

FAMILY COURTS IN INDIA MUST DELIVER SPEEDY JUSTICE

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In the name of modernity, Indians have adopted the western culture to marry and divorce without much thought. As divorce, is no longer a stigma, divorce happens even on flimsy grounds and this observation was also made by the Kerala High Court.

In recent years, it has been noticed that the divorce rates in Karnataka have seen a steady rise. It had been reported that Karnataka's family court has disposed of the fourth highest number of divorce petitions. This article examines the significance of expediting divorce cases in Karnataka and highlights the benefits it can bring to the parties involved.

Understanding the Current Scenario

Divorces in Karnataka, especially in Metropolitan cities in general and in Bangalore city in particular have seen a consistent rise. In Bangalore city alone, it was reported that during the period of 1991-2000, there was a rise in incidence of divorce by 17.25% which again rose to 31.9% in 2001, indicating a 14% rise during the decade. Divorces are increasing among the affluent and educated class located in these areas, probably because with education comes arrogance. Affluence provides the means to end and survive through a divorce. The breakdown is not just of the first marriage but also of the second marriages.

If we are blaming the younger generations for their mindset leading to divorces then we are mistaken. There is an increasing trend in 'silver divorces' too where after years of marriage, couples are over 50 or 60 years of age choose to part ways even when they have no major issues with each other and are healthy. They choose to divorce as they want to live separately in peace and are done with being together.



What needs to be done to ensure speedy justice?

In the state of Karnataka, like many other regions, the legal system & judicial wisdom plays a crucial role in ensuring a speedy dissolution of marriage. So given the protracted nature of divorce proceedings, a lot of things have to be considered. Marriage can be nullified, declared void or dissolved by mutual consent or contested divorce.

If there's an issue of legality, marriage can be nullified by the court's formal pronouncement that has the effect as if the marriage between the two never took place. In some cases, depending on the grounds some marriages can be declared as void too. These grounds are available under all the personal laws. It's therefore important to know if your case falls under the grounds available instead of thinking that all marriages are dissolved by the lengthy procedures of contested divorce alone.

In mutual consent divorce, the points for consideration are already settled and pre-requisites are already laid down and both parties give their consent to separate amicably. So, divorce by mutual consent is considered as one of the quickest and easiest ways. Its inexpensive and the biggest advantage is that it removes all unnecessary quarrels, blame game, washing dirty linen in public and saves precious time.

It's only when the parties are not agreeable or ready to mutually settle the issues, the divorce gets contested and proceedings are prolonged. In the contested divorce, which is solely driven by the grounds available to the parties, a lot of issues get involved such as custody of the children etc. which delays proceedings. There are many common grounds under all personal laws and if any one of them are primarily and essentially met and proved, divorce is granted. Then there are very short span marriages or marriages where there are no issues at all related to assets in joint names, or child custody etc. then in such cases, prolonging of dissolution of marriage is not justified.

The Impact of Delayed Justice:

Pendency of cases: We already have a huge pendency of 4.3 crore cases which includes

matrimonial cases too. It's a simple understanding that when more cases are pending it places heavy burden not just on the parties but also on the available judges and the staff of the court. This burden surely has an impact on the judgement in many ways.

Loss of faith: Delayed justice leads to frustration, anger, violence, suicide and loss of hope in the system. There are a number of cases where the parties' resort to suicide because the longer it takes for the case to end, the more the frustration grows. For some, when they run out of patience and tolerance or face hardships, suicide becomes a last resort.

Involvement in crime: When the delay seems inordinate, the issues can increase the hate and anger, often leading to revenge by resorting to crime etc. For the party who has all the time in hand, mind is devils' workshop and the plotting planning begins. Often there are instances of criminal intimidations and filing of multiple litigations.

Compromise: Often the parties who start a contested divorce end up so frustrated that they agree to mutual consent divorce compromising on things that they would not have actually agreed. Another fact is that often parties agree for mutual consent divorce but then one of them withdraws the consent and thus precious time is wasted. In one of the judgements of the Kerala High Court, a division bench in a matter related to mutual consent divorce, held that it was cruel to deny divorce to the partner in an unhappy marriage.

Mental Strain: Prolonged divorce proceedings can significantly impact the overall well-being of the parties involved. Mental strain causes stress, anxiety, bio-chemical proliferations and depression etc. Hence, one divorce case in the family not only affects the concerned party but also the entire family, often leading to psychosomatic disorders in them. It hampers one's ability to heal and move forward.

Financial Burdens: Lengthy legal battles in divorce cases often results in mounting legal expenses. This traumatizes the party if they already have many financial issues. It can drain their savings, increase medical expenses, trap them in loans and ofcourse make rebuilding their lives again a distant dream, especially after divorce.

Custody and Parenting Issues: Delayed divorce proceedings can disrupt the lives of children involved, affecting their well-being and overall development. Parental alienation is also increasing which can destroy the relationship between the targeted parent and the child. So, it would be the laws that led the alienating parent to spoil the relationship between the parent and the child because of the lengthy time made available to do so.

Stifling of New Beginnings: Many times, the trauma of the previous marriage takes such a toll that

they may give up on new beginnings or jump into another just to save time.

Potential Solutions and Way Forward

To address the issue of delayed justice in divorce cases in Karnataka, several measures can be implemented:

Reporting to court must not be avoided: Both the parties must report to the court on time whenever they have to be present. If any of the parties fail to do so on the date, it will delay the procedure and ultimately delay the disposal of the case.

Mediation assistance: Though CPC provides for alternate dispute redressal mechanism it's not being used. Life becomes easy and court cases inexpensive when you resort to settlement of matter amicably or by mediation. In mediation there is no lengthy process of the judiciary. One can cut short the lengthy process of divorce by opting for the mediation and getting your issues solved whichever way you choose. Even parties can agree to mutual consent divorce. So, it's best stick to the easiest way out and not change the whole course of your life just to harass the other.

Filing proper documents and avoiding multiplicity of litigations: In order to shorten the procedures, the documents to be filed before the court must be kept ready and filed on time as and when required. Both the parties must avoid harassment tactics, or making futile attempts by filing multiple litigations, restitution of conjugal rights, or appeals unless it's really required.

Increase number of working days: Unless we increase the number of working days or create more mechanism to efficiently handle matters, even during court vacations the pendency or delay cannot be avoided.

Introduction/updating of technology in courts: One of the ways in which the faster procedure of disposal of the courts can be done by introducing or updating the court. Our courts should be fully digitized, court should have readily available technical experts to streamline the whole process right from filing to final verdict. More Apps and editors can be used to simplify technically dense judgments.

Increase number of judges: India has about 21 judges per 1 million people as per the news in the Economic Times and it was a statement by the law minister. There is a lot of vacancy in the post of and this has to be filled up. So new appointments have to be made.

Increase in judicial premises and judicial infrastructure: There is need for establishing fast track family courts and employing the court staffs needed to handle cases. Research and training opportunities, setting up of libraries, well-lit and spacious court rooms should be built.

Judicial Reforms: Judicial reforms have to be made. Every endeavor should be made to achieve a Uniform civil code so that parties under one personal law do not suffer while the others under a different personal law gets the benefit of it. Article 21 of our constitution, provides for the right to speedy trial and speedy justice. Hence, we need express provisions of law being made that defines it in clear terms.

Facilitating Co-Parenting Arrangements: In cases involving children, during the proceeding's arrangements should be made to ensure that the children have the opportunity to live with both the spouses unless there is harm to the child. Every effort should be taken to see that the child does not have to bear the brunt of the parent's mental state or financial issues. The judgements should instill hope, right from the subordinate court to the higher courts.

Punishment and penalties: The legal system must show zero tolerance to parties resorting to delaying tactics by seeking adjournments on flimsy grounds or coming up with excuses from time to time for during filing and those who have falsely sworn on affidavits. It's important to prevent parties who delay the proceedings deliberately and are unable to prove their stand.

About the author:

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