

A critical review of gender neutrality in the dissolution of marriages from the perspective of Kandyan Law

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Sri Lankan society consists of multicultural, multiethnic groups and the laws governing these groups in terms of their main social affairs are also considered to be different. Whereas Roman Dutch Law operates as the common law of the country, Kandyan Law, Muslim Law and Thesawalamai Law also exists in certain domains. In the present context, Kandyans can be defined as inhabitants who are descendants of the families settled in the Kandyan kingdom in 1815. In ancient times, Kandyans practised their own traditions and customs which highlighted the unique features of their society. Later on, these traditions and customs of the Kandyans were codified under the British administration. A new set of laws pertaining to Kandyan marriage and divorce were introduced by the British through the Kandyan Marriage and Divorce Act, which presently prevails under the Act no. 44 of 1952. Section 32 of the aforesaid Act introduced six grounds for the dissolution of a Kandyan marriage, namely, (a) adultery by the wife after marriage, (b) adultery by the husband, coupled with incest or gross cruelty, (c) complete and continued desertion by the wife for two years, (d) complete and continued desertion by the husband for two years, (e) inability to live happily together, (actual separation from bed and board for a period of one year shall be the test), finally (f) mutual consent. The purpose of this study is to assess whether the six grounds for the dissolution of a Kandyan marriage create an unequal treatment towards women in terms of obtaining a divorce. The objective of the study is to critique the discriminatory provisions of the grounds for divorce with special reference to the principle of matrimonial fault and other domestic and international standards. The study is entirely based on a qualitative approach, which largely focused on the provisions of Kandyan Marriage and Divorce Act No. 44 of 1952, the Constitution of the Democratic Socialist Republic of Sri Lanka and other relevant domestic/ international legal instruments. The study highlights the discriminatory issue relating to women in terms of burden of proof of grounds number (a) and (b) under the matrimonial fault and other domestic and international standards. The study concludes by emphasizing the necessity of establishing gender neutrality in the dissolution of marriage under Kandyan law, further suggesting the need for revising the grounds on par with modern social requirements such as habitual drunkenness, the imprisonment of a spouse, and the disappearance of a spouse.

Key words: Kandyan Law, Marriage, Divorce, Gender, Matrimonial fault