

Dissolution of marriage by enforced disappearance: A study on Sri Lankan post – conflict scenario

P. Mathanarajan*

Generally, the laws governing on divorce in Sri Lanka are Marriage Registration Ordinance No. 19 of 1907 (Cap. 112) (Amended) and Civil Procedure Code No. 2 of 1899¹. Other than the general law, there are special laws *i.e.* Kandyan law and Muslim Law, govern the divorce if the parties marry under any of such special laws. Although the non fault principle or breakdown principle is incorporated in the special laws, the general law is very strict towards the fault principle. The party who marries under the general law cannot easily get the divorce unless he or she has to prove that a matrimonial fault has been committed by the other. However, there were many people forcibly disappeared during the armed conflict and the remaining spouse is facing difficulties to get a divorce to re-marry and/or dispose his or her acquired properties. The general divorce law does not recognize the disappearance nor break down of a marriage by non fault of either party as a ground for divorce. Though the government enacted Registration of Deaths (Temporary Provisions) Act No.17 of 2005, it fails to address the issues.² It is a severe problem faced by women who are governed by the law of *Tesawalamai*.³ Hence this paper recommends to incorporate the enforced disappearance as a ground for dissolution of marriage in order to encounter those legal issues.

Keywords: Divorce, Fault Principle, Breakdown Theory, Enforced Disappearance and Reformation

¹ Amended by Law No.20 of 1977

² As the Act refers Certificate of Death instead of Certificate of Absence, the women governed by *Tesawalamai* are unwilling to receive the Death Certificate of their husband. The Act only prescribe the procedure if person registered as dead is found to be alive and it does not prescribe the effectiveness of the transactions made upon the Certificate if the person is found to be alive.

³ S.6 of Jaffna Matrimonial Rights and Inheritance Ordinance No.1 of 1911 as amended by No.58 of 1947 provides that a married woman could not dispose her immovable properties without the consent of her husband but subject to the order of the District Court under S.8.