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Causes And Consequences Of Divorce And Its Socio-Legal Perspectives With Special Reference To Culturalization In Tamil Nadu

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Abstract

Marriage is the most essential institution of a society. Contemporarily, the chasing nature of "Divorce" is an alarming factor. The Socio-Legal causes and consequences are majorly due to the social stimuli and violation of legislations which are enacted to protect the contract of marriage legally. In this paper, the major area of focus is about the considering divorce as a anti-institutional body especially with various references to the state of Tamil Nadu. Our secondary point of concern is about various Statutes that govern the divorce proceedings. Lights have been thrown on the hidden grounds of divorce that are not mentioned in the divorce laws but are prevalent in today's society and advocates that as society evolves, the law of the land should also evolve. Aftermath, our paper focuses on the alternate remedies that can be a first-aid in solving the legal disputes among married individuals by recommending the practice of mediation, either by their own family members or by the legal experts who can provide psychological counseling along with the intent to retain the married couples familial bond. Further, various proceedings by the High court of Tamil Nadu are explained, where the dissolution of marriage is seen only as a last resort and not the initial remedy for negligible disputes. The relation between the conjugal stability and legal stability should be viewed seriously with reference to the religious customs and practices that are exercised within the family are analyzed in a reviewing methodology. More legal revolutions has been done by the parliament of India in structuring the divorce and cruelty provisions. Finally the concept of behavioral influence in violating laws of marriage and the individuals own conscience are discussed and various recommendations are given to eliminate the ego-clash and to retain one's own legal-social contract.

Keywords: Divorce laws, Socio-Legal causes, Conjugal stability, Ego-clash, Alimony

Introduction

Divorce has become the inseparable concept in the familial structure due to its consequences and causes, it is set to a wide range of deviation within the legal framework of a family. The southern states of India particularly the state of Kerala and Tamil Nadu witnessed more number of single women living independently, which portrays a truth that many marriages result in divorce. The recent report by the sample registration survey, it is mentioned that 9.2 percent¹ of the women's in Tamil Nadu are single widows, divorced and live outside the familial structure. Our legal framework has seen a drastic change in the social and cultural transformation where many cases are pending before the court of law claiming conjugal rights and dissolution of marriages. In this context, stripping away the stereotypes that are practiced from times immemorial alone cannot solve the issue, rather a strong legal protection should exist. Section 13(D) of the Hindu marriage Act, which emphasizes a woman's right to oppose the petition of divorce or the grounds of hardships stands as a benchmarking provision.

In such legal aspects the statute of divorce should not only have the intent to separate the couples rather to find most possible circumstances and try to strengthen the broken bond between the two individuals of marriage and divorce should be considered as the last resort rather as the initial solution for the temporary problem. Considering the act of divorce in socio-legal perspective, our culture plays a pivotal role in structuring the terminologies and causes that one person approaches knocks the doors of a competent court for separation either temporarily or permanent. The controlled nature exists when regulations become secondary and private ordering about the divorce becomes primary. In many instances including the age old case Agnes sumathi ammal vs. D.Paul,² and in many other cases the court of law observed that some serious issues than provoking divorce petition, in a controversy many negligible familial disputes which does not have the intent to self-rectification results in divorce.

¹ Sample Registration Survey Report, 2018, Office of the Registrar General & Census Commissioner, India

² Agnes Sumathi Ammal vs. D. Paul on 11 October, 1935

Divorce As An Anti-Institutional Feature Of Marriage

The sociological school of jurisprudence advocates marriages and family to be a complex social institution, where it is inseparable feature before the socio-legal lens. Divorce is not only ending the contract of marriage between the individuals rather to allow the married individual to remarry again without any constrain. Many legal doctrines put forward the question how a divorce proceedings are carried out and in what circumstances the provisions are fully excluded. The matter deals with primarily the economic motive of how the familial wealth could be divided among the divorced person and the husband or wife who is earning from a perennial source of income should take care the one who will be left abandoned without any monetary benefits generally called as spousal support laws or Alimony. Section (25) of the Hindu marriage Act of 1955 deals with the permanent Alimony and maintenance, which is a permanent maintenance amount that has been ordered by the court of law to be paid to the suffering partner after the divorce has been fulfilled, or the nullity of marriages are proved and any other decree regarding the dispute arises in the family relationship, when it is seen in the perspective of anti-institutional feature.

Divorce is an alarming sound that our legal provisions and social relations among the individuals in the society diminishes in its purposive satisfaction for what it was developed. Secondly, the offspring's of the marriage i.e. the children's are left in an abandoned manner, where there should be a separate legislation for the child support laws³ that has to be strengthened in any society. In Mnookin and Kornhauser (1979:959)⁴, the responsibilities arises out from the disfiguring of social institution lies holistically in the hands of law and the legal concern should be made by the judiciary in interpreting the most favorable provisions, that result in a idea where no party is been affected because of the damages caused in the anti-social structure. At last the fault finding tendency among the couples is the explicit reason, which develops as conflicts and further develops as ego clash and results in breakage of their marriage contract.

³ Furstenberg, F. F., Jr., and A.J. Cherlin. 1991. *Divided Families: What Happened to Children When Parents Part*. Cambridge, Massachusetts: Harvard University Press.

⁴ Mnookin, Robert, "Divorce" (1998). Harvard Law School John M. Olin Center for Law, Economics and Business Discussion Paper Series. Paper 231.

Indian Divorce Laws - An Overview

The laws in India regarding the conjugal rights and familial disputes are more pro-active, when comparing the global arenas of divorce disputes. India has a compendium of statutes which deals such cases, they are Hindu Marriage Act-1955, Christian Marriage Act-1872 and The Divorce Act- 1869, Parsi Marriage and Divorce Act of 1936, the Special Marriages Act-1954, and there also exists thousands of proceedings by the Indian Judiciary where multi-dimensional approaches have been applied in their rulings. Though many laws prevail in the subcontinent to grant divorce, they all have a touch towards their own religious and customary practice and age old traditions of their country are considered by the drafters of the legislation while framing such laws. Any Indian Law does not provide compulsive divorce, without the mutual consent or partial consent of at least one of the couples. This proves that the state tries to strengthen the social institutions and to build it in a better way rather to destruct it with its own whims and fancies.

Section (10) of the Divorce act 1869 advocates that *"Any marriage solemnized whether before or after the commencement of the Indian Divorce (Amendment) Act 2001, may on a petition presented to the district court either by the husband or wife, be dissolved on the ground that some the solemnization of the marriage, the respondent has committed adultery or etc..."*⁵ This legal provisions not only pronounces women to indulge in adultery rather even a man can be sued. *"A wife also present a petition for the dissolution of her marriage, been guilty of rape or bestiality"*. The jurisdiction of case to file a suit is being a matter of discussion since many married couples are unaware of the legal provisions regarding divorce. The relevant jurisdiction may be the place where the petition in the matrimonial issue is filed and the court of law needs to ensure whether it has proper jurisdiction over the issue by consolidating the parties domicile, place where the marriage is been solemnized and the residential jurisdiction of the persons who entered in to the contract of marriage.

Hidden Grounds That Causes Dissolution Of Marriage

Section 13(1) of the Hindu Marriage Act- 1955 explains several grounds for the divorce by either of the parties, similarly section 10 in the Divorce Act of 1869, various grounds for dissolution of marriage is been explained but all these statutes need a proper updation since the society is been

⁵ The Divorce Act, 1869, Act No. 04, Act of Parliament of India, 1869

evolved each and every day. For a person to have a healthy familial bond with his spouse there are certain criteria's formulated either based on the legal perspectives or social perspectives or by the customary practice of them. Unfortunately there exists many other hidden grounds that are considered to be un-spoken before the law, for instance ego-clash is the prime objective and acts as a seed for the dissolution of marriage, consequently that such ego-clash has never been spoken in any Indian legislations. *Jawaharlal vs. smt. Preeti* on February 2022, the court found that ego was the source of all the disputes that have been raised from the conjugal relationship of an individual and in structuring the concepts of all the terms and conditions that amounts to a great amount of threat to the familial bond. Secondly, the interrogative behavior among the couples are supporting the suspicious nature of family relationship with the peer workers, in this case if her husband always sees her in the interrogative eye, then the bond between the couples weakens that leads to the marriage dissolution. In *Rohtas Singh Yadav vs. state of Haryana* in 2011, the court observed that the interrogation was the major cause for the family to get withered away and to cause the participants of the family to coexists without any chaos. Indian laws pertaining to the divorce explain only certain health issues that are considered for the purpose of divorce but there exists much more, where the partner biologically have some defaults and it affects the conjugal relationship between the couple, hence this reason remains as a recessive one and some other fake dominant factors are quoted for filing the divorce petition before the court of law.

Post Divorce Law And Social & Election In Tamil Nadu

Divorce laws in India extremely affect the intention of a couple to get re-married with regaining the lost social status again. In Tamil Nadu there are various instances where the familiar disputes results in the sense of reluctance to get remarried. In *Mrs. Proud vs. The Income tax Officer* the court observed that there were no reason observed to the divorcing act and all these are literally considered to be a flaw in the trending social behavior of our society the position of the wife has the proper legal rights to stay in the matrimonial, hence under any situational error if his spouse expires or leaves her abandoned. In Tamil Nadu social cultures governs many of the matter that pertains the cause of action for voluntary involvement of dealing the divorced women. Though the legal frame work follows the couple till they are legally separated (i.e.) dissolved from the contract of Marriage, the systems of social stimuli does not leave an individual to walk freely as

others do.⁶ For example if a divorced couple stays in the orthodox society, they are subjected to social alienation, their inherent rights are taken away and they cannot live a life of a normal human being. The Divorce Act of 1869 and various related laws clearly emphasizes the point of discussion that divorce is the last resort to provide the couples with permanent separation rather to end their life in a tragedy. The social behavior of a family number say her mother of settling the stridhana properties back to the women's house. We are literally living in a society where people take more advantages in acquiring others property than following proper legislations in terms of laws and statutes. Hence the post divorce laws should be the matter of concentration among the existing proactive laws, which will make the dissolution of marriage, a smooth and easy process.

Substitutes For Divorce Proceedings

All familial disputes do not conclude in the divorce proceedings, fifty years ago, when there was no technological advancements as it is now, the Tamil Nadu society rarely know about the concept of Divorce and its legal provisions, as society evolves, rather knowing about the legal provisions of dissolution of marriage, many stand before the judiciary to get separated. The legislation is in its laws clearly mentioned various alternative way for the permanent separation of the couple. Section(10) of the Hindu Marriage Act throws light on the Judicial separation. The concept behind this temporary separation is to units the couple forever. The couples when they are separated Judicially, they cannot enjoys the rights of their Marriage.

In Dr. N.G. Dastane Vs. Mrs. S. Dastane the court pronounced the Judicial separation as a alternative remedy for Divorce. Since our paper particularly focuses on the state of Tamil Nadu, there exists more substitutes for a Divorce. Initially it deals with the Joint Family situations. A Hindu Joint Family which services under the one roof is the best example in combating familial disputes. For instance if any dispute arises between the couples the "Karta" of the family can be the judicial officer and solve the issue within the four walls of their house, which in turn provides dignity and self-respect to the family.⁷ If such Joint Family culture is absent, still there are some

⁶ Mrs.Kannammal vs. Income Tax Officer on 13 February, 2019

⁷ Kaur, Ravinder and Priti Dhanda. 2013. —Surfing for spouses: Marriage websites and Marrying in South Asia: Shifting Concepts, Changing Practices in a Globalizing World. New Delhi: Orient Blackswan, pp. 271–292.

ways like "Mediation" by the local mediators and sometimes a legal expert or court officer must compulsorily not only used to file a divorce petition, rather to provide a good counseling and mediation among the couple too. There also exists some kind of annulments in the religious institutions especially among the Christians and Muslims where the court of law is not approached rather their religious head is so. In these cases the focus is not to knock the doors of Judiciary rather to settle the dispute in the preliminary level itself before becoming a disaster.

Benchmarking Tamil Nadu Examples

The enactment of Tamil Nadu Hindu (Bigamy prevention and Divorce) Act of 1949 and Hindus Marriage Act of 1956 which shows some amount of strictness towards the Bigamy culture in Tamil Nadu is been a eye opener for extra Marital affairs among the Married couples in our Traditional society. Restitution of conjugal rights are not always claimed by women, at times by men also. In 2008 the state of Tamil Nadu have seen a good example where the husband claimed divorce before done to him by his wife. This was the new trend then and honorable Justices Elipse Dharma Rao and M. Venugopal viewed it very seriously and the issue in the case were analyzed. The appellants senior counsel argued that there are criminal actions filed by the women against her husband, which has become a norm in the familial dispute and the contention always not be the same.

The Judge commented that the cruelty is the questions of parts to be decided on the each and every case uniquely and one case should not be taken as an example for other because during the crime or civil disputes the circumstantial evidence does not remains same in all the problems. One couple fight for their extra marital affair and the other fight for the cooking method of his wife does not competes on par with their neighborhood house. Here the court observed that the divorce petition filed by the husband is valid and he had been experienced cruelty by his wife and the High Court of Tamil Nadu dissolved their contract of marriage. Apart from these example some other exceptional cases also exist because of the inculturation of legal systems in Tamil Nadu. Inculturation of legal systems means how a society adopts its culture according to the existing legal provisions and how it gives due importance to both of them by considering law and culture as the two eyes of it, and as a result harmony perishes in the society apart from the legal disputes.⁸

⁸ Michael, E. M. (2015). A study on the psychological well-being and quality of life of divorced Muslim women. Kottayam, Kerala: Mahatma Gandhi University. doi:10.603/42079

Conjugal Verses Jural Stability In Marriages

The jural and the conjugal stability in most of the Indian marriages are concerned because the intent to accept or reject the features which unites or separates the couple, for example, the state of Tamil Nadu witnessed more judicial separations and dissolution of marriages, in all such cases the couples do not follow what exactly the law says. A divorced couple who cannot enjoy legal contract of their marriage sometimes live united aftermath of their divorce and some couples who are not legally separated from their marriage contract still live without unity in different places. Hence the conjugal stability at many times govern the judicial stability. Regulation of divorce is governed by many factors within a family. A joint family which provides frequent counseling to the couples and some nuclear families where such opportunities are absent, in both cases the product of conjugal stability lies in the hands of the religious customs. The Joint Family will be governed by the Hindu Marriage Act, which is also applicable for the other religions like Sikhs, Janis and Buddhists but still each and every one of them, differ in approaching the court of law for divorce according to the religious customs.

In this paper we are focusing about major cause and consequences of the dissolution of marriage in a social as well as in the legal perspective which emphasizes that the liability is with both of them, i.e., our legislation and our society. In many orthodox families, in Tamil Nadu marriage is seen as a sacred institution, rather as a legal contract. Hence the presence of preventive laws relating domestic violence like Protection of women from Domestic Violence Act-2005,⁹ will be hesitated to get implemented in the familial relationship even though there are many cruelties occurred for the women. More than family disputes, the evolved form of such disputes before the court of law are emotional abuse and criminal behavior of the spouse. Hence the conjugal and jural stability should not be influenced by religious laws in a family

Social Stratification - A Major Cause For Divorce

The legal disputes in our country especially in southern regions of sub continent is majorly due to the social stratification of different communities. The laws which govern such stratification are conventionally not been used at the exact time when it is needed. Legally speaking, a stratification with respect to law is the ambiguous term since our fathers of the constitution toiled to remove such divisions among the individuals. Each and every family is bound by its own

⁹ The Protection of Women From Domestic Violence Act, 2005, Act Of Parliament Of India, 2005.

social status it has in the society. The families economic status which was determined but the social status determines the divorce rates in our society. The direct proportional graph of the two concepts, social status and legal status remains a bitter truth in our country. Various legislations relating the citizenship and the nature of self pertaining such groups especially the Citizenship (Amendment) Act - 2019 advocates the process of providing equal access to all irrespective of the external factors, which lies outside the Indian Legal System. Ramacvhandrapa in (2016) and Vasudevan in (2015) in their research found that economic independence of a women give her motivation to approach the court for legal dissolution, but here in our traditional society, we have number of examples which conveys a sad message that even when a women who needs to file a divorce petition, she needs to go out of the house only with the consent of her husband. Divorce rates among the aged women's between 40 to 60 is the hot topic in many family courts because they are ready to detach the sacred bond with his/her spouse at any time , but this opportunity is granted only to the urban society women and not to the village working women.¹⁰ In Chinnamal vs. Elumalai (2000) it was observed by the court of law that there is a distinction between the proof of marriage and the process of validity is amounted to a great question. On the basis of customary perspective or religious view, the doubt of previous marriages aroused and the honorable court held that the amount of pleading or proof of customers or either of the couples consent is very vital in deciding whether the marriage is void or not. Based on this it is clear that feminism and male chauvinism is also a regulating factor for divorce proceedings.¹¹

¹⁰ Saraswathy, S. (2016). Factors influencing Women attitude towards divorce - A study in Palakkad District, Kerala. *South -Asian Journal of Multidisciplinary Studies*, 3(4), 61–66.

¹¹ Vasudevan, B., Devi, G. M., Bhaskar, A., Areekal, B., Lucas, A., & Chintha, C. (2015). Causes of divorce: A descriptive study from central Kerala. *Journal of Evolution of Medical and Dental Sciences*, 4(20), 3418–3426. doi:10.14260/jemds

Conclusion And Recommendations

In this paper which deals about the analytical view of various sources that are being key factors in determining a marriage, there must be a healthy and strong bond between the legislations and the individuals. Today divorce has become a most prominent act in our society because marriage is seen in a commercial notion rather considering it to be a part of relationship matter. Conventionally India have witnessed many cruelties where a women cannot enjoy even the basic rights granted to her by nature, but in the post-women right era, where feminism bloomed, it gave a weapon in the hands of women to combat any hurdles that arises before her in restituting a happy life. The advent of Tamil Nadu Hindu (Bigamy prevention and Divorce) Act-1949, there exists a society which sees comparatively less familial disputes due to bigamy. Our law prevents bigamy because, it is against our social values and norms, without which a society (state) will perish at some point of time. Indian Government is very keen in preserving our age old traditions and valuable cultures since they determine our glorious history.

Following with some recommendations the legal dispute mechanisms should be solved maximum within the married individuals themselves or the state should provide psychological counseling for such couple and to make them understand the value of marriage as a social institution, and this should not pave way for cruelty and gaining advantage over such policies, whenever such violation are done the minimum support should be fetched from the law enforcement agency (police) and it should not be a conclusion, rather a move for second stage of protection when mutual speaking fails. The last but most significant topic of discussion is the children's of such divorced couples. Even though by any factor these persons dissolve their responsibilities in a legal contract, the state should protect their children's through social and child welfare agencies and the same kind of primary and secondary socialization should be given to them in the absence of their parents. Hence the state of Tamil Nadu which is unique in its heritage has many legal provisions to protect the couples who approach the court for winding up their social-legal contract.

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