

## My Experiences in Family Court

Family Court is slightly different from the normal Court where application of Indian Evidence Act is not followed in its strict sense and the proceedings are conducted in normal way to arrive at speedy settlement. The preamble suggests that endeavour should be taken either by settlement or by providing a scope to effect reconciliation between the couple. For simplification of the procedure, engaging legal practitioners by the parties on their behalf is restricted. To arrive at a settlement to effect reconciliation of the matrimonial disputes, Family Courts can secure services of medical, social welfare agencies and other experts. India is a vast country having second largest population in the world. So, naturally number of married persons also became high in number. With the high numbers of married persons, matrimonial disputes also increases due to differences in opinions, thoughts, etc. between such couples, for which majority is coming to the Court to get redressal. It is the constitutional mandate for speedy disposal of such disputes to grant quick justice to the litigant couple. But, our Courts are already over burdened due to pendency of large numbers of cases, for which it becomes difficult for speedy disposal of matrimonial disputes alone. In such circumstances, several organizations including women organization have urged for establishment of separate Courts for settlement of family disputes. As the matrimonial disputes are mainly between the husband and wife and personal matters are involved in such disputes, so, it requires conciliatory procedure to bring a settlement between them. The Law Commission of India in its 59<sup>th</sup> Report (1974) had stressed that in dealing with disputes concerning the family, the Court ought to adopt an approach radically different from that adopted in ordinary civil proceedings and that it should make reasonable efforts at settlement before the commencement of the trial. In view of the above background, the Family Court Bill was introduced in the Parliament in 1984 for being passed as an Act. Statement of objects and reasons accompanying that Bill refers to the futility of the special procedure (Order XXXII-A) required to be adopted by ordinary Courts in dealing with family matters and the need for establishment of Family Courts. The Bill was passed by both houses of the Parliament and received the assent of the President of India on 14<sup>th</sup> September, 1984. Thus the demand of several organizations to set up Family Courts for expeditious settlement of family disputes came in to reality. Accordingly, concerned State Governments established Family Courts in different parts of our Country to try exclusively the matrimonial matters.

After enactment of the Family Courts Act, 1984, the Government of Assam in consultation with the Hon'ble Gauhati High Court, established the Family Court,

Kamrup, Guwahati, on 21<sup>st</sup> March, 1992, which is the first Court of its kind in the State.

I took charge of the Principal Judge, Family Court, Kamrup, Guwahati, on 1<sup>st</sup> November, 2011. During my short tenure as a Principal Judge till today, I have come across different types of matrimonial disputes out of which, most of the cases are of claiming maintenance allowance by the wife from her husband. Apart from these cases, divorce petition for dissolution of marriage, petition for restitution of conjugal rights, nullity of marriage are also filed. Out of these cases, I have found the divorce petition filed under the Hindu Marriage Act, 1955 or the Special Marriage Act, 1954, is gradually increasing which includes mutual divorce also. But, divorce petition under the Mohmedan Law is not yet found, probably due to the fact that the Mohmedan husband usually gives 'Talak' through Kazi. It is also found that either party of a married couple came to the Court for dissolution of marriage with a bundle of allegations against the opposite party. After hearing the parties, particularly in some divorce petitions filed under Section 13 of the Hindu Marriage Act, 1955, what I feel is that the petitioner has brought the allegations for the sake of allegation only to make out a case and there is scope to settle these cases, if proper counseling can be done through mediation. I hope that if some extra efforts are taken, it becomes not so difficult to reunite these parties to bring in to their conjugal life. As we all know that the dispute between the husband and wife is a very delicate matter, so, proper care and attention must be taken to handle such disputes. I have found that in such cases, both sides try to lower down each other in such a manner and to such extent, as if they are the most dangerous enemy of each other. They forget that they were socially bonded in a marriage tie with the dictate of Vedas that marriage is a union of "bones with bones, flesh with flesh and skin with skin, the husband and wife as if they were one person". They also forget that Hindu marriage is a sacrament and an eternal union to live as husband and wife forever, a union which subsists not merely during this life but for all lives to come. I personally feel that where a couple came to the Court out of their dispute, it is a difficult task to reconcile them. Because, either of them comes to the Court, when their disputes reached in an extreme point, so, to bring such husband and wife again in to their conjugal life, the counselor or the mediator must have performed an important role very carefully. Before trying for reconciliation, they should listen the parties individually, preferably in camera and then try to find out the root cause of the dispute. In exercising this effort, the mediator or counselor must have patience to hear their every word carefully. Once the cause can be diagnosed, then it will be easier to find out a solution. Now a days, mediation has played a key role in settling the disputes between the parties. Matrimonial disputes are of such kind of disputes

that proper mediation or counseling might have yielded a good result. It is found to be a good gesture that Indian Law Institute, Assam Chapter, have trained up some learned advocates through 'Mind India' to do mediation or counseling works in Family Courts to reunite the couples, who became victims of circumstances for their differences of opinions and thoughts etc.

Another painful situation which I faced is the custody of minor children. Such unfortunate children are the first victim of the dispute that exists between the husband and wife, i.e. father and mother. Due to the tender age of such innocent children, they cannot realize the actual cause or situation for which their parents are living separately. These innocent children are in their initial stage of their life and they have to go a long way, but unfortunately they become the victim of the tug of war between their parents. I have found such minor children of 7/8 years of age, who appealed me with their tearful eyes to reunite their parents, because they want to live with them together and never want their parents live separately. But, the father and the mother neither bothered to think about the feelings of their children nor to build up their nature and character for a good citizen of the future, but, they think about their ego, status etc. as if they are fighting for their prestige in getting the custody of the minor children. They forget that every child is required to bring up in such a good and healthy environment that can build the nature, manner, character etc. of a child in a positive way. The environment, in which a minor child is growing up, has large impact in building their mind set up also. So, the parents must take proper care, in bringing up their minor children in such a way, so that they become the future of our country in its true sense.

Apart from the above, filing of mutual divorce petition is also found increasing. Most of such petitions are filed by young couples, who registered their marriage under the Special Marriage Act, 1954, at their teen age period, while they were student. These couples are found to be married with the Certificate only, issued by the Marriage Officer, but they never lived as husband and wife and started their conjugal life. After three or four years of their marriage registration, while they realize that they have entered in to the marriage registration out of their misconception of tender age dream and without informing their parents or guardian, they decide to dissolve their marriage and have come for mutual divorce under Section 28 of the Act.

In such a scenario, it is time to think over the above situations, by the society as a whole and the concerned department in particular. To minimize the matrimonial disputes, it has come to my mind that pre and post marital counseling is necessary. It can be done by the State Government through family welfare department or by any approved non Governmental organization. Post marital

counseling may be made compulsory for a fixed period, where all the married young couples must have attended before the counselors of the department or approved NGOs at an interval of certain period immediately after their marriage and discuss their differences, if they feel this arise in their family life. This will make the young couples to understand how to lead a happy married life. Old couples may also come to the department or the approved NGOs at the initial stage of their dispute so that they can resolve their dispute before the counselor of these departments and the disputes, which cannot be resolved, may be referred to the Court. Marriage Registration Officers also have an important role to play, i.e. they should comply the legal procedures of marriage registration fully prior to registration of a marriage, particularly the service of notices. I hope and think that these may help to curb the matrimonial disputes in our society.

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