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Conviction as a Ground for Divorce

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ABSTRACT

Marriage was once considered as a permanent union. In the present world, marriage has assumed the role of a contract between two adult individuals. Though marriage is still based on personal laws largely derived from religious order, marriage has transformed itself to the characteristics of a civil contract. Consequently, gone are the days when cancellation of this contract, widely known as divorce, is considered as a social taboo. Inter-alia with all other contracts which demanded a ground for its cancellations, the cancellation of marriage too needed certain grounds. With the passage of time, the grounds got altered. Some new grounds are created, while some grounds are dismantled. This article argues for the introduction of conviction as a ground for divorce.

At present, The Hindu Marriage Act 1955 and Indian Divorce Act 1869 do not have any express provision regarding convicted spouses. But, The Dissolution of Muslim Marriage Act 1939 and, The Special Marriage Act 1954 contains provision for divorce if the husband has been under imprisonment for seven or more years. Interestingly, only the wife can claim divorce. To put it in another perspective, the husband can never claim divorce, even if the wife has been convicted for any heinous crime. Thus, it is evident that a wife cannot bring forth the ground of conviction as divorce if the husband has been convicted for less than 7 years. Inter-alia, husband cannot bring forth the ground of conviction as divorce against a convicted wife.

Keywords: Conviction, Divorce, Marriage.

I. INTRODUCTION

Divorce, the legal dissolution of a marriage, is a complex and emotional process. Still, it is initiated by one or both parties due to irreconcilable differences. When one spouse is convicted of a criminal offense, it can have a significant impact on the marriage. The convicted spouse may be facing prison time, which can put a strain on the relationship. Additionally, the conviction may lead to financial difficulties and a loss of reputation. Still, there has been no attention by the legislature nor the judiciary in this matter. In these pertaining circumstances, this article tries to showcase the relevance of conviction as a ground for divorce.

The secular mind-set of the Indian legal system has initiated proclamation of various personal

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laws based on different religious faiths. Hindus, Christians, and Muslims are governed under separate marriage acts and grounds for divorce in India. Also there exists, The Special Marriage Act, which aims to secure a secular and uniform law for registration of marriages, regardless of the religion or faith of the individuals getting married.

In India, divorce can be granted on several grounds such as cruelty, desertion, adultery, insanity, conversion to another religion, incurable venereal disease etc. Additionally, The Hindu Marriage Act 1955 and, The Special Marriage Act 1954, provide for "irretrievable breakdown of marriage" as a ground for divorce. Also, the grounds vary depending upon the statute under which the marriage is registered. Hence it is important to know about the various grounds under different marriage acts existing in India.

II. GROUNDS FOR DIVORCE IN INDIA UNDER VARIOUS STATUTES

1. Grounds for Divorce under, The Hindu Marriage Act 1955²

A. Ground available for both spouses:

- i. has, after the solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse.
- ii. has, after the solemnization of the marriage, treated the petitioner with cruelty.
- iii. has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition.
- iv. has ceased to be a Hindu by conversion to another religion.
- v. has been incurably of unsound mind or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.
- vi. has been suffering from venereal disease in a communicable form.
- vii. has renounced the world by entering any religious order.
- viii. has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of it, had that party been alive.

² https://legislative.gov.in/sites/default/files/A1955-25_1.pdf

- ix. there has been no resumption of cohabitation as between the parties to the marriage for a period of one year or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties.
- x. that there has been no restitution of conjugal rights as between the parties to the marriage for a period of one year or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.

B. A wife may also present a petition for the dissolution of her marriage by a decree of divorce on the ground:

- i. the husband has, since the solemnization of the marriage, been guilty of rape, sodomy, or bestiality.
- ii. her marriage (whether consummated or not) was solemnized before she attained the age of fifteen years and she has repudiated the marriage after attaining that age but before attaining the age of eighteen years.
- iii. If the marriage is solemnized before the Hindu Marriage Act and the husband has again married another woman in spite of the first wife being alive, the first wife can seek a divorce.
- iv. if there is no cohabitation for one year and the husband neglects the judgment of maintenance awarded to the wife by the court, the wife can contest for a divorce.

2. Grounds for Divorce under, The Dissolution of Muslim Marriage Act 1939³

A. A Muslim woman can seek divorce on the following grounds for divorce in India:

- i. The husband's whereabouts are unknown for a period of four years.
- ii. The husband has failed to provide maintenance to the wife for at least two years.
- iii. The husband has been under imprisonment for seven or more years.
- iv. The husband is unable to meet the marital obligations.
- v. If the girl is married before fifteen and decides to end the relationship

³ https://legislative.gov.in/sites/default/files/A1939-08%20_1.pdf

before she turns eighteen.

vi. The husband indulges in acts of cruelty.

3. Grounds for Divorce under, The Divorce Act 1869⁴

i. Adultery.

ii. Conversion to another religion.

iii. One of the couples is suffering from an unsound mind, leprosy, or communicable venereal disease for at least two years before the filing of the divorce.

iv. Not been seen or heard alive for a period of seven or more years.

v. Failure in observing the restitution of conjugal rights for at least two years.

vi. Inflicting cruelty and giving rise to mental anxiety that can be injurious to health and life.

vii. Wife can file a divorce based on the grounds of rape, sodomy, and bestiality.

4. Grounds for divorce under, The Special Marriage Act 1954⁵

i. has, after the solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse.

ii. has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition.

iii. is undergoing a sentence of imprisonment for seven years or more for an offense as defined in the Indian Penal Code.

iv. has since the solemnization of the marriage treated the petitioner with cruelty.

v. has been incurably of unsound mind or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

⁴ <https://legislative.gov.in/sites/default/files/A1869-4.pdf>

⁵ https://legislative.gov.in/sites/default/files/A1954-43_1.pdf

- vi. has been suffering from venereal disease in a communicable form.
- vii. has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of the respondent if the respondent had been alive.
- viii. A wife may also present a petition for the dissolution of her marriage by a decree of divorce on the ground:
 1. that her husband has, since the solemnization of the marriage, been guilty of rape, sodomy, or bestiality.
 2. if there is no cohabitation for one year and the husband neglects the judgment of maintenance awarded to the wife by the court, the wife can contest for a divorce.

On careful examination of the grounds available for divorce under various statutes, The Hindu Marriage Act 1955 and Indian Divorce Act 1869 do not have any express provision regarding convicted spouses. But, The Dissolution of Muslim Marriage Act 1939 and, The Special Marriage Act 1954 contains provision for divorce, if the husband has been under imprisonment for seven or more years. Interestingly, only the wife can claim divorce. To put it in another way, the husband can never claim divorce, even if the wife has been convicted for any heinous crime.

Thus, it is evident that a wife cannot bring forth conviction as a ground for divorce, if the husband has been convicted for less than 7 years. Likewise, husband cannot bring forth the ground of conviction as divorce against a convicted wife.

State of West Bengal & Ors. Vs. Nazrul Islam ⁶, Supreme Court held, when criminal cases are pending against a person, he cannot be considered suitable for appointment in government service, unless he is acquitted of all the charges. Quashing the appointment of constable SK Nazrul Islam, the apex court said, “Surely, the authorities entrusted with the responsibility of appointing constables were under duty to verify the antecedents of a candidate to find out whether he is suitable for the post of constable. And so long as the candidate has not been acquitted in the criminal case of the charges, he cannot possibly be held to be suitable for appointment to the post of constable”.

Thus, for just an application to any government jobs, the applicant must not be charged with any pending criminal case. If he is charged or convicted, he is disqualified to even apply for the government job. It is to be noted that, sometimes the accused may be held guilty not guilty by

⁶ State of West Bengal & Ors. Vs. Nazrul Islam, AIR 2012 SC 160

the court in the future. Until convicted, he is just an accused. Only if the court decrees him as guilty, he will be guilty in the eyes of law. But even the individual who is accused is devoid of the opportunity to apply for government jobs.

In another case, *Lily Thomas vs Union Of India & Ors.*⁷, Supreme court ordered that all the elected or non-elected MPs and MLAs would be disqualified with immediate effect, if they were convicted in a criminal case by a trial court by challenging Section 8(4) of the Representation of the People Act, which protects the convicted politicians against any sort of disqualification from contesting the elections, on the ground of pending appeals against their conviction in the appellate courts.

The above judgment simply states that the elected representative will lose membership of legislature or parliament if they are convicted for an imprisonment spanning longer than 2 years. Thus, it is very much evident that conviction is not seen as lightly by the state. The state tries to close the door to people who are convicted and tries to distance itself from them.

When an accused is sentenced by a court, he is a convict, not an accused anymore. It is proof that the offenses are committed by him. But just for being an accused, the state denies the right to apply for government jobs. Also, an MP or MLA loses his post when he is convicted for an offense where the sentence is greater than 2 years. Interestingly, only a conviction greater than seven years is grounds for divorce. Isn't it irrational that the state can distance itself and terminate its relationship with a person who is convicted of a criminal offense, but do not give the same right to a person in a marital relationship to maintain distance or terminate from the spouse who is a convict.

In *Sobha Rani v Mathukar Reddy*⁸, the Supreme Court held that the cruelty may be mental or physical, intentional, or unintentional. Cruelty is a course of conduct of one which is adversely affecting the other.

In another case titled, *Somasekharan Nair v Thankamma*⁹, High Court of Kerala held that making false allegations about the character of the husband and his family members to injure the reputation of the husband amounts to cruelty.

Also, in the case of *Suseela v Mohan Das Prabhu*¹⁰, High Court of Kerala held that, to grant divorce on the ground of cruelty, it is necessary to show that the treatment is such as to cause

⁷ *Lily Thomas vs Union Of India & Ors.*, AIR 2013 SC 2662

⁸ *Sobha Rani v Mathukar Reddy*, AIR 1988 SC 121

⁹ *Somasekharan Nair v Thankamma*, 1987 (2) KLT 892

¹⁰ *Suseela v Mohan Das Prabhu*, 1975 KLT 72

reasonable apprehension in the mind of the petitioner that it will be harmful or injurious for the petitioner to live with the other party. It is not necessary to show that such injury would be to health, life, or limb, bodily or mental. Injury or harm may include cases other than that of injury and harm to one's body limb or health. Harm to reputation and social position can also be treated as cruelty.

In the landmark judgment of *Mayadevi v Jagdish Prasad*¹¹, Supreme Court held that any kind of mental cruelty faced by either of the spouses, not just the woman but men as well, can apply for a divorce on grounds of cruelty.

From the careful examination of all the above case laws, two things are evident. First and foremost, mental cruelty is a ground for divorce. Secondly, cruelty also involves an act to damage the reputation of the spouse. Isn't the involvement in a criminal offense an act which damages the reputation of the spouse? Then, shouldn't it be treated as cruelty, at the least by the court and grant divorce. Also, isn't it the responsibility of the legislature in the welfare state to ensure welfare of the citizens by making conviction a ground for divorce?

¹¹ *Mayadevi v Jagdish Prasad*, AIR 2007 SC 1426