

“Living in Adultery” as a Ground for Losing the Opportunity to Claim Maintenance: A Critical Appraisal of the Sri Lankan Judicial Standpoint

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Abstract

The common law reciprocal duty of maintaining the spouses has been part of the Sri Lankan legal regime with the incorporation of the maintenance law directions, with the enforcement of Maintenance Ordinance, No. 19 of 1889, which was subsequently repealed by the Maintenance Act, No. 37 of 1999. “Living in adultery” has been recognized as an exemption to qualify to claim maintenance from the spouse as per the provisions of both statutes. Nevertheless, the scope of the term, “living in adultery” has been developed by the domestic judiciary following numerous approaches of construction. This research aims to evaluate the effectiveness of the domestic judiciary in dealing with the concept of “living in adultery”. It also analyses different approaches used by the judiciary in interpreting the term and determining whether the burden of proof required to establish “living in adultery” has been consistently applied in accordance with Sections 3, 4, and 5 of the Maintenance Ordinance (1889) and Section 2(i) proviso of the Maintenance Act (1999). The black letter approach and comparative legal research methodologies have been employed in order to achieve the objective of the study. Finally, the study reveals that the judicial determination under both statutes has attempted to construct the phrase “living in adultery” based on the circumstantial evidence provided by each case, yet the level of burden of proof expected to establish the “living in adultery” shall remain unclarified.

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