THE CURIOUS CASE OF 'WRONG AS A BAR TO MATRIMONIAL RELIEF'

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ABSTRACT

The society in which we live is an organic body witnessing constant churns and changes from all directions. Every social institution evolves slowly with the passage of time. The institution of marriage has likewise undergone a sea change. Today, every civilized jurisdiction recognises the right to dissolve marriage as an indispensable part of this social institution. However, this right is not absolute and unconditional. Even when all the substantive requirements of seeking matrimonial relief are fulfilled by the petitioner, the law casts a duty on the Court to examine if there are certain underlying circumstances which would bar the petitioner from claiming relief. One such important ground which is often invoked by the family courts to bar the petitioner from seeking matrimonial relief is when S/he take 'advantage of his/her own wrong.' In this article, we map the contours of this specific ground as a bar to matrimonial relief, as encapsulated under Section 23 (1) (a) of the Hindu Marriage Act, 1955.

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I. INTRODUCTION

In India, the law with respect to marriage and matrimonial relief is codified in different personal laws as well as guided by customs and practices. One thing which is common among all the laws is that, the right of seeking matrimonial relief is not conferred upon parties as an absolute right. It is subject to the fulfilment of certain conditions. In this article, we discuss and map the contours of one such condition, namely, '***taking advantage of his/her (petitioner)own wrong',*** which is encapsulated as a bar to seeking matrimonial relief under Section 23 (1) (a) of the Hindu Marriage Act, 1955 [HMA, 1955].

We have firstly explained the concept of 'wrong' and the underlying fault theory under Section 23 of the HMA, 1955. Secondly, we have discussed the duty of the Court and the manner in which it examines the 'wrong(s)' of the petitioner who claims matrimonial relief. Thirdly, we have analysed the intersection between the concept of non-resumption of cohabitation as a ground to seek relief under Section 13 (1A) and the concept of 'wrong' under Section 23 of the HMA, 1955. Finally, we have examined the nexus between the petitioner's wrong and the respondent's guilt or fault, which entitles the latter to thwart the relief sought.

II. CONCEPT OF 'WRONG' UNDER SECTION 23(1) (A) OF HMA, 1955

There are primarily three kinds of matrimonial relief in a valid marriage sought under the HMA, 1955, namely, the restitution of conjugal rights[1], judicial separation[2] and divorce[3]. The petitioner is required to satisfy the specific conditions conjoined under the respective provisions of HMA in order to successfully claim each of these reliefs. Additionally, s/he is required to prove to the satisfaction of the Court that no bar applies to seeking his/her matrimonial relief or, in other words, the petition is not hit by any of the 5 grounds provided in Section 23(1) of the HMA, 1955.

The petitioner cannot seek relief under Section 23(1) if he or she takes advantage of his or her own wrong or disability[4]. The HMA doesn't define what constitutes "wrong." Generally, the "wrong" is an injury (physical, emotional, or/and economic) inflicted by the petitioner on the respondent. For example, let's hypothetically assume that "*A"* filed a

[1] The Hindu Marriage Act, 1955, § 9.
[2] The Hindu Marriage Act, 1955, § 10.
[3] The Hindu Marriage Act, 1955, § 13.
[4] This bar however doesn't apply when the relief is sought under § 5, clause (ii) of the Hindu Marriage Act, 1955.

petition seeking a divorce under Section 13(1) against "*B"* on the ground of desertion. However, if the Court finds out that it was only "A" who had driven his wife out of the home as he disliked her behaviour, it will dismiss the petition as *"A"* is clearly taking advantage of his own wrong.

In the famous case of ***T. Srinivasan v. T. Veralakshami***[5], the Hon'ble Supreme Court held that when the petitioner filed a case for restitution of conjugal rights with no intention of resuming the conjugal relations but solely for the sake of making a case under Section 13 (1) (a) of the HMA, 1955, divorce could not be granted. In this case, as the husband did not allow the wife to perform conjugal duties, he could not be allowed to take the benefit of his own wrong.

In the case of ***K.R. Manjunath v. Veena***[6]***,*** the husband was having illicit relations with a neighbouring lady, ignoring his own family, and the wife objected to it. The husband later filed a petition for divorce on the grounds of mental cruelty inflicted by the wife. The court held that the wife's conduct was a natural reaction of her husband's conduct and he could not be allowed to take advantage of his own wrong.

The concept of "wrong" is based on the equity maxim, "***he who comes to equity must come with clean hands."*** Thus, the law demands that, in order to seek matrimonial relief, only one party must be directly and substantially at fault. If both parties are sinners, the law commands them to continue in sin. However, in regard to the modern jurisprudence and changing perceptions related to marriage, this assertion is becoming problematic with each passing day. Often in a marriage, if both parties are incompatible or facing some problem in the marriage, they start treating the other party in an improper way, which is more often than not, is reciprocated. In essence, the marriage is dead but the parties are forced to be bound in matrimony because both the parties are at 'fault' and either party is not ready for divorce by mutual consent essen out of spite. This particular problem has forced us to understand that the interpretation of the term 'wrong' must be done in such a way that it will not force two people in a loveless marriage to continue, and thus making their life miserable.

III. EXAMINATION OF 'WRONG(S)' OF THE PETITIONER WHO CLAIMS MATRIMONIAL RELIEF: COURT IS DUTY BOUND

[5] (1988) 3 SCC 112
[6] AIR 1999 KANT 64.

The nature of family dispute is not same as a civil or criminal dispute where the weight of evidence will make a party eligible for favourable order. In matrimonial disputes, even if the fault is clearly proved on the part of one of the parties, the court may refuse remedy to the other party. Due Consideration by the court is required for coming to the conclusion, whether the remedy asked by the parties should be granted or not.[7]

When a civil proceeding is instituted by the petitioner for seeking matrimonial relief, the Court is duty bound to examine if the petitioner has himself/herself committed any wrong or not. Even in *ex-parte* cases, the Court is entrusted with the same duty. Section 23 (1) explicitly provides that, *'whether(the proceeding is) defended or not',* the Court has to satisfy itself on the basis of evidence that the petitioner is not taking any advantage of his/her wrong before granting a decree in his favour.

In the case of ***Balwinder Kaur v. Hardeep Singh***[8], a wife was duped into signing a divorce petition by the husband. However, the husband did not appear and an *ex parte* decree was passed. The wife approached the Supreme Court after an unsuccessful appeal before the High Court. The court held that the grant of *ex parte* divorce, without satisfying itself whether the requirements of Section 23 were complied with, was not proper.

Thus, it is not sufficient that the petitioner has made plain assertions in the petition and the respondent failed to counter it or the matter is declared *ex-parte*, it will be still the duty to the court to ascertain that the petition is *bonafide* and the petitioner is not taking the benefit of his own wrong. The satisfaction of the court should be based on the evidences and the relevant considerations and no merely on the fact that the stance of petitioner appears correct.[9] Mere possibility will not be considered sufficient for the application of Section 23.[10]

These particular precedents also expose a fault line in our understanding of matrimonial issues. While a duty has been cast on the court to ensure that the party is not taking benefit of his wrong, nobody thought about how the same will be done, whether the judge will hold its own enquiry in the family matters or the expert psychologists will be engaged. While the Courts have affirmed that the decision will be taken on the basis of material on record, it is unclear why the law expects a party to provide material exposing his own wrong. Specially in cases of fraud, it is nearly impossible for the court to ensure without making an out of court enquiry

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[7] Hirachand Srinivas Managaonkar v. Sunanda (2001) 4 SCC 125.
[8] AIR 1998 SC 764.
[9] Mahendra Manilal Nanavati v. Sushila Mahendra Nanavati (1964) 7 SCR 267.
[10] M. Ajith Kumar v. V. K. Jeeja AIR 2009 Ker 100.

that the party claiming the relief is blameless, which is often not the case in matrimonial cases.

IV. INTERSECTION BETWEEN *NON-RESUMPTION OF COHABITATION* [SECTION 13 (1A)] AND THE CONCEPT OF 'WRONG' UNDER SECTION 23 OF THE HMA, 1955

If the Court has granted a decree of judicial separation or restitution of conjugal rights in favour of one of the parties to the marriage, and both of them have been unsuccessful in resuming cohabitation for more than one year, Section 13(1A) of the HMA, 1955 entitles either of them to dissolve the marriage by filing a petition.

This particular ground for divorce was added in the amendment act of 1976 with a view of providing a remedy to the parties in whose case all attempts to reconciliation ahs been made but without success. It is often said that the parliament while enacting this provision failed to take into account the impact of Section 23 over the same. The term that is used in Section 13 (1A) is 'either party', which includes the decree holder as well as the judgement debtor of the proceedings under Section 9 or 10 of Hindu Marriage Act, 1955. If the parliament intended that the party who obtained the relief in original proceeding will only get the benefit of Section 13 (1A), then the section should have reflected so. Since that is not the case, we should carefully interpret the provision so as to construe it harmoniously with the pre-existing Section 23.

Interestingly, the moot question which arises in the context of Section 23 of the HMA, 1955 is whether deliberate 'non-resumption' of marriage or conscious refusal by a party to cohabitate can be considered as taking advantage of 'own wrong'?

The 'wrong' as mentioned in the Section 23 (1) must be a serious misconduct and mere refusal to cohabit with the spouse would not be considered a wrong. Simply because a party does not want to be united with the spouse owing to the irreconciled differences, it will not disentitle the party to claim remedy under the act.[11]

Similarly, in the landmark case of ***Saroj Rani v. Sudarshan Kumar Chaddha***[12], there was a consensual but not collusive decree of restitution of conjugal rights. The wife filed a case against the husband for restitution of conjugal rights which was not opposed by the husband.

[11] Dharmendra Kumar v. Usha Kumar (1977) 4 SCC 12.
[12] (1984) 4 SCC 90.

Later, the husband refused to cohabit with the wife for more than one year. In a subsequent proceedings under Section 13 (1A), the court held that the refusal to cohabit is not a wrong within the meaning of Section 23 of the HMA, 1955.

In a case before the Delhi High Court, the question before the court was if the allegation of adultery on the respondent-wife was not proved in the court, whether she would be entitled to claim divorce under Section 13 (1A). The Court held that the failure of respondent-wife to comply with the decree of restitution of conjugal rights will be of no importance and hence not a bar under Section 23(1) of the HMA, 1955.[13]

In the case of ***Pushkar Gupta v. Narendra Kumar Gupta***[14], it was alleged by the petitioner-wife that the husband thwarted all her attempts to reconcile in pursuance of the degree of restitution of conjugal rights and thus she claimed that the husband should not be granted the decree of divorce. The husband, on the other hand argued that the wife made the husband's life miserable for 13 long years by constantly filing criminal cases not only against husband but also against his old mother and his handicapped sister. The Court held that the conduct of the wife made it difficult for the husband to reconcile the differences and welcome her in the matrimonial home. Hence, here the husband was not held to be liable for any wrong within the meaning of Section 23.

However, in the case of ***Renu Bala v. Jagdeep Chiller***[15], the Delhi High Court took a very interesting viewpoint. In this case, Husband filed a case for desertion against the wife but made no sincere efforts to reconcile the differences with his wife. He took no initiative to bring his wife back to the matrimonial home. The Court held that granting divorce in this respect will be akin to allowing the husband to take benefit of his own wrong.

In another case of ***Sushil Kumari Dang v. Prem Kumari Dang***[16], Delhi high court observed that the Petitioner-Husband on one hand applied to the court for Restitution of Conjugal Rights and in the same proceeding levelled the allegations of adultery against his wife. It was held that the very contradiction in the pleading of the husband indicated that the petition is not bonafide and thus the remedy claimed cannot be grated on account of bar in the matrimonial relief under Section 23 (1).

[13] Ashok Kumar Sakhuja v. Sweety (1992) 24 DRJ 260.
[14] (2016) SCC OnLine Del 5716.
[15] (2010) SCC OnLine Del 2802.
[16] (1976) SCC OnLine Del 22.

In another case of ***Meera Bai v. Rajinder Kumar Sabti***[17], the husband married again in the lifetime of wife. Wife filed a case under Section 9 of Hindu Marriage Act, 1955 which was not objected by the husband. The Hon'ble court granted the relief which was left unfulfilled because the husband had no intention to live with the wife. Later, the husband filed a divorce case under Section 13 (1A) of the Act. The court refused to grant the relief in the light of Section 23 of the Act. Court observed that the conduct of the husband to let wife get the decree under Section 9 while planning to abuse Section 13 (1A) clearly established fault on his part.

In the case of ***Nityanand Karmi v. Kum Kum Karmi***[18]**,** the Court emphasised that the provisions under Section 13 (1A) and Section 23 (1) of Hindu marriage Act, 1955 have to be harmoniously construed. The conduct of the other party and their contribution in the whole dispute cannot be overlooked and the same is equally relevant.

Thus, We can conspicuously say that the interaction between Section 13 (1A) and Section 23 (1) is one of the most controversial points in the Hindu Marriage Act, 1955. The Courts have observed that the Section 13 (1A) should not be construed to help a wrongdoer merely on the belief that the subsequent amendment to the Hindu Marriage Act were intended to completely liberalize the concept of divorce among Hindus.[19]

V. THE NEXUS BETWEEN PETITIONER'S WRONG AND THE RESPONDENT'S GUILT OR FAULT UNDER SECTION 23

For a Court to bar the petitioner from seeking a matrimonial relief, what is necessary is that the petitioner's wrong or disability, must have some direct or indirect connection with respondent's guilt or fault. If the "wrong" of the petitioner has no connection or co-relation or has a remote connection or corelation with respondent's guilt, the petitioner cannot be denied the relief.

For example, the husband cannot be allowed to plead that wife's refusal to live with him was the cause of his second marriage or that the wife entered into the second marriage with him knowing that he was already a married person.

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[17] AIR 1986 Del 136.
[18] (2002) SCC OnLine Cal 556.
[19] Sounderumal v. Sunder Mahalingum (AIR 1980 Mad 294).

In the case of ***Mohan Lal v. Mool Chand***[20] , the wife had filed a case for divorce under Section 13 (1) of the HMA, 1955 claiming that the husband married again in her lifetime. The husband countered the petition on the ground that he was compelled to commit adultery as wife was not willing to live with him. He argued that the wife's indifference towards her matrimonial duties lead him to marrying again and allowing the decree of divorce will be in contravention of Section 23 (1). Court completely rejected the argument and held that simply because a spouse is guilty of any matrimonial offence, it will not give a licence to the other spouse to commit Bigamy.

In this context, the observation of the Calcutta High Court in the case of ***Sumitra Manna v. Gobind Chandra Manna*** becomes relevant. The issue was related to the interpretation of the phrase 'benefit of own wrong' as used in Section 23 (1) of the HMA, 1955. The Court observed that the term 'wrong' used in the phrase does not refers to any wrong committed in the marriage. It is important that the wrong should mean a wrong of which the petitioner can take and is trying to take advantage in order to obtain a decree or order favourable to him or her[21]. Simply because a party fails to pay alimony or provide maintenance, it will not disentitle them from getting matrimonial relief. While the wrong of non-payment of alimony can be considered wrong, the party seeking relief can't be said to take benefit of the wrong.

VI. WRONG: PRE-EXISTING OR SUBSEQUENT

Another interesting aspect of this problem is regarding the nature of wrong. Whether a wrong which germinated before the original proceeding can be considered a wrong within the meaning of Section 23. Secondly, whether a fresh default on the part of respondent, although not essentially in issue in respect of the original matrimonial proceeding may constitute a wrong within the meaning of this section, is also a pertinent question.

In the case of ***Gajna Devi v. Purushottam Giri***[22] the Court observed that the matrimonial wrong should be subsequent to the decree under Section 9 or 10. Simply because a party was at fault prior to the dispute, will not disentitle him from claiming remedy under Section 13 (1A).

For example, a person converts to a non-Hindu faith and thus the other spouse obtains a decree of judicial separation. Subsequently if the non-

[20] AIR 1958 Raj 71.
[21] (1987) 2 CHN 246.
[22] (1976) SCC OnLine Del 13

Hindu spouse files a case for non-resumption of cohabitation, then the fact that the conversion is a serious matrimonial wrong will not disentitle the party from claiming the relief.

On the other hand, the judicial opinion in the cases of continuing wrong is different. If a party continues to live in adultery even after passing of the decree under Section 9 or 10, then they are not entitled for the decree of divorce.[23] Similarly the misconduct must be serious, non-payment of the alimony was considered 'wrong' by the court, but no so wrong as to disentitle a party from claiming matrimonial relief. [24]

The judicial trends offer little clarity on the issue. It is often argued by the scholars that the parliament should seriously consider these anomalies and correct them through legislative means. An amendment in the Hindu law or enactment of a Uniform Civil Code might bring some more clarity on the issue.

VII. CONCLUSION: THE WAY FORWARD

Marriage, one of the most important social institutions, continues to rapidly evolve with time. Because of social, economic, and technological advancement, the underlying motive, expectations, and subsequent reciprocation between the parties to the marriage have been drastically altered. The law's utmost consideration is predominantly in saving the marital relationship, and the duty of the court, in the first instance, wherever possible, is to make every endeavour to bring about reconciliation between the parties. However, in situations when the institution becomes unworkable and the differences grow to the point where they can't be reconciled, the law also provides the suffering party the opportunity to dissolve the marriage. Interestingly, the Hindu Marriage Act, through Section 23 (1) (a), expects that the suffering party approach the court with clean hands. If the petitioner himself/herself has wronged the other party, s/he cannot be allowed to take advantage and successfully claim matrimonial relief against the respondent.

In marital disputes, it is not always the case that only one party is at fault. At times, the issues involved are not very simple and often fall into the category of a space that is neither black nor white. Such "grey *area"* cases will grow in the future, thanks to the increasing trend of walk-in and walk-out marital relationships. In such cases, the family courts will

[23] Sunita Rajendra Nikalje v. Rajendra Eknath Nikalje, AIR 1996 Bom 85.
[24] Hema v. Parthsarthy (2002) SCC OnLine Mad 505.

be called upon to act as surgeons, conducting a careful examination of the wrong(s) committed by both the respondent and the petitioner. If the latter's wrong is found to be in direct correlation and connection with the respondent's fault, the Court must thwart the relief claimed in the interest of justice, equity, and good conscience.