

Abstract

Marriages and divorce in Sri Lanka are governed generally by General Marriages Ordinance (No. 19 of 1907). Apart from that, Kandian marriages and divorce are governed by Kandian Marriage and Divorce act (No. 44 of 1952) where parties should be entitled to apply the provisions in the act according to their hailing of the kandian generations and belonging of Kandian territories since it is a residual law of Sri Lanka. Only Muslims are entitled to apply Muslim marriage and Divorce act (No. 13 of 1951) for their marriages and divorce and Muslim law is considered as one of the personal laws in Sri Lanka. Those acts are having different grounds for divorce where the section 19 of the general marriages ordinance sets three grounds as (01) Adultery subsequent the marriage, (02) Malicious desertion and (03) Incurable impotence at the marriage. Those three grounds are called matrimonial offences and based on faults committed by a party to the marriage. The 'consent of the parties' is not considered as a ground to general marriages ordinance, but the other laws, Knadin law and Muslim law are considering the 'mutual consent' as a ground for divorce more liberally. Thus, if the parties have decided to get divorced on their own consent because of their marriage has broken down irretrievably and as a result of that when the parties cannot live happily together furthermore, they have no any ground applicable in general marriages ordinance to rely for divorce litigation. So they have no other option than relying on a prevailing ground where they have to create a story including a fault based ground with allegations each other as the law unfairly expect from them. This fault based adversarial system takes a considerable time for coming to its conclusion where the laws delay and more expenditure are also taken place and that making parties highly frustrated. Therefore the speaker of this work is of the opinion that the "consent of the parties" should be introduced as a ground for divorce even after passing about one hundred and ten years from the introduction of general marriages ordinance. Therefore this study, Investigates and evaluates the consent based divorced systems with 'consent' residual and personal laws in Sri Lanka as well as other countries (United Kingdom, South Africa and India) and this is an attempt to propose a new consent based system for divorce cases in Sri Lanka where "the consent of the parties" can be applied as a ground for divorce with the introduction of "divorce by consent" for the purpose of minimize the laws delay.