

Establishment of Family Courts in India: Need of the Society

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Abstract

Adversarial system is ill-suited to family needs. It should be viewed as a litigation in which parties and their counsels are engaged in resolving family conflicts where human considerations prevail over, everything else. The resolution of family conflicts requires special procedures designed to help people in struggle, to reconcile and resolve their differences and where necessary to obtain assistance. Family Courts are specialized courts established for maintaining welfare of the family by developing multidisciplinary approach to resolve family problems within the framework of law. These courts assume a twin function of securing the legal rights of the individuals and playing the role of a guide, helper and counsellor to enable the families to cope with their problems and thereby establish family harmony. In the absence of uniform civil code, family courts were seen as a step forward as it intended to improve procedural laws by providing more flexible, unconventional and investigational procedures.

Keywords: Divorce, Family court, Kinship, Maintenance, Marriage

INTRODUCTION

Family Courts are specialized courts established for maintaining welfare of the family by developing multidisciplinary approach to resolve family problems within the framework of law. These courts assume a twin function of securing the legal rights of the individuals and playing the role of a guide, helper and counsellor to enable the families to cope with their problems and thereby establish family harmony. In the absence of uniform civil code, family courts were seen as a step forward as it intended to improve procedural laws by providing more flexible, unconventional and investigational procedures aimed at bringing about reconciliation among the affected parties [1].

The concept of marriage is held as sacred and significant for the whole span of life. But it is apprehended that the evils of westernization are adversely affecting the institution of marriage in India too. Indeed, the western culture of cohabitation without marriage is gradually creeping into the Indian society.

Still, there are attempts to preserve the institution of marriage. Marriage is considered a permanent and sacred bond in the mainstream of Indian cultural life and therefore until recent times it was treated as indissoluble [2]. The traditions of all civilized societies of our pattern, advocate the belief in the theory of indissolubility of marriage. Indian society also considers marriage as not only an important social institution but also a sacred one. Separation and divorce are treated as harmful practices for the normal functioning of the family.

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It is a generally held view that separation of spouses can be considered by the kinship network

only in extreme conditions and in intolerable problems [3]. Divorce rate in India, taking the total population into account, is low. But it does not guarantee marital peace, harmony, fulfillment and growth. Separation or divorce may not be always desirable as usually it leaves a scar on the personality of both the partners. In the institution of marriage, the dignity of woman must be taken into account because the dignity of woman is the most jeopardized condition and thereby it is subverting the very institution of marriage [4]. To avoid this, menace the relationship between the members of the family has to be maintained. The law arising out of matrimonial bond gain significance here.

Since family life is the fundamental aspect behind the existence of every average Indian woman, much importance is being given to family law. It follows that laws governing family relations have a greater significance for most Indian women than laws governing equal pay, maternity benefits, property or laws dealing with the lending policies of banks and insurance companies [5].

RELIGIOUS PERSONAL LAWS

Today religious personal laws are the determining factor in maintaining family relations. The major religious communities like Hindu, Muslim, and Christian etc. have their separate personal laws. In matters of marriage, divorce, succession, adoption, guardianship and maintenance, these personal laws govern them. Though law provides special rights to the women in these fields, practically they are discriminated. Therefore, there is an urgent need of providing legal aid to the women irrespective of the fact that they are rich or poor or belong to any particular religion [6].

Although the Constitution of India promises equality of status and opportunity for women in all spheres of life, this remains mostly in principle and not so much in deeds. The Constitution of India ensures equality to both women and men. But women can rarely enjoy legal rights because of the existing patriarchic forms of society [7].

A main objective in the preamble of the constitution is equality of status and opportunity and the dignity of the individual. The dignity of the individual is the result of an uninhibited interaction between the concept of social justice and the principal of equality of status and opportunity [8]. The effort taken by the framers is evident from the provisions of the Constitution, which have not only ensured equality between women and men but also provided specifically certain safeguards in favour of women.

Briefly, the Indian Constitution has textually liberated woman and guaranteed her dignity and personality. Equal status and opportunity and non-discrimination on the ground of sex are guaranteed by the Constitution [9]. But the notion of weaker sex complex is a clever invention of male chauvinism [10]. The Constitution, quickened by social conscience, has added invincible legal missile for woman's liberation. Indian womanhood in its severality and collectivity is maimed by man's inhumanity [11].

The concepts of marriage, divorce, maintenance and right to property under personal laws are different from one another. Marriage is the very foundation of the civilized society; it is the foundation of the family, and in turn of the society without which no civilization can exist [12]. Hindu concept of marriage is entirely different from that of Muslims. The former considered marriage as a sacrament, whereas, of Muslims it is a civil contract [13]. Neither of them considers divorce as permissible. Even when divorce occurs the woman has no say in it. For Christians also, marriage is an indissoluble union, a holy tie. It was therefore proclaimed, "what God hath joined together no man put as under" [14].

In Christian matrimonial matters, the supreme authority is Church. Marriage creates a change in the status of woman. Her personality is identified with that of her husband. The traditional concept of sacredness attached to the marital bond is that once it is tied it cannot be untied. This concept is not always practicable. There are many cases in which divorce takes place and the bond breaks.

The later half of the 20th century has been a period of great development in the field of family law. Marital relationship is under increasing strain and becoming complex and demanding. Divorce came to be recognized practically in all societies including those like Hindus and Christians. Divorce cannot be considered as an end to the familial problems, but a beginning. It does not guarantee marital peace, harmony, fulfillment and growth. There are problem marriages and troubled marital life but even in such cases separation or divorce may not be always desirable as a separation or particularly a divorce leaves a scar on the personality of both the parties [15].

INCREASING MATRIMONIAL LITIGATIONS

Litigation in matrimonial matters is widely increasing day by day particularly in towns and cities. The nature of matrimonial dispute is different from other civil litigation. Evidence led in these matters is usually complicated and lengthy. The result is that the number of cases disposed of in matrimonial affairs is rather low and cases go on piling up and hundreds of such petitions remain awaiting disposal.

Similarly, the litigation in regard to any matter concerning family, whether divorce, maintenance and alimony of spouses or custody, education and support for children or trial of juvenile offenders should be viewed as a social curative problem needing solution. The resolution of family conflicts requires special procedures to reconcile and resolve their differences. This means that traditional adversarial procedure has to be modified and replaced by a less formal procedure [16]. It means that the procedure must be effective and speedy one otherwise the imbalance in the family unit may bring trouble to the society as a whole. So, the administration of justice in this field needs a special care.

Under the Indian judicial system till recently family matters were entrusted to the district judges and magistrates, who are eminent in ordinary civil and criminal trials. They adopt the usual adversarial procedure even in family matters. The already overloaded district courts and magistrate courts could not deal family matters expeditiously. The delay in matrimonial litigation is dangerous in as much as the entire youth of these couples would be wasted in these litigations.

Moreover, in ordinary courts the procedure is so technical and expensive that by the time any relief or settlement is reached, the partners, particularly, girls are past their age of resettlement in life, emotionally torn and socially embarrassed. Many of them are psychologically wrecked. The procedure involving lawyers on both sides creates much bitterness that makes decent settlement impossible. In fact, legal action in ordinary courts, more often tends to aggravate rather than resolve matrimonial disputes [17].

CHILDREN: VICTIM OF MATRIMONIAL DISPUTE

Children are the most affected victims of matrimonial disputes. The fate of them during such period is simply torturous causing adverse psychological effect. In most of the cases they are used like shuttlecocks by the litigating spouses. They just do not care for their psychological disturbances nor the children are able to express themselves being weak in every respect. Thus, the adversarial system failed absolutely in imparting legal protection to children.

In the adversarial system the clients in the matrimonial disputes were forced to approach a number of courts seeking remedy for their grievances. For separation, one has to go to civil court, for getting maintenance to a magistrate court. In case some property dispute is involved, one has to go to another court. This is a most undesirable situation for a woman. It is also a time consuming and tiring process. This system is not only illogical but leads to inefficiency and injustices.

It was realized that the adversarial system is ill-suited to family needs. It should be viewed as a litigation in which parties and their counsels are engaged in resolving family conflicts where human considerations prevail over, everything else. The resolution of family conflicts requires special

procedures designed to help people in struggle, to reconcile and resolve their differences and where necessary to obtain assistance.

The court adjudicating family disputes should function in such a manner that it may tend to protect and not disturb family life. It should be helpful and not harmful to individual partners and their children and it should be preservative rather than punitive to family problems. The fact of the matter is that the adversarial process prohibits reconciliation and conciliation of inter-spousal and inter-parental conflicts.

The court engaged in this task requires a less formal and a more active investigational and inquisitorial procedure. In other words it is not litigation in which parties and their counsel are engaged in winning or defeating a legal action, but an inquisition in which parties, social workers, lawyers and welfare officers, psychiatrists etc. are engaged in finding out a solution to family problems. So, for the settlement of dispute between the members of the family, there should be a procedure. The procedure must be effective and speedy one. Otherwise the imbalance in the family unit may bring trouble to the society as a whole. Hence administration of justice in this field needs a special care.

Taking into consideration this special character of family and its significance in the society, the Law Commission of India in its 59th report in 1974 strongly recommended for the establishment of Family Courts in India for dealing with the disputes concerning the family [18]. The main force behind the establishment of family courts originated from women's movement, which brought to the focus anti-women bias within the law in the courts. The concept of family court implies an integrated broad-based service to families in trouble. It stipulates that the family court structure should be such as to stabilize the marriage to preserve the family and where the marriage has broken down irretrievably, to dissolve it with maximum fairness and minimum bitterness, distress and humiliation. The demand was made for reforming laws and procedures that would ensure women's economic rights within marriage and make divorce proceedings speedy, less painful and just for women.

CONCLUSION

Mahatma Gandhi had said "family disputes and differences are to be settled generally according to the law of love" [19]. It expressed itself in mutual relationship and co-existence, which shall be the basis of Family Courts Act. Family courts are described as fully responsible judicial tribunals which provide a special social approach to certain family problems and which centralize various legal matters relating to the family in one court equipped to provide this approach [20]. Along with the aim of protecting the legal rights of the individuals, family courts play the role of a guide, helper and counsellor.

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