

were in tears and had their fears and hopes. It is the hoary custom to pour holy Tulasi water into the mouth of the moribund man or woman to serve as a step-in-aid to ensure salvation. Accordingly the holy water was poured into the dying lawyer's mouth. An elderly relation of his asked him to utter the holy name of the supreme lord 'Parameswara'. The senior advocate out of force of sixty years practice, loudly said "Pray time Pray time". Then another relation of his suggested an easy word "Narayana". The old man with a glow on his face said "Not ready. Not ready". That is why it is said that old habits die hard.

Sometimes it happens the old man with a strong will power survives his 'will' defying death and belying the "legitimate expectations" of his near and dear.

Let me conclude this essay by quoting the will of an American stock broker.

"To my wife, I leave her lover and the knowledge that I was not a fool she thought I was. To my son I leave the pleasure of earning. For twenty five years he thought the pleasure was mine. He was mistaken. To my daughter I leave one lakh dollars. She will need it. The only good piece of business her husband ever did was to marry her. To my valet I leave the clothes he has been stealing from me regularly for ten years as also the furcoat he wore last winter while I was in palm beach. To my chauffeur I leave my cars. He almost ruined them and I want him to have the satisfaction of finishing the job. To my partner I leave the suggestion to take some other clever man in with him at once, if he expects to do any business."

There is much truth in the old saying "Where there is a will, there is a way (to the Court).

---

## DIVORCE LAW IN INDIA AND ENGLAND

*By*

**—Dr. K. MALATHI, Lecturer  
Nyaya Vidya Parishad Law College,  
P.M. Palem, Madhuravada,  
Visakhapatnam**

Marriage and divorce are significant Social Institutions. They are the obverse and reverse of the same coin. Mutual love, affection, mutual faith and understanding are the basic tenets of successful marriage. Fidelity on the part of husband and chastity on the part of wife are essential to have happy harmonious conjugal life. Any deviation from these basic principles leads to mutual bickering between the two which may end up in dissolution of marriage. Easy divorce practice amongst Hindus is the result of the influence of Western culture and civilization. Modernization and

industrialization have brought a sea change in the outlook and attitude of modern couples. Sastric Law ensures stability of marriage and modern Hindu Law has introduced easy divorce due to altered conditions of the Society. In the same way traditional English Law never encouraged easy divorce. It is only in the modern English Society coming under the influence of Westernisation has brought about materialistic culture and outlook amongst the people in England. English boys and girls are free to choose their life partners according to their whims

and fancies. This accelerates the need for changing laws and divorce law reform in English society and Hindu Law, Muslim and Christian Laws in India. Immediately after Independence particularly after 1950, declaring India as a Republic with a new Constitution coming into force witnessing a plethora of social legislation for the purpose of tackling various social problems such as marriage, divorce, dowry problem, early marriages *etc.* The most relevant and important legislation dealing with marriage and divorce such as the Hindu Marriage Act 1955 as amended by the Hindu Marriage Laws Amendment Act 1976, which came into force in the year 1977 which has drastically changed the grounds of divorce enabling either spouse to get easy divorce. The grounds mentioned in the 1955 Act made divorce difficult such as living in Adultery<sup>1</sup> which cannot be proved easily. In the same manner there are certain other grounds such as incurable leprosy<sup>2</sup> and virulent form of venereal diseases<sup>3</sup> *etc.* Thus the 1955 Act which made divorce difficult to be granted and thereby the 1955 Act has ensured stable marriages and Hindu spouses found difficult to get easy divorce. Then came the Marriage Laws Amendment Act 1976 which has brought about revolutionary changes in the law of marriage and divorce. One of such changes is that the grounds for judicial separation such as cruelty<sup>4</sup> and desertion<sup>5</sup> are converted into

common grounds for judicial separation as well as divorce. The Court will grant either of the two depending on the seriousness of the situation. Further, certain new grounds such as divorce by mutual consent adding new clause 13(B) and partial breakdown of marriage have been introduced. The new clause would enable both the spouses to file a petition for divorce by mutual consent in case they have lived together separately for one year and found difficult to reconcile with each other. The partial breakdown theory has been thus manifested and both the spouses have proved to be perfidious in character. Section 13(A) contains two clauses stating that the spouses fail to unite together in case of the decree for judicial separation and if the parties fail to reconcile and unite together. In the same manner after the decree for Restitution of Conjugal Rights when the spouses fail to return to the conjugal society within one year after the decree for Restitution of Conjugal Rights is granted. In these two clauses, partial breakdown theory is manifested. Another easy ground is that where the husband fails to maintain his wife for period of one year it becomes a ground for divorce. In this way the Marriage Laws Amendment Act 1976 has introduced easy divorce under the impact of western culture and civilization. In fact the divorce concept itself is borrowed from England. English society is a free society in which men and women enjoy lot of freedom to live together as long as they want and get separated when once they decide to get separated.

Divorce is much more easier in Muslim Law than in Hindu Law and Christian Law since Muslims in India do not have codified Law. The oral pronouncement of Talaq<sup>6</sup> in various forms would be sufficient to divorce a Muslim spouse. In Christian Law, however, it becomes difficult for Christian wife rather than her husband in Indian Divorce Act 1869. It is very strange to find that Christians in India are most

1. "Living in Adultery" implies more or less continuous course of adulterous conduct continuing right upto the filing of the petition.

2. In the original clause it was stated that the party should be suffering from leprosy, "for a period of not less than three years immediately preceding the presentation of the petition."

3. Originally, Section 10(1)(b) of pre-amended Hindu Marriage Act 1955 stipulated that the party should be suffering from venereal diseases in a communicable form for a period of not less than three years immediately preceding the presentation of the petition.

4. Section 13(1)(ia) of Amended Hindu Marriage Act 1955

5. Section 13(1)(ib) of Amended Hindu Marriage Act 1955

6. Talaq means "repudiation" or "release"

educated and progressive people do not prefer easier divorce when compared to Hindus. Under the Indian Divorce Act 1869 which contains a provision in Section 10 which enables a husband to divorce his wife by proving the sole ground of adulterous conduct of his wife. On the other hand a Christian wife has to prove adultery of husband coupled with cruelty or desertion or both<sup>7</sup>. It is surprising to note here that the century old law of Christians has reformed and replaced by modern law of Christians in India only after 130 years. Before the Amendment Act in 2001, the only alternative for unwilling Christian spouse is to have recourse to Special Marriage Act 1954. Modern Hindu society is remarkably registering easy divorces on frivolous grounds due to the influence of western culture and civilisation.

### *English Law of Divorce*

Traditional English society has undergone a sea change due to changes in divorce reform law. There used to be an Unmarried Couples Act, according to which boy and girl were free to live together without marriage for two and half years. In this period they must not change their sexual loyalty to some others. When once they violate that principle they get separated or else they would be married immediately after completion of the stipulated period or get separated once for all. In case the girl becomes pregnant and conceives a child they would get married immediately.

### *Divorce Law Reforms in England*

English society is a free society when compared to that of Hindu or Muslim or Christian in India. English people have lot of freedom of choice in marriage and divorce. Getting divorce is much-more easier in England than in Indian society in view of the growing industrialization and modernisation

and also due to the impact of western culture and civilization. Section 1 of the Matrimonial Causes Act 1973 contains only one ground for divorce is that the marriage has broken down irretrievably. However, this ground has to be established only by proving one of the five facts mentioned in Section 1(2) of 1973 Act. If none of the five facts is proved the Court may not pronounce the decree of divorce even though the Court is convinced that a particular marriage is on the rocks set to be broken down any moment. When once the Court is convinced that any one of the five facts is proved the Court has to pronounce the decree of divorce *nisi* (subject to one exemption) unless it is satisfied that the marriage has not broken down irretrievably (grave hardship to the respondent if the petitioner relies on five years separation)<sup>8</sup>. Thus last fact on which petitioner relies is that the spouses have lived continuously for five years immediately preceding the petition (Matrimonial Causes Act 1973, Section 1(2)). The required proof of any one of the facts gives rise to the presumption that the marriage is broken down irretrievably. The first fact is that the respondent is guilty of adultery and the petitioner finds it difficult to live with him<sup>9</sup>. Adultery is defined as sexual intercourse between two persons of whom one or both are married, but who are not married to each other. The Court of Appeal observed in *Denims v. Denims*,<sup>10</sup> “there must be some penetration of the female by the male organ is sufficient ground,” and the act of adultery must be voluntary. Any degree of penetration is sufficient to constitute adultery. The other fact is that the marriage has been irretrievably broken down since the respondent spouse has behaved in such a manner that the petitioner cannot reasonably be expected to live with him<sup>11</sup>. This fact has replaced the

7. Before Amendment by Act 51 of 2001 (*w.e.f.* 3.10.2001)

8. See for details Matrimonial Cause Act 1973, Section 1(2)

9. Matrimonial Causes Act 1973, Section 1(2)(a)

10. All ER. P51

11. Matrimonial Causes Act, Section 1(2)(b)

old grounds of cruelty and desertion. It must also be proved that the behaviour of the respondent is intolerable, but not a mere a state of mind or implies some form of conduct<sup>12</sup>.

The next important fact is that the respondents' mental illness (unsoundness of mind). In the words of Lord Pearce<sup>13</sup>, "whereas a blow speaks for itself, insults, humiliation, meanness" etc. In *Williams v. Williams*,<sup>14</sup> the House of Lords laid down that the rule that the respondent's mental illness was not a defence to a charge of cruelty, but it was taken into account as one of the aspects of respondents temperament or behaviour. Because of the aforesaid instances of respondent's behaviour due to mental illness, the petitioner has no other alternative except to seek a decree of divorce to get separated from the respondent once for all.

The petitioner further proves that the marriage has irretrievably broken down due to desertion continuously for two years or more by the respondent immediately preceding the petition<sup>15</sup>. Desertion is nothing but getting separated from the petitioner with an intention not to come back to the fold of the petitioner. This desertion is with the consent of the petitioner and five years period of desertion without consent by the respondent enables the petitioner for divorce on the ground that the marriage has broken down irretrievably. In this way the petitioner has to prove any one of the facts mentioned in Section 1(2) clauses a, b, c of the Matrimonial Causes Act 1973.

From the above brief analysis of the legal provisions relating to divorce in Hindu Law, Muslim Law and Christian Law in comparison with that of English Law makes

it clear that the law relating divorce provides for easy divorce for the suffering spouse or a spouse interested in getting separated from other spouse easily without much difficulty. But the million-dollar question is that in actual practice, Are the Hindu or English spouses seeking divorce easily in actual practice? This question has to be answered by examining the cases that have come up before the Courts in India and England. A careful examination of the legal provisions contained in the relevant laws in India and England would make it clear that it is not that easy to get divorce in all the systems. There is a difference in degree. Among Hindus men are more prone to ask for divorce than women in the Modern Hindu Society due to modern materialistic outlook developed among highly educated and employed men and women under the impact of western culture and civilization. When once women are economically independent, they claim equality with men giving rise to differences between the couples due to the authoritarian attitude of men. This has undergone some change in the urban India in favour of women. However rural women are still suffering under the clutches of authoritarian husbands.

It is said that educated and employed women are treated as broiler chicken in the houses of parents-in-law. There may be exemptions also in this regard. Getting divorce is said to be easier in Muslim Law and Christian Law. However Muslim Law provides for checks and balances through the payment of dower amount to wife. A Muslim husband has to pay dower amount if he wants to divorce his wife. In the same Christians also would not ask for divorce frequently since both spouses amongst Christians are said to be highly educated and hence they are supposed to be progressive in outlook. Therefore, this writer is of the opinion that though the law provides for easy divorce, in actual practice Hindus or Muslims and Christians may not opt for

12. *Katz v. Katz*, 1972, All ER pp 219, 223

13. *Collins v. Collins*, 1985 ELR P.780

14. 1964 AC 698

15. The Matrimonial Causes Act 1973, Section 1(2)(c)

divorce easily since the consequences of divorce would be serious and it will have adverse impact on the development of children. Even in England easy divorce is not endemic unless it becomes inevitable for spouses to get separated permanently. One thing is clear that modern trend is towards easy divorce that may be sought by the needy spouses when they find it difficult to live together.

*Reference Books:*

1. Mayne's "Treatise on Hindu Law and Usage", 14th Edition 1996
2. "Marriage and Divorce", A.N. Sinha, 4th Edition, 1987.
3. Paras Diwan "Muslim Law in Modern India", 3rd Edition, 1985.
4. Justice P.S. Narayan's 'Law relating to Christians in India', 2nd Edition, 2008.
5. Verma's "Muslim Marriage, Maintenance and Dissolution, 2nd Edition, 1988

---

## EUTHANASIA : A LOOK AT THE INDIAN LEGAL SYSTEM

By

**—Dr. MUKUND SARDA,**  
Principal and Dean  
New Law College,  
Bharatiya Vidya Peet University,  
Pune

1. The Indian Law considers as the most severest form of crime, the intentionally causing death of a person<sup>1</sup> and prescribes even the death penalty for such a crime<sup>2</sup>. Any act by which death is accelerated in respect of a person laboring under a physical disorder, disease or bodily infirmity constitutes culpable homicide<sup>3</sup>. The law is not prepared to condone the act of a person resulting in death, even though the victim by resorting to proper remedies and skilful treatment, the death might have been prevented<sup>4</sup>. Even causing the death, while a person is still in the womb of the mother also treated as culpable homicide, if some part of the child is brought forth<sup>5</sup>. All the exceptions to murder stated in first to fifth, do not give any immunity

from punishment, but regard them as culpable homicide not amounting to murder, punishable under Section 304 of Indian Penal Code.

2. Acts of suicide, whereby the act of a person terminating one's own life, without any aid or assistance of any other agency is made punishable<sup>6</sup>. Striking down Section 309 IPC as unconstitutional, the Supreme Court held that 'no question of protection of society from depredation of dangerous person in case of suicide'<sup>7</sup>. However, in a latter decision, the Supreme Court lost no opportunity to overrule this decision and to uphold the constitutional validity of Section 309 IPC and stated in unequivocal terms thus : "Right to life under Article 21 does not include right to die, because of extinction of life is not included in the

---

1. See Section 300 IPC which defines the crime of culpable homicide amounting to murder.

2. See Section 302 IPC

3. See Explanation I to Section 299 of IPC

4. See Explanation II to Section 299 of IPC

5. See Explanation III to Section 299 of IPC

---

6. See Section 309 of Indian Penal Code

7. *P. Rathinam Nagabbusan Patnaik v. Union of India*, AIR 1994 SC P1844.