RIGHTS OF HUSBANDS - SOCIAL AND LEGAL PERSPECTIVE

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ABSTRACT

Marriage is a social union or legal contract between people called spouses that establish rights and obligations between the spouses. As there is increase in number of marriages every day, at the same time breakdown of marriages in the society has also been seen to be increasing whether by fault of husband or wife. Though cases filed by wife against husband and in-laws under Domestic Violence Act and 498-A of IPC to claim maintenance and divorce but all complaints are not bona-fide. In this insight, the paper explores the various issues related to misuse of women protecting laws by women against their husbands and the rights of the husbands to protect themselves against the like petitions. The paper concludes that the husband is under obligation to fulfill the marital obligations and to some extent our law is also tilted in favour of wife so the need of the hour is to introduce some provisions to safeguard the rights and interests of husbands.

KEYWORDS: Marriage, Grounds for Divorce, Misuse of Women Laws, Rights of Husband.

INTRODUCTION

In India where marriage is the union between man and woman to get social status in the society and marriage is nothing but procreation and caring of the child. Marriage is a social union or legal contract between people called spouses that establish rights and obligations between the spouses, between the spouses and their children and between the spouses and their in-laws. When defined broadly, marriage is considered cultural and universal.

In India marriage has been considered as sacrament and has been often like as an institution made by it. As there is increase in number of marriages every day, at the same time breakdown of marriages in the society has also been seen to be increasing whether by fault of husband or wife. Though cases filed by wife against husband and in-laws under Domestic Violence Act and 498-A of IPC to claim maintenance and divorce but all complaints are not bona-fide.

Marriage is a relationship of reciprocity and both husband and wife have mutual obligations towards each other and also towards other members of the families. Various provisions of Hindu Marriage Act, 1955 also spells the same. Hindu Marriage Act also provides marital rights and
duties to both the parties to marriage. Section 5 of Hindu Marriage Act, 1955 provides conditions of a Hindu Marriage

Clause 1(ii) of Hindu Marriage Act provides that “at the time of marriage, neither party-

(a) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or

(b) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or

(c) has been subject to recurrent attacks of insanity2[***]

If one of the parties to the marriage is incapable of giving consent, unsoundness of mind, insanity, unfit for procreation of children, then the marriage is voidable and can be declared void at the instance of the other party.

Section 9 of Hindu Marriage Act, 1955 provides for restitution of conjugal rights and this section is as follows:

1[***] When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply, by petition to the district court, for restitution of conjugal rights and the court, on being satisfied of the truth of the statements made in such petition and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.

2[Explanation: Where a question arises whether there has been reasonable excuse for withdrawal from the society, the burden of proving reasonable excuse shall be on the person who has withdrawn from the society.]

3[***] This right is available to both husband and wife

GROUNDs OF DIVORCE

Section 13 of Hindu Marriage Act, 1955 provides the grounds of Divorce

(1) Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by decree of divorce on the ground that the other party-

(i) 1[has after the solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse; or

(ia) has, after the solemnization of the marriage, treated the petitioner with cruelty; or

(ib) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or,]
(ii) has ceased to be a Hindu by conversion to another religion; or

1[(iii)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.

Thus Hindu Marriage Act, 1955 provides Desertion, Cruelty, Adultery, Conversion, unsoundness of mind mental disorder as grounds of Divorce.

Though the above said provisions of Hindu Marriage seems to provide equal rights to both husband and wife but of the provisions proved otherwise e.g., Adultery as one of the grounds of Divorce and Adultery of wife means wife is having social relationship with some other person during the lifetime of marriage. According to the provisions of law the Husband cannot take any action against the adulterous wife but he can proceed against the man with which his wife has illicit relations. Such kind of provisions seems amusing.

Other ground of Divorce is cruelty. Before discussing the cruelty as one of the grounds for divorce, it is important to discuss the meaning of cruelty. The legal conception of cruelty comprises two distinct elements firstly, the ill treatment complained of and secondly, the resultant danger or apprehension thereof. The language of the clause is comprehensive enough to include cases of physical as well as mental cruelty cases where both the elements are present. Though, the popular conception is that cruelty is always inflicted by husband upon wife. Though it is the duty of the court to decide the case based on facts and circumstances but what amounts to cruelty is an important aspect as misuse of Laws by the wife against husband in society is growing day by day and most apparently some Indian Urban educated women have turned the tables and are using these laws as weapon to unleash personal vendetta on their husbands and innocent relatives and there are certain grounds on which cruelty against husband can be proved. But our Courts have decided many matrimonial cases where cruelty is inflicted by wife upon husband. From the judgments of the Courts we have inferred certain instances of cruelty inflicted by wife on the husbands.

MISUSE OF LAWS

Misuse of Dowry Laws, Domestic Violence Act and ‘Sec: 498-A’ of IPC by Wife against Husband and In-laws of Husband through Lodging False Complaints

CASE LAWS

1. Narendra Kumar Gupta vs. Smt. Indu 2002(2) HLR 115 (Raj)(DB)

In the above cited case wife left matrimonial home on ground that husband’s family do not have standard of life and lodged false complaints under section 498-A of IPC and the court held this act of wife as cruelty.

Desertion by wife, which means wife deliberately intends for separation and bring cohabitation permanently to an end.
Adultery by the wife means wife having sexual relationship with some other person during the lifetime of marriage and there must be strict law to punish wife who has committed adultery.

Wife opting for second marriage without applying for the divorce proceedings.

Threatening to leave husband’s home and to commit suicide by the wife.

Cruel behavior of wife where wife tearing the shirt of the husband, refusing to cook food properly or on time and breaking of the mangalsutra in the presence of husband’s relatives. Abusing and accusing husband by way of insulting in presence of in-laws and in some cases wife abusing husband in front of office staff members.

Wife refusing to have sex with husband without any sufficient reasons which can be considered as a ground of cruelty and husband can file a divorce petition.

Lowering reputation of the husband by using derogatory words in presence of family members and elders.

Lodging FIR against husband and in-laws which has later proved as false report.

Conduct and misbehavior of the wife against husband i.e. pressuring husband to leave his home, insisting for the separate residence, mental torture and disrespectful behavior towards husband and in-laws as well.

Some other grounds of cruelty i.e. mental disorder and unsoundness of wife, Impotency of wife, illicit relationship of wife with some other person and Wife suffering from the filarial.

Extra-marital affairs of wife can also be a ground of cruelty against the husband.

Initiating criminal proceedings against husband and in-laws of husband with mala-fide intention by the wife.

Charge of impotency.

Threat to commit suicide.

Aborting foetus in very first pregnancy deliberately and without the consent of husband by wife.

**CASE LAWS:** situations in Hindu marriage where a wife was held as ‘cruel’ to the husband and the law applied by the Supreme Court:

I. Mrs. Deepalakshmi Saehia Zingade v/s Sachi Rameshrao Zingade (AIR 2010 Bom 16)

In this case petitioner/wife filed a false case against her husband on the ground of ‘Husband Having Girl Friend’ which is proved as false in a court of law so it can be considered as cruelty against husband.
II. Anil Bharadwaj v Nimlesh Bharadwaj (AIR 1987 Del 111)

According to this case a wife who refuses to have sexual intercourse with the husband without giving any reason was proved as sufficient ground which amounts to cruelty against husband.

III. Kalpana v. Surendranath (AIR 1985 All 253)

According to this case it has been observed that where a wife who refuses to prepare tea for the husband’s friends was declared by the court as cruelty to husband.

Recently The Marriage laws (Amendment) bill 2010 was approved by Union cabinet. The Bill provides for amendment of Hindu Marriage Act, 1955 and the Special Marriage Act, 1954. The amendment make it possible for anyone to seek divorce by proving that there has been “irretrievable breakdown of marriage” and escapes the delays and “harassment” caused because of one party not turning up in courts.

Besides this the bill gives women the right to property acquired during the marriage. According to the amendments cleared by the Cabinet, while adjudicating on divorce petitions, courts can decide on how much property acquired during marriage is shared.

There are other provisions which protect husbands as Sections 12 and 13 of Hindu marriage Act, 1955 provides for Annulment of Marriage (where the consent of the husband has been taken by fraud and established that husband has been kept in dark at time of marriage about mental condition of wife, annulment of marriage is decreed, Section 9- Restitution of Conjugal Rights, Sections 20 and 21 of Civil procedure Code, 1908, Order VI, Rule 4- Fraud for annulment of marriage are certain provisions which safeguard the right of husbands. Even in some of the cases the husbands have been granted the right of maintenance if he is not able to maintain himself and the plea of wife for maintenance has been rejected on the grounds that the wife can maintain herself due to her sound economic conditions.

CONCLUSION

Though society and law both fixed the obligations of husbands to fulfill the marital obligations and to some extent our law is also tilted in favour of wife. But due to changing situations like education, economic independence of women, the whole scenario has changed and some provisions are also required to safeguard the rights and interests of husbands.

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