

DIVORCE – TIME FOR REFORM BY MUNTAZ ALI*, ATTORNEY-AT-LAW

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Note: It is heartening to know that in 2008, Ms. Priya Manickchand, Attorney at Law and Minister of Human Services and Social Security called for divorce reform and is presently leading consultations for the process of reform.

The present **Matrimonial Causes Act** of Guyana was enacted in the year 1916. This Act regulates, *inter alia*, matters concerning divorce. Since that time there has been a considerable change in social attitudes towards matrimonial causes particularly in matters relating to divorce.

At present, for one spouse to obtain a divorce it is necessary for the other spouse to be guilty of some matrimonial offence such as adultery or malicious desertion or cruelty. It does not matter that the marriage has broken down completely and the parties are living apart for several years. It is still necessary for one spouse to be guilty of a matrimonial offence.

Historically, in the Western world, in matters of marriage and divorce, the Church was always considered the proper domain. For instance, in England, before the Reformation, marriage was regarded by the Church as a sacrament and it was almost impossible to obtain a divorce without recourse to the Pope. This doctrine of indissolubility of marriage was frequently evaded by obtaining a decree annulling the marriage on certain specified grounds, such as consanguinity or affinity. There is an interesting case of a marriage being annulled by the husband standing Godfather to his wife's cousin, and yet another by a husband having sex with the third cousin of his prospective wife before the celebration of the marriage.

Fortunately, times have changed, and eventually the dissolution of marriage and related matters came solely within the jurisdiction of the Civil Courts. No longer is divorce considered a social phenomenon, anomaly or flaw in our system but rather a civil remedy effected by the Courts.

SHIFTED

In modern times the emphasis has shifted from the notion of guilt or innocence in obtaining matrimonial remedies. In England, prior to the year

1969, it was necessary for a spouse to be guilty of an offence, as in Guyana, before a divorce can be obtained by the other.

Some years ago a Royal Commission on Marriage and Divorce was set up in England to consider the reform of the Law and practice in matrimonial causes. The Commission concluded that a good divorce law should seek to achieve two objects:

- i) To buttress, rather than undermine, the stability of marriage and
- ii) When regrettably, a marriage has irretrievably broken down to enable the empty shell to be destroyed with the minimum bitterness, distress and humiliation.

Based on the Commission's recommendations, the Divorce Reform Act of England was passed and 'Irretrievable Breakdown' of the marriage replaced the former matrimonial offences and is now the sole ground for divorce. Since this Act was passed the number of divorces in England has doubled. This must not however be taken to mean that the new law is the cause of many marriages breaking down. Rather it seems that many marriages which had already been broken are now permitted 'to be destroyed with the maximum fairness and the minimum bitterness, distress and humiliation.'

In Guyana, in the third quarter of the 20th century, it seems odd that where a marriage has irretrievably broken down and the parties are living apart, one spouse can still hold the other to ransom in divorce proceedings. Greater emphasis should be placed on ancillary matters such as financial provision for children and the wife. Perhaps, the recommendation of the British Royal Commission could serve as a starting point in reforming our divorce laws.

Our present law also contains some archaic remedies, such as restitution of conjugal rights, jactitation of marriage, prohibiting a person from falsely boasting that he or she is married to a particular person, breach of promise of marriage, enticement and seduction. Many of these remedies are virtually obsolete and should no longer be permitted to clog our statute books and should be abolished with the minimum of delay. Perhaps the feminist movement in our society can take the lead.

Finally, it is noteworthy to mention that over a century ago one of the greatest intellectuals of his age, **Herbert Spencer**, wrote this with his customary felicity:

“It may be that the maintenance of the legal bond will come to be held improper if the natural bond ceases. Already increased facilities for divorce point to the probability that there will come a time when the Union by affection will be held of primary moment and the union by law as of secondary moment: whence reprobation of marital relations in which union by affection has dissolved.”

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