

# Journal of Multi-Disciplinary Legal Research

## **Speedy Disposal of Matrimonial Disputes in India- A Race Against Time**

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### **Abstract:**

This paper is an analytical and experimental presentation of the piling matrimonial disputes in Indian courts and the failure to dispose them on time. There are causes, effect and implications-all interspersed in nature. Deficiencies have been analyzed, solutions have been suggested and the expectation of a calculated approach towards requires our attention has been proposed in this article.



## **Introduction**

More than 43.55 lakh cases lie pending in the 25 High Courts in the country and over 8 lakh or more of these are at least a decade old. Moreover, 18.75 lakh of these are cases relating to civil matters whereas 12.15 lakh of them are criminal cases. Though these statistics might not pertain directly to the topic under magnification here, they sure do reflect on the pace of our legal mechanisms and justice system. A society where “Justice delayed is justice denied” is just another aphorism on some far-fetched wall where no one cares to look.

Marriage is a sacrament for a Hindu- a bond of more than 7 birth cycles, the breaking naturally leads to more than just shattering of a union-it leads to emotional, economical and psychological stress and burden, not only to the bride and the groom but their children and family members suffer the brunt of such anguish too. In a country where not few social evils plague the society and make it less habitable not only for the average human but mostly for females, the legal system which is supposed to be our Guardian and solver of disputes only ends up complicating the separation process and there mounts the pressure of “dispute over matrimonial disputes”. Legal complexities only add to the blemish by failing to address the consequential damages and legal grievances that come with it.

When considering matrimonial disputes, we cannot lightly neglect the subsidiary disputes that arise due to it- separation, child custody, property division disputes and whatever either party wish to stake a claim on. Due to the indolent justice system and lazy speed of proceedings and procedures, a dispute that should be characteristic of quick and accessible legal redressal keeps hanging by a thread for years on end forcing both parties to advance in no progressive manner.

## **Research Problem**

This project tackles the question of mounting cases of matrimonial disputes and the urgent need for their speedy disposal concerning the current structure and functioning of the Indian Legal System.

## **Research Objectives**

- To evaluate the current standing of cases relating to matrimonial disputes
- To analyse the reasons behind matrimonial disputes
- To understand the development and stages of disputes of matrimonial nature
- To suggest ways for addressing grievances of parties
- To fix the fissures and cracks in the existing legal system

**Hypothesis**

The number of matrimonial disputes across the courts is increasing and the method of their disposal is disproportionate and slow.

**Research Methodology**

This paper has resorted to archival methods of research by referring to available data concerning matrimonial disputes in India. An interpretive approach has been used to sum down the prevailing conditions and foresight into the expected conditions has been provided.

An explorative technique has been used to carry out an in-depth analysis of each factor and its effect on society.

A doctrinal approach was considered appropriate keeping the ongoing pandemic in mind wherein case studies and interviews could not be availed, thus, paving way for research articles and journals to be utilised where necessary. Newspapers and online news websites have also been consulted to gather data considered valid for the compilation.

**Marriage- an overview**

Much like the society, the institutions and bonds in it have developed and evolved with times too and matrimonial relations are no different. Marriage as a concept did not exist in prehistoric times, the caveman chose his lady and procreated at will. As humans evolved, the institution of togetherness between man and woman did too, and now a social validation was required to be seen as a couple or as “man-and-wife” - this brought around selectivity of spouses and sticking around with a single partner for the rest of their lives.

Marriage is a social institution and is the root of stabilisation and sustainability in contemporary society. According to Gillin- “Marriage is a socially approved way of establishing a family of procreation.” Duncan Mitchell defines it as “a socially sanctioned sex relationship involving two or more people of the opposite sex, whose relationship is expected to endure beyond the time required for gestation and the birth of children.”

With marriage came co-habitation, procreation, a responsibility of families and the day-to-day domestic hassles, not to forget. Though the foundation and existence of the institution of marriage were largely seen as a social one, its dissolution is perceived legally.

## **Involvement of the legal structure in matrimonial disputes**

The legal structure performs its very many functions of being an arbitrator and settler of disputes amongst the two parties (spouses) and if the same is not possible, resorts to or explore the use of the methods mentioned below. The following are where the role of the law right from family courts to the Supreme Court is considered:

### **Maintenance allowance**

One of the most common grievances that reach the court under matrimonial disputes in cases where the wife seeks maintenance allowance from the husband. This is mainly because in our country, women are still heavily and largely dependent on their male counterparts for financial aspects of their life and enjoy almost next to nil fiscal independence.

Various legislations: Special Marriage Act, 1954, Section 125 of the Cr. P.C., 1973; and the Protection of Women from Domestic Violence Act, 2005 provide statutory remedies for such a situation excepting the personal laws of each community. A Hindu wife may also claim maintenance under Hindu Adoptions and Maintenance Act 1956.

### **Divorce petition and mutual dissolution of marriage**

The Hindu Marriage Act, 1955, under Section 13 of the Act mentions the following grounds for seeking divorce: Adultery, Cruelty, Desertion, Conversion, Unsoundness of mind, Schizophrenia, Virulent and incurable leprosy, Venereal disease in a communicable form, adopting a new religious order, a presumption of death on not being heard of as alive for a period of seven years or more, non-compliance with a decree of judicial separation, non-compliance with a decree of restitution of conjugal rights (fulfilment of one's obligations as a husband or a wife). The aggrieved party must be able to prove any one of the above-mentioned grounds to be able to attain divorce.

In case of divorce, issues relating to property distribution, custody of children, alimony are settled by court too<sup>1</sup>.

This concept though often confused with “divorce” is slightly different and a little less harsh.

The three requirements for the dissolution of marriage by mutual consent as enumerated by the supreme court in *Sureshta Devi* are:

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<sup>1</sup> Indian Legal Solution (2020) *How to fasten divorce cases in India: Full Guide*, *Indianlegalsolution.com*. Available at: <http://indianlegalsolution.com/how-to-fasten-divorce-cases-in-india-full-guide> (Accessed: November 11, 2021).

- The parties must be “living separately” for a period of one year should be immediately preceding the presentation of the petition, here living separately connotes not living as husband and wife and not relating to the place of residence.
- The second requirement that they “have not been able to live together” seems to indicate the concept of broken-down marriage and it would not be possible to reconcile themselves.
- The third requirement is that they have mutually agreed that the marriage should be dissolved.

Here, the parties settle issues relating to alimony, child custody, return of dowry etc. at their own volition and the court does not interfere. There is general mutual consent over the decision for dissolution and mutual agreement over other concerns resulting due to such a decision.

The result of both proceedings, however, is the odd of marriage or marital relations between the two spouses.

### **Petition for restitution of conjugal rights**

Section 9 of the Hindu Marriage Act, 1955 deals with “Restitution of conjugal rights”. It reads as under:

(I) When either the husband or the wife has, without reasonable excuse, withdrawn from the society of the other, the aggrieved party may apply, by petition to the district court, for restitution of conjugal rights and the court, on being satisfied with the truth of the statements made in such petition and that there is no legal ground why the application should not be granted, may decree restitution of conjugal rights accordingly.

Explanation: where a question arises whether there has been reasonable cause for withdrawal from the society the burden of proving reasonable excuse shall be on the person who has withdrawn from the society.

The petitioner must satisfy the court that the other party has without reasonable excuse withdrawn from the others’ society. However, if the court finds reasonable excuse or reasons furnished by complications in relation, remarriage of husband, cruelty, adultery etc., such restitution might not be granted.

### **Nullity of marriage**

In this case, the validity of the marriage itself is under question. It is a judicial affirmation that the marriage did not happen or exist in the first place. It is usually because the marriage is held to be invalid, void or null due to a violation of any of the Indian laws.

As marriage was treated as holy wedlock that is supposed to be necessary for the carrying out of spiritual and religious responsibilities, there were no grounds for nullification of the institution of marriage before the Hindu Marriage Act, 1955.

- If either party has a living spouse at the time of marriage i.e. bigamy
- If marriage between prohibited degree relation unless customs and usage are allowed.
- If marriage between sapindas unless customs and usage are allowed such marriage

Under section 12, certain marriages are voidable, the grounds for the same are:

- Impotency of the respondent
- Incapacity to give valid consent or forced consent of parties or mental illness or person unfit for procreation of the child
- Underaged marriage
- If a respondent was pregnant by some other person at the time of marriage.

Under Dissolution of Muslim Marriage Act, 1939 and personal law marriage without valid consent by the parties or their guardian is void, some other grounds are:

These grounds are as follow:

- Inter-religious marriage by women does not have religious status. A Muslim male also cannot marry a female who does not follow Islam.
- Marriage between milk relations or maharim close blood relatives.
- Marriage with a person who renounces Islam or does not have faith in the principle of Islam.
- Temporary or conditional marriage is void in Sunni.
- Marriage to a woman during the period of iddat.
- Where conditions of marriage are against the principle of Islam.

### **Judicial separation**

Judicial separation is another one of matrimonial disputes, in this, the couple asks the courts for a decree of separation, as in they remain husband and wife but stay separately and not under one roof. The spousal duties do not end on the grant of this decree and the marriage stays valid and intact.

The grounds for the same are:

- Adultery
- Cruelty
- Desertion

The plight of matrimonial disputes<sup>2</sup> does not end with these five types elaborated upon here, it continues to haunt the lives of children who still have the world to see but are left reeling under the differences of their parents, it seeps deeper into the property disputes and that is when it grips the entire family- from close siblings to far cousins- everyone is ready for a show of muscle and money. Separation, nullity, dissolution and divorce- all lead to more or less end of a bond that in some cases is even reconcilable but the people in it are just not willing enough or sometimes blind due to ego- this swallows happiness, calm and normal functioning of domestic affairs around them.

### **Delay- a right denied:**

Under the sacred constitution of India, we as citizens have been granted security of our right to trial and its dispensation timely<sup>3</sup>. Article 21 reads “*no person shall be deprived of his life or personal liberty except according to procedure established by law*”, still delay and denial remains so deeply embedded in the justice structure that we have been used to the “What if it goes to court?” aphorism. Courts are supposed to indicate safety and hope and not instill fear and laxity.

Justice Krishna Iyer in *Babu Singh v State of UP* remarks “Our justice system, even in grave cases suffers from slow motion syndrome which is lethal to “fair trial” whatever the ultimate decision. Speedy justice is a component of social justice since the community as a whole is concerned with the criminal being rightly and finally punished within a reasonable time and an innocent being absolved from the inordinate ordeal of judicial proceedings”

In the case of *Meenakshi Sundaram v H. Radha* the Court acknowledged:

“Justice delayed is justice denied, this is a tragedy felt stronger and deeper when justice is delayed in matrimonial cases.”

The court went on to reiterate the following factors proving to be obstacles in the said speedy disposal:

- a) The attitude of the parties
- b) procedural flexibility not being utilized
- c) party is not willing to settle the matter at the earliest point in time

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<sup>2</sup> Yadav, R. (2014) “Private International Law and Matrimonial Causes in India by Dr Raj Yadav,” in, p. 3 2376873.

<sup>3</sup> Shukla, B. C. (2006) “Unnecessary delay in disposal of cases,” *The Hindustan Times*, 30 January. Available at: <http://www.hindustantimes.com/india/unnecessary-delay-in-disposal-of-cases/story-ghADQqoKUc5M6X4a6dMyON.html>. (Accessed: November 11, 2021).

d) pre-litigation settlement not being utilized

Further,

*Section 21 (B) of the Hindu marriage act 1955* states that “the trial of a petition under this act shall so far as is practicable consistently with interest of justice in respect of the trial be continued from day to day until its conclusion unless the court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded.”

It further states that “endeavor shall be made to conclude the trial within six months from the date of service of notice of the petition on the respondent and an endeavor shall be made to conclude the hearing within three months from the date of service of notice of appeal on the respondent”, apart from pointing out the time frame the mancala has been pointed towards “special machinery” “infrastructure available”.

*Section 5 of the Family Courts Act, 1984* provides for the Association of social welfare agencies and *Section 6* of the said act provides for assistance of counsellors in the discharge of functions of the family courts.

*Application of Indian evidence act 1872*

“A family court may receive as evidence any report, statement, documents, information or matter that in its opinion assist it to deal effectively with a dispute whether or not the same would be otherwise relevant or admissible under the Indian Evidence Act, 1872.”

So far as the recording of evidence is concerned it shall not be necessary to record the evidence of witnesses, verbatim, and it is enough of the substance of the evidence is recorded and the relevant provision of *Section 15* of the Act which reads as a record of oral evidence and the procedure that must be followed is referred to in *section 10* of the same.

**Deficiencies causing delay**

**Court system delay:**

This is the more common type of delay is the court system delay and at one point we are all guilty of it, it could be due to time being taken up in trial, rescheduling delayed hearings etc.

It includes delay in the disposition of cases- cases keep piling up and are neglected due to widespread laxity and convenience. The accumulation of arrears and delaying attention makes the situation



worse, especially in matrimonial disputes whose satisfaction lies in the pace of the ultimate judgement. Otherwise, the marriage and other matters only remain a burden for both parties as well as their immediate families including innocent children.

Procedures must be utilized to advance the cause of justice but in India, it is used to thwart it.

For an instance, the landlord, aged 54 years, sought to evict his tenant on the ground of his personal need to carry on his own business. When the matter finally reached the Supreme Court after a lapse of 33 years, the landlord was non-suited on the ground that at the ripe age of 87 years, he is not supposed to start a new business.

### **Judge- population ratio:**

The judge-population ratio of our country at 18 judges per 1 million people is also deeply disproportionate and contributes to the piling workload by burdening the already less number with much more work than they can dispose of efficiently. With a sanctioned strength of 1080 judges, the High courts are laggingly functioning with only 661 judges, leaving 419 posts vacant. This is a worrisome 39% vacancy with no immediate filling in near sight.

### **Vacancy:**

The Supreme Court even took suo moto cognizance of the vacancies plaguing the lower courts (Districts and subordinate courts) which then stood at 22,036 judicial posts in the District and Subordinate Courts out of which 23% of these judicial posts are vacant, i.e. 5133 judicial posts Recruitment processes are underway for 4180 posts and 1324 of these had no ongoing recruitment process to fill them. This only makes the scenario grimmer because it is these lower courts that are the first hand or actual entertainers in cases like matrimonial disputes. This inadequacy and inefficiency make the worst of all scenes as cases and complications drag out pulling many more in the whirl of drama.

### **Independence of judiciary:**

The aspect of judicial independence is as much a bane as it is a boon, independence, however, does not mean the judiciary is free of any accountability or is not bound by principles of transparency at points where needed. This makes the judges and officials indolent and they take over and dispose of cases at their whim and fancy, it affects their efficiency to not be able to dispose of cases in a time-bound manner and most cases the very nature of the cases as in matrimonial ones, the dispute loses its effect of urgency and delaying the already delayed and suffering process and proceedings.

## **Impacts of delayed disposal**

### **Emotional**

The delayed justice in matrimonial cases leads the litigants into a never-ending tunnel of emotional explosions and disturbances. Besides, having to face the allegations and the emotional wreck of the shattering of a household in all the hearings, both parties also continue to reside and carry out their domestic and familial duties, only making the environment more heavy-hearted and unfortunate.

The most adverse of such delay in disposal falls on the innocent children being dragged into the mess of their parents, their future planning does not only falter but is almost suspended, procreation is an impossibility because the question of the legality of the child now comes into question.

The delay in many cases even leads to worsened domestic violence on and mental frustration of females and further disruption of any possibility of reconciliation between the two parties. Delay gives enough time to put one party under duress or coerce them into backing out of the legal proceedings or suppressing their desires to separate.

### **Financial**

The parties on both sides have to shed their pockets for every trip to the court in hope of quick access to justice or even a date of consideration. The corrupt officials make sure none of their fellows remains empty-handed and this is a huge black mark on the face of the governmental departments all over our country. This accrues heavy monetary burden and as many matrimonial resolutions require constant nudging at officials as well as regular trips to courts, sometimes even across cities. Thus, financial reasons form not only one of the leading reasons for marital conflicts but are also an impact of continuing matrimonial disputes.

### **Legal**

Ironically, the resolution of matrimonial disputes leads to further legal grievances and nuances. From maintenance and settlement to the dirty courtroom conflicts, defamation, property disputes, custody of children etc are problems that sometimes become inevitable.

This is the result of constant dragging out of judgement or mediation and leads to worsening of relations and results till the ultimate judgement is faced. The structural and systemic problems unleash the worst and the failure of the justice skeleton is witnessed at this stage.

### **How to ensure speedy disposal?**

#### **Providing counselling to suffering couples**

This could be a method to avoid matrimonial disputes arising in the first place. This could be a precaution rather than waiting for things to worsen and eventually adding on to the already existing dump of matrimonial conflicts that remain unvisited.

With the rapidly urbanizing world, the couples have lesser time to spend with each other due to professional commitments and ambitions and often this causes a communication gap which further worsens to misunderstandings, reduced time for solving issues in the relationship and an even lesser understanding of situations. Counselling could give them some time off to cool off and revisit issues and analyze them deeply while evaluating each other's priorities and reaching a work-life-relationship balance in the true sense. Counselling is a method that is still considered "abnormal and embarrassing" in a country like ours and its benefits remain unsung, it could lead to the strengthening of the social fabric right from the roots and revitalize the institution of marriage thus, ending or at least delaying the resort to judicial solutions.

#### **Fixing court system delays:**

The real problem lies in the justice system itself, we keep reading of "what justice desires"<sup>4</sup> but we often fail to explore the means we use to achieve that justice, means that is corrupt, unfair, arbitrary and worst of all firming obstacles for the actual beneficiary and delaying the very access of justice. In some cases, this worsens and the suffering party does not even get a chance to knock at the door of justice.

Improving the judicial infrastructure resolving issues like judge-population ratio and avoiding overscheduling of cases, modernization of judiciary and using technology to address remote issues such as effective articulation of paperwork and streamlining the investigation and documenting procedures. Addressing inherent issues like corruption must begin at the very root of the system and a general awareness must be spread among the citizens regarding ways to overcome any of them if existing in the law. Vacancies must be filled before cases pile to a level of no return, general efficiency and responsibility should be allowed and encouraged to prevail.

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<sup>4</sup> Sastry, V. R. and Saibaba, K. (2013) "GOOD GOVERNANCE: THE IMPERATIVE OF JUDICIAL REFORMS IN INDIA," *The Indian Journal of Political Science*, 74(1), pp. 9–16.

### **Uncontested conflicts and no-fault divorces**

Uncontested conflicts are the ones that must be resolved first and foremost. An uncontested conflict is one in which both parties give general agreement and consent on all issues concerning custody, visitation, child maintenance, spousal support, property separation, debt division, and other matters such as education and health insurance. If the couple has settled on all of the major issues, the actual divorce is not a time-taking process. The benefits of an uncontested conflict include speedy redressal, less economical burden and gradual relief of tension on the legal systems as well.

India needs new developments in divorce law; at the moment, the law or rule that governs divorce in India favours no-fault divorces.

A no-fault divorce is a form of divorce in which neither party has to prove that the other is guilty of any wrongdoing. Previously, a married couple had to have a compelling reason for wanting to leave their marriage and get a divorce. The filing partner merely has to claim that the marriage has irreversibly broken down due to irreconcilable discrepancies or incompatibility. This could speed up the disposal and wreak negligible havoc.

### **Establishment of fast-track courts**

Establishing fast track courts is not a new introduction to the Indian legal setup, popularized around 2000, they have been brought up often and again. However, the lack has always been in the terms of functioning and efficiency of the courts so established. This solves the problem of creating additional posts and spending a large amount of money to fix prevailing discrepancies and instead diverts the money and efforts where best and urgently needed thus increasing efficiency and speeding up solutions.

The kind of cases allotted to Fast track courts differs from state to state, thus, in this regard, the allocation of cases should be made uniform when it comes to the nature of cases- primarily matrimonial disputes which will, in turn, leave space for other cases relating to women to be addressed in time.

### **Encouraging mediation**

The best and most explored way of speedy disposal of matrimonial disputes and conflicts is through mediation. This could be understood as “legal counselling”. Mediation is an effective method of Alternative Dispute Resolution (ADR) and it involves reconciliation of both parties without going into deep legal nuances. It involves the inclusion of a neutral third party which gets both parties to negotiate or renegotiate by exploring each other's demands, wants and needs while talking stock of both perspectives and understanding of the situation. The mediator for such delicate cases must be able to

see beyond the personal motives of either party as well as be able to mold their desires in a way that looks past vengeance and revenge and aims at peaceful solutions that cause minimum or negligible damage to both sides.

Mediation happens in a comparatively optimistic and lighter atmosphere, thus allowing both sides to be innovative, creative and accommodative in their resolution- it could include patching up again, settlement etc.

When it comes to matrimonial conflicts, it is not always about conflicting interests of parties, as in commercial disputes- often very irrational factors play a role in the decisions taken by parties- emotions, social control, family perspectives, future of children etc. are some factors that need tender attention and might turn explosive if handled under the immense pressure of a courtroom. Further, resorting to mediation leads to lesser financial expenditure and helps avert the other prevailing legal deformities.

### **Legislation**

Our country has some classic examples of laws that lag in a society that awaits development and discourse. Legislative absence can be largely felt in the field of marriages and divorce in India.

Moreover, both factors that come into play after and before the separation proceeding must be kept in mind while framing laws.

For instance: in some cases, the powerful party (usually the husband) can coerce the weaker one into submission or withdrawal of legal proceedings- reasons could be domestic violence, property disputes, disagreement over custody etc. Such unfair factors should not be able to influence someone's life decisions such as separation from spouse. The law should ensure punishment and fine in such cases as well as include consequences for not adhering to the judgement so produced by courts or other mechanisms.

Old and colonial laws must be repealed or amended concerning the demands of society.

### **Conclusion**

A country like ours already suffers in terms of resources, jobs, healthcare, education and a never-ending list due to factors of population and illiteracy. A fight for all this e naturally entails judicial intervention and invites litigation. To resolve these, the common man resorts to the courts and when these courts too, are lagging due to structural and functional damages and deficiencies, not only do the affected parties lose trust in the judiciary but a whole lot of other subsidiary people are rendered helpless and dejected. When considering matrimonial disputes, the brunt of delay and inefficiency hits even harder since it involves children, family, property, emotions and other factors sensitive in

nature. What is important is their distinction from other civil and criminal proceedings and the attention paid to a solution that is amicable to the greatest extent possible, and does not harm either party- an outlook beyond revenge and anger needs to be explored.

While litigation is a sure way, its delay cannot be tracked and this is when other alternative dispute resolution methods kick in and give a quick, mutual decision- well discussed and weighed on all costs and benefits. The legal system should not shy away from exploring and delegating matrimonial cases to such institutions, this will not only unburden the courts but also fast-track efficient judgment.





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