

Building a Discourse for Pre-Marital Counselling in India

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Abstract:

“Let us try to offer help before we have to offer therapy. That is to say, let's see if we can't prevent being ill by trying to offer a love of prevention before illness.”

---Maya Angelou

Marriage is a social institution and happy married lives of citizens can rightly be said as one of the parameters for happiness index of a country. However, in the recent past, society has witnessed a threat to this social institution from growing rate of divorce and development of other emerging concepts like: live-in-relationship, incompatibility, modern life styles, nuclear family structure, lack of quality time to spend together, impact of social media, professional ambitions and adultery. For saving this social institution from falling-off, no law will come to rescue as law cannot be a panacea for all the problems rather it demands civil society to introspect and to go for saving marriages. Counselling of would-be couples by experts may be one such via media/ platform for orienting and sensitizing youngsters about this holy social institution. The present write-up is an attempt to build a discourse for the need of such pre-marriage counselling so as to save this social institution which seems to be under threat of falling-off. Counselling can be carried out under the purview of free Legal services/legal aid which *inter alia* includes legal literacy, empowerment and counselling of citizens towards their basic rights, duties and contribution in realizing access to justice for all.

Keywords: Dharamasastras, live-in relationship, professional ambitions, social media, bigamy, demographic dividend.

I. INTRODUCTION

According to Hindu mythology, amongst 16 *sanskaras* as laid down in *Dharamasastras*, *sanskar* of marriage is considered to be of utmost importance. It is a belief that without solemnization of marriage one cannot attain the salvation. Institution of marriage as an ‘agency of socialization’ in the society happens to be a very pious institution. The Holy Bible advocates that “Man must not separate what God has joined together”. Every religion on the earth do recognize the importance of marriage. However, if we see the success rate of marriage in today’s context then there is a sorry state of affairs. A significant change has occurred in the views and attitudes of people towards sanctity of marriage in the recent past, especially in metro cities. Gone are the days when marriage was to be treated as ‘heavenly match’ or a ‘blessed union’. Unfortunately, the institution of marriage has gradually become unstable. For the past few decades, divorce rate has been alarmingly increasing in most of the developed and developing countries. Divorce represents “the end of the hopes that two people had for each other”. It is, in fact, a certificate that their marital relationship has failed. In the present world, Information and Communication Technology (particularly social media) and Western influences have redefined the aspirations and expectations associated to marital

life. However, this attitudinal metamorphosis is seriously damaging the sacred institution of marriage and Indian society is not an exception to it. Compared to the past, instances of women initiating the separation are on steep rise. Violent, insensitive and abusive partners are no longer tolerated and which should never be tolerated rather. It is also observed that the families of women are generally supportive of any such decision. The overall socio-cultural change has also made the Indian women to become physically, financially and sexually more demanding than past generation. (Madan, 2003)

In the present age of cut-throat competition where everyone aspires to excel in one’s own field of occupation, spouses hardly get the time to share their feelings and affections and a growing dissatisfaction disrupts the sacred bond of marriage. Subsequently, insensitivity towards the life partner necessitates divorce and people don’t have any inhibitions about the decision to break up. Incompatibility, modern life styles, nuclear family structure, lack of quality time to spend together, impact of social media, development of emerging concept of live-in relationship, professional ambitions and adultery are some of the most cited reasons for divorce.

However, the concept of divorce is class-led because divorce cases are still more common amongst the educated and wealthier families. The disadvantaged and subaltern classes still do not see divorce as an option due to the attached social stigma, costs and the delay in the Justice delivery

system which can take years for cases to be settled, especially if they involve children (Sethi, 1989).

The growing culture of excessive engagement with the social networking sites also contribute in alarming rate of divorces. Presently, couples are giving more time to these social networking sites than to their partners. Social media obsession further affects the care of parents and children too. Divorce lawyers were surveyed in United Kingdom to determine if there exists any anecdotal relationship between divorce and usage of social media (2012). Surprisingly, one amongst three divorces found to be resulted from social media related disagreements. Also, four out of five lawyers were found to be using evidences derived from social networking sites (with Facebook as leading) in divorce cases in a separate study undertaken by the American Academy of Matrimonial Lawyers in 2010.

1.1. Divorce in India: Recent Trends

India has been witnessing a large number of married couples walking out from their marriages in recent time. Existing data reveal that over the past decade, divorce rates have been increased manifold in India. Not only metro cities but even small towns of India are reported to be witnessing augmentation in divorce cases. By many it is being seen as a reflection of India's changing socio-economic and cultural mapping. The recent figures suggest that the tendency to opt out of unhappy alliances is now percolating down to middle and lower middle class. The statistics suggests that Delhi alone registers about 9,000 cases of divorce every year; a significant increase from the average 1,000 cases that were registered in the 1990s.ⁱ Also, number of couples going for mutual divorce with mutual consent has been significantly increased for example: Nagpur has been reported with total number of 787 cases of divorces in 2021.ⁱⁱ It indicates an unconventional trend of women filing petitions for divorce, something that was unheard of in the 1970s and 1980s. Needless to say, divorce can have far-reaching negative impact on families, especially on children who bear the consequences of failed marriages.

There is need to have strong support system for people who decide to go for divorce which was an uncommon and socially unacceptable practice in the past. In India, there was a cultural, religious, and social stigma associated with divorce which in fact could be cited as one of the factor behind having the lowest rate of divorce in India if we compare world-wide data. India is said to have less than one per cent of divorce rate comparing to U.S.A,

Luxembourg, Spain, France and Russia which are having 46%, 87%, 65%, 55% and 51% divorce rate respectively.ⁱⁱⁱ But, presently India is witnessing an alarming rise of 50% to 60% in divorce rate particularly in urban metro cities.^{iv}

1.2. Legislative measures and divorce rate

Laws regarding separation, divorce and inheritance are generally religion/custom-specific. The first legislative mechanism viz. Indian Divorce Act, 1869, providing for divorce was made for Christians in India in colonial era. Again, with the Parsi Marriage Divorce Act, 1936 and law for Hindus of Kolhapur State in 1920, an attempt was made to give a statutory colour to divorce as a matter of right. Later on in pre-independent India, it was followed by Baroda State in 1942, by Bombay State in 1947, and by Madras State in 1949. The Baroda State Act *inter alia* provided for change of religion, desertion, cruelty, drunkenness, bigamy, and adultery as grounds of divorce.

The Special Marriage Act was passed in 1954 and the Hindu Marriage Act in 1955, which legally permitted divorce to Hindus, Sikhs, Jains and Buddhists but excluded scheduled tribes. The Hindu Marriage Act 1955, provides for judicial separation, divorce, nullity of marriage and annulment of marriage as grounds of divorce. The 1976 amendment further permits divorce by 'mutual consent' after proving that husband and wife had been living separately for at least one year and their relation could not reconcile. The new emerging ground of divorce in the form of irretrievable breakdown of marriages^v as recognized by Supreme Court in the case of *Naveen Kohli v. Neelu Kohli* is also on higher side. Per Census 2011, in India, more than 4.2 million women (4,225,940) were either separated or divorced in 2011, and the numbers would only have increased manifold since then, particularly because of above stated recent trends including rise of social media with a skyrocketed jump. As per the census data of 2011,^{vi} Mizoram has the highest number of divorced or separated women with 6.9 percent compared to 4.8 percent men.^{vii}

Furthermore, surprisingly the dominant form of dissolved marriage in India happen to be separation as nearly 63% of dissolved marriages are due to separation. Most of cases of separation are unreported and having informal arrangements which do not provide for any legal right on women.^{viii}

Family courts in the State of Kerala in India come across five divorce cases every hour in 2014 (approximately, 130 divorces a day) – more than 12

Indian States that compile related data, according to a research.^{ix} Although India does not figure on the world divorce statistics records (a global divorce repository compiled by the University of Illinois, USA) because it lacks nationwide data, the volume of divorces handled by courts in Kerala and the other 11 states indicates that couples are more willing than ever to separate than stay.^x However, no denial to say that as per one school of thoughts, the alarming rate of divorces is a sign of a message that women are finally standing up for themselves. The growing rate of divorces by women as an outcome of their empowerment may rightly be treated as an indication that the stigma associated with divorce is on the decline. Except irretrievable, immoral and illegal instances, if divorces/breakdowns are outcome of any avoidable circumstances; which particularly making women a sufferer, then definitely the alarming rate of divorces is a curse for happy families.

The landmark judgment passed by the Supreme Court of India in the case of *Shayara Bano v. Union of India*, wherein by declaring the practice of *triple talaq* as unconstitutional, the Court has aptly put a check on the alarming rate of divorce amongst Muslims in India. This judgment led the enactment of Muslim Women (Protection of Rights on Marriage) Act, 2019.

1.3. Where does the solution lie?

Keeping in view the present context as stated above the need of the hour is to go for an amicable resolution of the existing problems which are being faced by the present day families in India. The mounting instances of divorce petition in the courts are not a good sign and certainly it is in contravention of the constitutional mandate of establishing a 'welfare state'. This can rightly be said as one of the hindrances towards promoting 'fraternity'—for assuring the dignity of an individual and unity and integrity of the nation which *inter alia* happens to be an ultimate goal of our Constitution of India. Majority of divorce cases relate to trivial issues. Undoubtedly, solution lies in the counselling of the couples, their family members and the would-be couples. Pre-marital counselling of would-be couples will certainly be the right target group for the pre-marital counselling

1.4. Setting the Tone for Pre-Marital Counselling

The Governor of the State of Goa once recommended that Governments at the Centre and in all States should take steps to make pre-marital

counseling a pre-requisite for marriage registration in all communities. She emphasized the need to create one-nation identity for women as Indian woman.

The recommendation of Ms. Mridula Sinha, then hon'ble Governor^{xi} to this effect can rightly be deliberated with the direction of the Supreme court of India in the case of *Seema v. Ashwani*^{xii} and further in the light of the recommendations as made by the Law Commission of India in its report for recommending the registration of marriage mandatory by enacting a statute in this regard by the Parliament of India.

State Women Commission of Delhi had also set up a Pre-Marital Counseling Cell where couples and their parents can call for help and guidance (Hindustan Times, July 29, 2008). The societal stigma attached to divorce is found to be shrinking and divorce is no longer a dirty word, instead, it is being treated as a routine practice.

The Madras High Court has also advised the Centre and the Tamil Nadu government to sensitize people on the importance of pre-marital counseling while annulling a couple's marriage in which the groom who hides his suffering from serious ailments including cancer.

Justice N. Kirubakaran declared a marriage null and void on the ground of fraud by the groom in suppressing cancer and a hole in his heart even before marriage. Justice N. Kirubakaran remarked that: "It is appropriate for the central and state government to sensitize the people about the importance of pre-marital counseling at least, if not premarital examination."

1.5. Pre-marital Counselling in Haryana State: An Initiative of HALSA

In the above stated background, kudos to the efforts of Haryana State Legal Services Authority for coming up with the idea of 'Pre-marital counseling'^{xiii}. No denial to say that the initiative is a unique one but it is not a cakewalk. If we give a serious thought to this new concept of 'Pre-marital counseling' for a second, then certainly it is understood that the target group of this initiative would be the youth between the age group of 18 to 30 (to a large extent). This is the same segment of Indian population that makes India proud in terms of the 'demographic dividend' i.e. 65% of Indian population below the age of 35. The ailments like divorce and estranged relations are bound to make adverse effect on young India that cherishes and aspires to harness the gains of 'demographic dividend' of India. Therefore, the issue of pre-

marital counseling has far-reaching consequences in the journey of the country driven by the youth.

Orientation of this segment of the society ('demographic dividend') is full of challenge but this task can be handled easily by the counsellors who are expert not only in the field of psychology but also in the field of Law, economics and sociology. So, it is the high time to build a roadmap for training the prospective counsellors for the proposed pre-marital counselling. Though the adoption of pedagogical skill, modules for the counselling and the awareness amongst public at large, particularly at grassroots level, is a challenging task, but authors are sure that this initiative will achieve its desired objectives under the umbrella of HALSA (Haryana State Legal Services Authority).

II. CONCLUSION

It is saddening to note that the growing demographic dividend is not yielding the desired fruits in absence of proper orientation and counseling of the youth. Therefore, the HALSA initiative of pre-marital counseling is a preemptive step forward towards ensuring a better future and happy life for Indian youth. With the recommendation of Law Commission vide Report No 270 for Compulsory Registration of Marriages, a concept of pre-marital counseling has become relevant. It may be opted as a prerequisite condition for Registration of Marriages.

Pre-marital counseling should orient the male and female partners for not taking the hasty decision in selecting the partner. They should be trained to befriend each other and know the strength and weaknesses of each other before they go for solemnizing the bond of marriage. Friedrich Nietzsche has rightly said that "It is not a lack of love, but a lack of friendship that makes unhappy marriages."

To be more effective for prospective life skills, the pre-marital counseling of each couple may be further extended for a certain period in the post-

marriage phase also. To ensure the effectiveness of pre-marital counseling, the prospective couples may be trained in their respective religious and social practices that consider divorce as an inhuman practice. So to retain the sanctity of marriage and to uphold its importance as a social institution so as to secure faith in it, and to curb divorce from becoming a social menace, a pre-marital counseling is the need of the day. The newly established pre-marital counseling center in Haryana had organized a workshop for counseling of would-be couples of District Mahendergarh with an appreciable success. For working towards these kinds of social causes of the society, Mahendergarh District Legal Services Authority under HALSA had already been conferred with certificate of commendation as the National Best District Legal Services Authority by the National Legal Services Authority (NALSA). With the success of pre-marital counseling, HALSA and its associates shall certainly realize the vision of Martin Luther King who observed that: "there is no more lovely, friendly and charming relationship, communion or company than a good marriage."

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