

Bars to Matrimonial Relief

There are different types of bars to matrimonial relief:

1. Doctrine of strict proof or standard of proof or burden of proof: the level of certainty and the degree of evidence necessary to establish proof in a criminal or civil proceeding. the standard of proof to convict is proof beyond a reasonable doubt.

2. Taking advantage of one's own wrong: The wrong or disability should have a nexus with the guilt of the Respondent. This bar applies in seeking most of the matrimonial remedies E.g. Wife was granted decree of judicial separation on account of adultery by husband. The husband continues to commit adultery and later files for divorce on the ground of cruelty by wife. Such a Petition cannot be allowed as the wrong of the husband has direct connection with the actions of wife.

3. Accessory: petition is filed on ground of adultery and petitioner should not help the respondent in the act of adultery. Under the Hindu Marriage Act, Special Marriage Act and Indian Divorce Act, when a petition is filed on the ground of Respondent's adultery accessory can be a bar to grant decree. Under Parsi law Accessory is a general bar and not limited to adultery. eg : In case a husband allows third parties to have intercourse with his wife or keep a watch while his wife is having sex with third person he is an accessory and cannot be awarded decree of divorce if filed by him on the ground of adultery .

4. Connivance: Connivance as the terminology suggests is consenting to the commission of the offence . It is more like Accessory. However the basis difference is that in accessory there is active participation by the Petitioner in the offence by the Respondent while in connivance there is no such participation and mere knowledge and consent is there. To constitute connivance, express, or implied consent is necessary. There can be indirect consent by either party to commit an offence of adultery which can be made a ground for divorce. E.g.: Either Husband/Wife agrees with the offer of other spouse to earn money by illicit intercourse, then the Petitioner is guilty of connivance and cannot be granted decree of divorce. If a couple invites a friend in their house and husband/wife wilfully leaves the house to provide a chance

to commit adultery by other spouse there is connivance and decree of divorce cannot be granted.

5. Condonation: Condonation means condoning a matrimonial offence committed by other spouse and intending to continue the matrimonial relations with the spouse. Once a matrimonial offence has been condoned by the Petitioner and cohabitation resumes with the Respondent, it amounts to condonation. Under HMA and SPA condonation applies to matrimonial relief of adultery and cruelty. Under the Divorce Act it applies to adultery only and under Parsi Marriage Act it is a general bar and applies to all matrimonial reliefs.

In a leading case law of

Dastane vs Dastane

(1975)2SCC326

The court held that the husband has condoned the act of cruelty by wife and her subsequent conduct did not amount to revival of cruelty.

6. Collusion: Collusion means a situation when both husband and wife create a situation which creates a ground for divorce when actually it does not exist. Collusion is an act by the Petitioner and/or Respondent or their agents to do an act which misleads the court by deception, alteration, concoction, non disclosure of the material and actual facts, with a view to secure a decree of a matrimonial relief.

Under Sec .23 (1) (c) of Hindu Marriage Act and Sec . 34 (1) (d) of Special Marriage Act collusion was a bar to all matrimonial reliefs . Now collusion has been abolished as a bar to relief of declaring marriage as null and void under Section 11 of the H indu Marriage Act and remains for other matrimonial reliefs . U/s 35 (c) of Parsi Law is a bar to all matrimonial reliefs . U/s 13 and 14 of Divorce Act it is a bar to relief of dissolution of marriage.

7. Unnecessary delay or improper delay : The Petitioner seeking a matrimonial relief should be filed within a reasonable time and there should not be

improper and Petition. unnecessary delay in filing the Under Section 14 of the HMA the Petition seeking divorce cannot be filed within one year of marriage expect . The delay however can be condoned if it is proved that the case is of exceptional hardships to the Petitioner or exceptional depravity on the part of the Respondent. The Petition for Annulment of marriage in cases of void and voidable marriages can be filed at the time when such act came to the knowledge of the Petitioner.

8. Any other ground : There are residuary clauses i.e. Section 23(1)(b) of the HMA, Section 34(1)(b) of the SMA and Section 35(e) of the Parsi Act which provide that there should not be any other legal ground for rejecting the Petition. The Divorce Act however do not provide for such a residuary clause. However the court has to be satisfied and sure that there is no legal bar in the grant of the decree for matrimonial reliefs.

CONCLUSION various personal laws provide solutions for a disturbed married life and either of the parties can apply for the matrimonial remedies applicable in their case. The institution of marriage is very complicated and delicate, as such, the courts have to be mind ful before the grant of applicable matrimonial reliefs. As such the statute has provides bars in the grant of matrimonial remedies for Petitioners who have tried to take advantage of their own wrong, condoned act of their partner, colluded and/or connived with their partner, unnecessary delayed the filing of Petition and any other applicable bars under the statute.