



AGE OLD INSTITUTION OF MARRIAGE ON VERGE OF EXTINCTION WITH REFERENCE TO THE ROLE OF THE FAMILY COURTS IN INDIA

Babugar Dhangar Goswami¹ and Dr. Satishkumar Nagar²

¹B.A. LL.M. Ph.D. (Pursing)

Ph.D. Research Scholar, Department Of Law, Shri Govind Guru University, Godhra.

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ABSTRACT:

Marriage is the age old social institution of civilized society. It has cultural as well as religious bearings. It is entirely the function of discharging duties towards all attached with the said relationship. In India, since ancient times, marriage as a part of pious social contract envisaged the performance of moral obligations. In other words, the performance of duties by the people in ancient times was because of prevalence of high morality in the society. Later on the level and proportion of morality diminished with the passage of time and marriages were seen solely under the purview of rights and nothing else. In modern days, family courts all over India plays vital role in sustaining marriages. The parties to matrimonial disputes chase their own rights. They do not know anything about their duties towards marriage. The family courts make people vigilant about their duties and make all possible efforts to sustain the marriages that are on the verge of breakdown or collapse.



KEYWORDS:

UN- United Nations

CEDAW- Convention on Elimination of all Forms of Discrimination against Women

CRC- Child Rights Convention

HQI- Human Quality Index

INTRODUCTION:

Marriage is an important social institution necessary and essential for maintaining social order and uniformity and harmony in the civilized society. We can call ourselves civilized human beings only when this age old institution of marriage is sustained. But in modern times, the age old and pious institution is on the verge of extinction. Most of the youngsters have lost faith in marriages. They wanted to build physical relationship with their partners but at the same time they wanted duty free relationship. In other words they do not want to perform their duties emanating from the said relationship. Such relationship was considered as illicit relationship in ancient times. But now in modern times, the said relationship is legalized under the name of Live-in-Relationship. The youngsters are purely evading and escaping their duties towards the society, towards their own family members and also towards the national building process. Due to this reason, marriages are replaced by illicit

relationship or in many cases marriages have become mere formalities as they don't last longer. Under such situations, the Family Courts all over India are making strenuous efforts in sustaining marriages between the parties to the disputes.

AGE OLD INSTITUTION OF MARRIAGE

Marriage is an age old institution in India because Indian culture, tradition and civilization are the oldest amongst the world's ancient civilizations and cultures. During ancient times there were various types of marriages and all these forms of marriages were unique from each other embodying unique duties on the parties. The recognizable and acceptable forms of marriages according to Manu Smriti, Yajnavalkya Smriti and other Dharma Shastras in ancient India were-¹

- i) Brahma Vivah
- ii) Daiva Vivah
- iii) Arsha Vivah
- iv) Prajapatya Vivah
- v) Gandharva Vivah
- vi) Asura Vivah
- vii) Rakshasa Vivah
- viii) Paishach Vivah

That for above all the forms of these marriages, the spouse has to perform their duties towards each other, towards the family and towards the society during their life time. The physical relationship other than marriage was considered as illicit and illegal according to ancient Indian culture and social norms. Finally values, moral values, duties towards the society were on highest esteem in those days.

Due to the above reasons, social order was well maintained. People were ready and willing to perform their duties towards each other. The society was rich and was governed by Dharma i.e. duty first approaches because the mankind and humanity were on highest esteem. These duties were performed as per the Dharmasashtras. Though Human Quality Index- HQI was not measured in those days but it was highest in the world.

MARRIAGE ON VERGE OF EXTINTION

Modern era is the era of freedom and liberty backed by rights. In other words, it is the era of escaping from duties under the embezzlement of morality. Modern era is the era of de-morality, inhumanity, etc. The prevalence of ancient Dharmasashtras do not prevail any more in the society. People are escaping from rich Indian culture, traditions and religious aspects in form of duties and chasing western trends. Due to this reason, most of the people get satisfaction in non-marital relationships. Most of the people chase rights and evade their duties. Due to this reason, the ultimate sufferers are the children and aged and infirm and dependent family members.

Marriages are losing its importance in the society. Divorces are becoming common among people of all religions living in India. Entire society including education is inclined towards rights. Compulsion for performance of duties generally gives rise to struggles of different kinds of liberation. Most of the women evade daily household chores, rearing of her own children, taking care of her dependent in-laws, etc.

The transformation of women from traditional women to modern women is utmost necessary but such transformation is moving forward in negative direction. Most of the women do not want to become mothers during the fertility age group as prescribed by medical sciences, they evade breast feeding their babies, etc are classic examples of this so called modern transformation of women in negative direction.

1 wordpress.com

Most of the women do not know cooking, rearing of children and lack the basic qualities of womanhood that are the precondition for performance of duties. Thus, ultimately the entire society suffers adversely. Due to all this reason, marriages are losing its important place in the society.

ROLE OF FAMILY COURTS IN INDIA

The Family Courts in India came into existence due to the advent of passing of the Family Courts Act, 1984.² The family disputes especially matrimonial disputes are increasing rapidly in India and divorces are becoming quite common in India. In order to stop the menace of divorce and to sustain matrimonial tie the duties and functions performed by the Family Courts in India are must.

The Constitution of India provides for various fundamental rights to all. It includes women, children, parents, etc. These are basic and essential rights, the protection of which is guaranteed by the State. Thus, all classes of people are to be protected by the State as far as these fundamental rights are concerned.

India is a party to the United Nations-UN. India has signed the United Nations Convention on Elimination of All Forms of Discrimination against Women - CEDAW on 9th July, 1980.³ Various rights mentioned in the said Convention are mandatory to be provided to women in India. Due to this reason, the rights available to Indian women are more strengthened further leading to legal awareness amongst the women especially about the various aspects of rights.

Being a party to UN, India has signed The Child Rights Convention - CRC of 1993 on 20th November, 1989. As per the provisions of the said Convention, it is necessary and mandatory for India to provide each and every right to the child in wholesome and absolute manner. As per the provisions of the said Convention, it is the inherent right of the child to be grown, nurtured and brought up by both his/her parents i.e. mother as well as the father. Child needs both i.e. mother and father.

When divorce or judicial separation takes place between the spouse having child/children usually the custody of child is either kept by the mother or the father as the case may be. The aspect of custody of child is determined like other articles determined at the time of separation. At this point of time parents usually forget their duties as parent towards their children. Thus, the bright future prospects of the child/children perish away due to divorce or judicial separation. Such separation further gifts the mental trauma to the child/children.

If the rights of the child/children are protected then divorce or judicial separation cannot be permitted in any manner. If divorce or judicial separation is permitted then rights of the child to be nurtured, cared and to grow up with his/her parent cannot be permitted in any manner. Thus, the said situation leads to clashes of rights of one disadvantaged group with the other. The ultimate result is the child/children are the sufferers. Similar is the case with the aged, infirm parents and handicapped family members.

Section 9 of the Family Courts Act, 1984 imposes duty upon the Family Courts to make all possible efforts for amicable settlement between the parties to the matrimonial disputes by means of mediation and conciliation.⁴ The Family Courts in India are well aware about the aforesaid situation of clashes of rights between different disadvantage groups.

The Family Courts are successful in the said move of bringing amicable settlement between parties to matrimonial disputes. It conducts conciliation as and when needed. The main purpose is to make realize the parties their duties towards their marriage, their duties towards their children, towards their dependent family members, etc. Most of the parties realize their mistakes and they do realize their duties and prefer amicable settlement. This has saved the lives of millions of families all over India.

2 <https://districtcourts.gov.in>

3 <https://gnwp.org>

4 <https://legislative.gov.in>

PROBLEMS FACED BY FAMILY COURTS IN INDIA

The Family Courts in India face multiple problems in bringing parties to matrimonial disputes for amicable settlement. These are as under:

- i) The approach of performance of duties that is associated with each and every right in unique manner is not made mandatory by the law. This is the patent error or incompleteness of laws in India. Due to this reason people get easy chance as well as excuses to escape or evade from their duties.
- ii) The perils of Westernization have increased the rate of divorces, lack of understanding, tolerance, etc among the people. Due to this reason, most of the people do not understand the impact of divorce in their lives. They consider divorce as a part and parcel of life process.
- iii) Lack of ability among the people in maintaining relationships. In other words relationship maintenance is not known by most of the people. Therefore, they fail to maintain relationships especially matrimonial relationship.

These are the major reasons. Besides this, there are several other reasons responsible for the problems that are faced by the Family Courts all over India. Therefore, Family Courts have to make very hard efforts to overcome the abovementioned obstacles in bringing amicable settlement between the parties to matrimonial disputes.

CONCLUSION

The main reason for matrimonial disputes or divorce or separation is lack of morality, compassion and humanity among the people of India. It is because they are not taught the needed lessons of tolerance, morality and humanity from within their families as well as from the educational institutions where they have availed education. Modernization and Westernization have totally destroyed India's rich culture and cultural heritage prevailing in terms of performance of duties towards each and every person in the society. The so called human society has become valueless society.

Divorce, separation and matrimonial disputes are quite common in such valueless society. Human relationships are confined to their wishes and vices and not for performance of duties. Social transformation that has taken place in Indian society needs to be reversed as per India's ancient cultural heritage and norms embodied in our rich Dharmasashtras. In the prevailing messy and uncontrolled social orders, Family Courts are doing their best in sustaining marital ties between most of the parties to matrimonial disputes.



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B.A. LL.M. Ph.D. (Pursing)

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