



Vidhyayana - ISSN 2454-8596

An International Multidisciplinary Peer-Reviewed E-Journal

www.vidhyayanaejournal.org

Indexed in: ROAD & Google Scholar

THE ROLE OF THE FAMILY COURTS AND AGE-OLD INSTITUTION OF MARRIAGE

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ABSTRACT

Marriage is the social institution of civilized society. It has cultural as well as religious foundation. It is entirely the function of discharging duties towards relationship. In India, marriage is a part of pious social contract with moral obligations. The level and proportion of morality has diminished among the people. The family courts play vital role in sustaining marriages. The parties to matrimonial disputes strive for their own rights. They do not claim their duties towards marriage. The family courts make people vigilant about their duties.

KEY-WORDS

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. It is necessary and essential for maintaining social order and uniformity and harmony in the society. We are civilized human beings only when this institution of marriage prevails. But in modern times, this institution has almost collapsed. Most of the people do not have faith in marriages. They want duty free relationship. They do not want to perform their duties with regards to the said relationship. Such relationship is illicit relationship as per Indian culture and tradition. But in modern times, it is relationship is legalized as Live-in-Relationship. The youngsters are evading their duties towards the society. Thus, marriages are replaced by such illicit relationship. The Family Courts all over India are making strenuous efforts in sustaining marriages between the parties to the disputes. If marriages are not sustained then ultimately the society or the social order cannot be sustained.

INSTITUTION OF MARRIAGE

Indian culture, tradition and civilization are the oldest in the world. There were various types of marriages and all these forms of marriages were unique from each other. The recognizable and acceptable



forms of marriages according to Manu Smruti and other Smritis and other Dharma Shastras 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 the essence is performance of duties during the life time. At that time the physical relationship other than marriage was considered as illicit and illegal. Family values, moral values, duties towards the society were highest.

Due to the above reasons, social order was maintained. People were ready and willing to perform their duties. The society was rich and was governed by Dharma i.e., duty first approach. The mankind, humanity and morality were on highest esteem. These duties were performed as per the Dharmasashtras. At that time Human Quality Index- HQI was not measured. But it was highest.

MARRIAGE ON PERILS

Modern era is the era of freedom and liberty. It is the era of claiming rights and escaping from duties. Modern era is the era of inhumanity. The ancient Dharmasashtras do not prevail any more in the society. People are escaping from rich morality and moral values and duties and chasing western trends. So, people get satisfaction in non-marital relationships. They chase rights and evade their duties. The ultimate sufferers are the children and aged and infirm and dependent family members.

Marriages are losing its importance amongst the modern generation. Divorces are becoming common among people in India. The education is inclined towards rights. Compulsion for performance of duties is found nowhere in the society. Most of the educated women evade daily household chores, rearing of her own children, taking care of her dependent in-laws, etc.

¹ wordpress.com



The negative transformation of women has taken place in the society. 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. Most of the women do not know cooking, rearing of children. They lack the basic qualities of idle womanhood. Thus, ultimately the entire society suffers adversely. Due to all this reason, marriages are losing its importance in the society.

IMPORTANCE OF FAMILY COURTS IN INDIA

The Family Courts in India are established as per the provisions of the Family Courts Act, 1984.² The family disputes especially matrimonial disputes are increasing rapidly in India. Therefore, divorces are becoming quite common in India. In order to stop the said menace of divorce and to sustain matrimonial tie the importance of Family Courts in India is of extreme importance.

The Constitution of India provides various fundamental rights. It includes women, children, parents, etc. These are basic and essential rights. Their protection is guaranteed by the State. Thus, all classes of people are to be protected by the State under the purview of fundamental rights.

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.

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 by the parties themselves if divorce is preferred by mutual consent or if parties approach the

² <https://districtsecourts.gov.in>

³ <https://gnwp.org>



family court, then the question of custody of child is decided in the best interest of the concerned child. In divorce by mutual consent the question or issue of custody of child is decided unlike any articles. In such cases parents usually forget their duties as parent towards their children. It destroys the child/children future prospect of development i.e., both intellectual as well as moral. Such separation further leads to mental trauma to the child/children.

If the rights of the child/children are protected then question of divorce or judicial separation do not arise. If divorce or judicial separation is permitted then rights of the child to be nurtured, cared and to grow up with his/her parent do not sustain 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 is/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 only way out is the amicable settlement between the parties to the matrimonial disputes.

The Family Courts are successful in the said move of bringing amicable settlement between parties to matrimonial disputes. It conducts conciliations 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. Divorce is not the solution and can never be the solution of any matrimonial problems.

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

⁴ <https://legislative.gov.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. 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.