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BARS TO MATRIMONIAL RELIEF- A

CRITICAL ANALYSIS

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ABSTRACT

There are various provisions available under various acts, such as the hindu marriage act of 1955, the special marriage act of 1954, the indian divorce act of 1839, and the parsi marriage and divorce act of 1936, through which the parties to a marriage can ask different matrimonial relief such as dissolution of marriage (divorce), judicial separation, restitution of conjugal rights, etc. But to get such relief, the parties may attain some wrongful means knowing or unknowingly, to get the specific relief they seek from the court. In order to prevent this, there are bars to such matrimonial relief that are also mentioned under the same laws. The hindu marriage act provides some bars under section 23 that includes the doctrine of strict proof, accessory, condonation, and delay, etc. Similar kinds of bars are provided under the special marriage act that is applicable to any individual irrespective of his case, religion and culture, etc. Under the personal laws of muslim no such provision of bars is given but the indian divorce act, 1839 and the parsi marriage and divorce act, 1936 lays down bars that are applicable over christian and parsi individuals. Overall, these bars to the matrimonial relief act as a guard against any false ground based on which a petitioner tends to dissolve his marriage.

Introduction

The study seeks to critically analyse the bars to matrimonial reliefs and to understand so as to why such bars to matrimonial relief are necessary for the process of gaining these reliefs.

A matrimonial relationship is formed through marriage, and it is regarded as a sacred bond to which two individuals are tied for the purpose of the legalization of sexual intercourse and the procreation of children. It is regarded as an important step for the evolution of society and the individuals tied up through this process. But, with time marriage has become a contract and people have got the option to terminate it with respect to certain conditions. These conditions to terminate a marriage are called matrimonial reliefs. Both spouses can pray for these matrimonial reliefs and can eventually come out of the marriage, but there are some obstacles or bars to these matrimonial reliefs that the individual faces in the process of terminating a marriage.

The study is being conducted by referring to various law books, case laws, and the bare act¹. It has also taken into account the article on the respective topic by various authors.

¹ Hindu Marriage Act, 1955 (Act No.25 of 1955)

Bars to Matrimonial reliefs under Hindu law

“One who comes to equity must come with a clean hand” bars to matrimonial relief exist based on this maxim. According to this, who comes to the court seeking such relief must not be in default himself. These bars to the matrimonial relief act as a guard against any false ground based on which a petitioner tends to dissolve his marriage. As no one can be allowed to take advantage of his own wrong, also it gives the defendant a fair opportunity to prove his arguments.

Section 23 of the Hindu Marriage Act lays down bars to matrimonial relief that are as follows

- The doctrine of strict proof
- Taking advantage of one’s own wrong or disability
- Accessory
- Connivance
- Condonation
- Collusion
- Delay
- Any other legal ground

All these above-mentioned bars are defined from clause (a) to (e) of section 23 of the Hindu Marriage Act, 1955. also, any order passed against these bars will be null.

a) The doctrine of strict proof

According to the doctrine of strict proof, the onus or the burden of proof lies on the aggrieved party or the petitioner. The party coming to the court first has to prove his statement to the court beyond a reasonable doubt. But, in the case of *Dastane vs. Dastane*,² the supreme court stated that the presence of proof beyond a reasonable doubt is not necessary for personal relationship issues like those of a husband and wife.

b) Taking advantage of one’s own wrong or disability

Granting matrimonial relief is not possible if the petitioner is taking advantage of his own wrong. For example, if the husband beats his wife and, as a result of it, the wife leaves the matrimonial house and stays separately, then the husband cannot ask for divorce on the ground of desertion.

c) Accessory

The term accessory is used for someone being an active participant in the crime. Now a petitioner himself, being an accessory, cannot move against the respondent seeking any suited matrimonial relief.

² Dastane vs Dastane [1975] AIR 1534, 1975 SCR (3) 967

d) Connivance

this bar is used as a defence generally in the case of adultery, where the accused spouse argues that the other spouse has given consent to his act. It is similar to an accessory, but the basic difference here is in the accessory, there is active participation, whereas, in this, active participation is missing.

e) Condonation

Condonation is referred to as the act of forgiveness and re-establishment of the status *quo ante* (the state of affairs that existed previously)³. If either party condone the actions of the other party any action of latter, he can not move to the court seeking matrimonial relief on the ground of the same act that he has condoned.

f) Collusion

When the parties seeking matrimonial relief misrepresent or deceive the court to obtain the specific matrimonial relief, then the parties are said to done collusion. It has been defined under section 23(1)(c) of the Hindu Marriage Act. This bar has been abolished under Hindu Marriage Act for null and void marriages but prevails under the Special Marriage Act⁴1954.

g) Delay

Like any other suite, the suite for matrimonial disputes is also time-bound. If either party delays bringing the matter under the prescribed time limit, then it becomes time bared. The onus lies on the petitioner to prove that the delay was not intentional.

Bars to matrimonial relief under the Special Marriage Act, 1954

the bars mentioned under the Special marriage act are similar to that of the Hindu Marriage Act. But the difference that lies is that as Hindu marriage act can only apply to Hindus, unlike the Special Marriage Act, which is applicable to any individual irrespective of his caste, religion, culture, etc.

The following are the bars mentioned under the Special Marriage Act 1954:

- Accessory
- Connivance
- Condonation
- Collusion
- Unnecessary delays
- Burden of proof

³ Merriam Webster' (Merriam-Webster Dictionary) < "Status quo ante." Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/status%20quo%20ante>.> Accessed 3rd November 2022.

⁴ Special Marriage Act, 1954 (Act No.43 of 1954)

- In cases where divorce is obtained by mutual consent, the court shall see whether the consent has not been obtained by force or fraud
- Any other legal grounds
- Reconciliation

As we can see here, almost all the bars are similar to that of the Hindu Marriage Act.

Bars to matrimonial relief under Personal Laws

In other personal laws like Muslim Laws, there is no mention of any bars to the matrimonial relief, but the Indian Divorce Act 1839 and the Parsi Marriage and Divorce Act 1936 do have provisions acting as bars to the matrimonial relief under these laws, and that's are as follows:

I. Indian Divorce Act, 1839

It was the first law that came up with bars to matrimonial relief, and these are as follows,

Section 12 of this act says that the court must check that the petitioner is not an accessory, has condoned the act, or is in connivance. It should also make sure that the petitioner had not committed adultery. The counterclaims should also be taken into consideration.

Secondly, section 14 states that if the court finds that the petitioner has not indulged in any of the acts mentioned in section 12, then the court can pass a decree to dissolve the marriage.

II. The Parsi Marriage and Divorce Act, 1936

In India, the Parsis are governed by this Act regarding marriage and divorce. An Ashirwad ritual is required for a Parsi marriage to remain enforceable. The Act's Section 35 states the limitations on marital remedies. If a lawsuit is brought under one of the sections that deal with marriage remedies—Sections 30, 31, Section 32, Section 32A, and Section 34—and the court is convinced that none of the conditions listed below have been met, it will issue a decision providing matrimonial relief. The following bars:

- Annulment
- Condonation
- Collusion
- Connivance
- Reasonable delay
- Any other legal ground

Conclusion

Bars to the matrimonial relief in India serve as a shield to prevent any advantage either of the party may

be taking of their own wrong. Also, it provides proper guidance or rule that must be followed in order to succussed in getting matrimonial relief. These bars have also served as means to safeguard the marriage from getting dissolved by any wrongful mean and hence are very necessary as it also binds the court to examine the matter thoroughly. _

List of cases

Dastane vs Dastane [1975] AIR 1534, 1975 SCR (3) 967

List of abbreviation

U/s- Under section

No.- Number

Vs.- Versus

v.- versus

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