULT THEORY

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MATRIMONIAL FAULT THEORY

- Hindu Marriage Act, Special Marriage Act, Parsi Marriage & Divorce Act, Dissolution of Muslim Marriage Act & (Indian) Divorce Act recognize divorce on Fault Grounds.
- The matrimonial law in India has been greatly influenced by English Matrimonial Law.
- In England, Matrimonial Causes Act 1857 permitted divorce by judicial process for the first time.
- But under the provisions of said Act, husband could petition for divorce on the ground of wife's adultery. But a wife had to prove adultery coupled with either incest, bigamy, cruelty, desertion (2yrs) or rape or any other unnatural offence.
- Then, Matrimonial Causes Act 1923 put both husband & wife at par and wife could also sue for divorce on the ground of adultery.

MATRIMONIAL FAULT THEORY

- The Matrimonial Causes Act 1937 added three more grounds. They are- cruelty, three yrs desertion & incurable insanity.
- After IInd World War, a movement was developed for the reforms of divorce law & breakdown of marriage was accepted as the basic principle of divorce.
- Matrimonial Causes Act 1973 retains the breakdown of marriage as the basic ground of divorce.
- The Indian Matrimonial Law had closely followed the development in English law.
- The Converts Marriage Dissolution Act was passed in 1866 to provide facility of divorce to those who converts to Christianity & whose spouses refused to cohabit with them on account of their conversion.

MATRIMONIAL FAULT THEORY

- The first divorce statute was passed in 1869 i.e. Indian Divorce Act which was based on the Matrimonial Causes Act 1857 (of England). The Act laid down same grounds of divorce.
- When the Act was passed, it applied only to Christian marriages.
- When Special Marriage Act was passed in 1872, the Indian Divorce Act was extended to marriages performed under that statute.
- The Special Marriage Act was passed in 1954, Hindu Marriage Act in 1955, Parsi Marriage & Divorce Act was passed in 1936 which was amended in 1988.
- Dissolution of Muslim Marriage Act was passed in 1939. the Act conferred right of judicial divorce on wife on certain grounds.

Grounds of divorce

1. Adultery
2. Cruelty
3. 2 yrs Desertion
4. Conversion to a non-Hindu religion
5. Incurable insanity or mental disorder
6. Virulent & incurable leprosy
7. Venereal disease in a communicable form
8. Taking of sanyasa i.e. renunciation of world
9. Unheardness

1. Voluntary sexual intercourse with a person other than spouse
2. 2 yrs desertion
3. Imprisonment for 7 yrs or more
4. Cruelty
5. Venereal disease in communicable form
6. Leprosy, disease not having been contracted from petitioner
7. Incurable insanity or continuous or intermittent mental disorder of such kind & extend that petitioner can't reasonably be expected to live with respondent
8. Unheardness for 7 yrs or more

Additional Grounds for wife

1. Husband, since solemnization of marriage, has been guilty of rape, sodomy or bestiality
2. Cohabitation has not been resumed for one yr or more after an order of maintenance
3. Marriage was solemnized before wife attains age of 15 years & she has repudiated marriage after attaining that age (15 yrs) but before attaining the age of 18 years
4. Any other wife of the husband is alive at the time of solemnization of marriage

1. The husband, since solemnization of marriage, has been guilty of rape, sodomy or bestiality.
2. The cohabitation has not been resumed for one year or more after the passing of an order of maintenance

Grounds of divorce U/Divorce Act: S-10

Any marriage solemnized before or after the commencement of Act, may, on a petition either by husband or by wife, be dissolved on the ground that—since solemnization of marriage, the respondent –

1. Has committed adultery
2. Has ceased to be a Christian by conversion to another religion
3. has been incurably of unsound mind for a period of not less than 2 yrs
4. Has been suffering from a virulent & incurable form of leprosy for a period of not less than 2 yrs
5. Has been suffering from venereal disease in a communicable form
6. Has not been heard of as being alive for a period of 7 yrs
7. Has willfully refused to consummate the marriage
8. Has failed to comply with a decree for restitution of conjugal rights for a period of 2 yrs or upwards after passing of decree against respondent
9. Has deserted petitioner for at least 2 yrs
10. Has treated the petitioner with cruelty

Additional ground for wife- husband since solemnization of marriage has been guilty of rape, sodomy or bestiality

Grounds U/Parsi Marriage & Divorce Act:

Sec- 31: Unheardness for the space of seven years

Sec- 32: Any married person may sue for divorce on any one or more of

The following grounds—

1. Willful refusal to consummate marriage by defendant within one year of its solemnization
2. Defendant was of unsound mind at the time of marriage & continues to be so till filing of suit. But suit is to be filed within three yrs of marriage & plaintiff was ignorant of the fact of insanity at the time of marriage
3. Pre-marriage pregnancy of defendant. But pregnancy is to be by some other person, plaintiff is to be ignorant of pregnancy at the time of marriage, suit is to be filed within two yrs of date of marriage & marital intercourse has not been taken place when plaintiff came to know the fact of pregnancy
4. Defendant committed adultery, fornication, bigamy, rape or an unnatural offence. But the suit should be filed within 2 yrs from the date of knowledge of the fact

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Grounds U/Parsi Marriage & Divorce Act:

5. Defendant caused grievous hurt to the plaintiff or infected her with venereal disease or compelled (when defendant is husband) her for prostitution. But suit should be filed within 2 yrs from the date of fact
6. Defendant is undergoing a sentence of imprisonment for 7 yrs or more. But petition can not be filed before expiry of at least 1 yr's imprisonment
7. Defendant has deserted the plaintiff for at least 2 yrs
8. Parties had not resumed marital intercourse for 1 yr or more since the decree of maintenance to plaintiff against defendant
9. Defendant has ceased to be a Parsi by conversion to another religion. But suit should be filed within 2 yrs from the date of knowledge
10. Post-marriage unsoundness of mind i.e. defendant has been incurably of unsound mind for a period of 2 yrs or has been suffering continuously or intermittently from mental disorder of such a kind & to such an extent that plaintiff can't be expected to live with defendant
11. Defendant has treated the plaintiff with cruelty since solemnization of marriage. (ground 10 & 11 added by amendment in 1988)

Grounds U/Dissolution of Muslim Marriage Act S-2

A woman married under Muslim Law shall be entitled to obtain a decree for dissolution of her marriage on any one or more of the following grounds:

1. Whereabouts of husband are not known for a period of 4 yrs
2. Husband's failure/neglect to provide maintenance for a period of 2 yrs
3. Husband being sentenced to imprisonment for a period of 7/more yrs
4. Husband's failure to perform marital obligations without reasonable cause for a period of 3 yrs or upwards
5. Husband's impotency at the time of marriage & its continuance till the filing of the suit
6. Husband's insanity for at least 2 yrs or leprosy or virulent venereal disease
7. Exercise of right of repudiation by the wife (when wife is married before age of 15 yrs & she repudiated it before attaining 18 yrs & before consummation of marriage)
8. Husband's cruelty
9. On any other ground recognized as valid for dissolution of marriage under Muslim Law