

of natural justice, supply of Enquiry Officer's report, appellate authority recording reasons and these are only illustrative and not exhaustive.

In *Sudhakar Prasad v. Government of A.P.*, (2001 (1) SCC 516), it was held that power of Central Administrative Tribunal to punish for contempt is constitutional. The jurisdiction of powers of Service Tribunals had been dealt within the under noted decisions:-

2001 (2) SCC 118, 2001 (9) SCC 526, 2001 (4) SCC 43, 2001 (9) SCC 240.

Bias in case of rank favouritism was dealt with in *A.K. Doshi v. Union of India* (2001 (4) SCC 43). In *Abdul Majeed v. State of Kerala* (2001 (6) SCC 292) what can be termed as back door appointment had been discussed. In *Surya Kanta Kadam v. State of Karnataka* (AIR 2000 SC 2415) concept of hostile discrimination was discussed. Normally in departmental enquiries, the acquittal in criminal proceedings, charges, charge-sheet, procedure, assistance for

defence, principles of natural justice, penalties, proportionality thereof, appeal, revision and review are certain of the aspects wherein litigations crop up. The different facets of natural justice in relation to this branch may be to specify a few – Hearing, bias, fairness in procedure, principles of evidence, reasonable opportunity, recording reasons, non-supply of document, non-furnishing of enquiry report, judicial review. The contribution of the Apex Court, different High Courts and Service Tribunals as well to this branch is really note worthy. The case law on the subject being vast, only certain had been referred to above.

It is no doubt true that there is some dissatisfaction expressed from several quarters over the functioning of the Administrative Tribunals *vis-à-vis* service disputes. In a system there will be certain ills and also certain advantages. Hence instead of pleading for total abolition of the said system, better to suggest remedial measures for the further effective functioning of these Institutions which were established after giving a serious thought over the same.

SPEEDY MATRIMONIAL RELIEF

By

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Marriage is a solemn and sacred institution which means a life long companionship coupled with rights and obligations. The sanctity is still preserved in our society and efforts are being made in the entire Globe by right – thinking persons to preserve the institutions of Marriage. The marriage Acts have been passed keeping pace with the changes in the outlooks and aspirations of the people and thus the concept of marriage has under gone a seachange. But the preservation of marriage has assumed utmost importance for the safety and security in human life. If marriage breaks Home

breaks and the life of the children will be in a confused state. The repeated slogan is that 'couple can break the marriage but not the parents has lost its significance and the number of single mothers is increasing alarmingly.

It is an admitted fact that there is an upsurge in Matrimonial cases for Divorce, Nullity of marriage, judicial separation *etc.* Now there are family Courts in some districts and the initiative taken by the Central Government through the Ministry of Law to establish family Courts in each district is a welcome step indeed.

After the establishment of Family Courts the pendency in matrimonial cases has been reduced to some extent and the Courts are doing their best for the speedy settlement of the disputes which is the main object of the Family Courts Act. Even before the establishment of the Family Courts the concept of conciliation has existed in the Hindu Marriage Act. Reconciliation is the most sincere and solemn duty of the Courts and for that reasonable time should be spent. One more aspect that should be kept in mind is that when the relief is sought on the grounds of Desertion and Cruelty under Sections 13(i) (1a) and (1b) of the Hindu Marriage Act, they are the venues where reconciliation is possible. According to Section 23(1) the mandate is that the petitioner should not take advantage of his or her wrong or disability for the purpose of such relief. If such relief is sought by one spouse on the ground of desertion that means he or she should not withdraw from the society of either spouse wilfully in order to gain relief, and either party should not drive the other party out of the house to take advantage of wilful desertion. Similarly under Section 23 (b) the Court while granting the relief prayed on the ground of cruelty should see that the petitioner has not in any manner condoned the cruelty. If a divorce is sought under Section 13 (b) of the Hindu Marriage Act by mutual consent the Court should be satisfied that the said consent is not obtained by force, fraud or undue influence. The Courts should take some extra precautions while passing such decrees. There are cases where the wives are coming forward with complaints that they have not exercised their free will and volition while passing the decree of divorce by mutual consent. It is only when they are driven out by their husband they are coming out with the version that the husbands played fraud on them. It is proper that besides examining the couple some elderly persons of the family from both sides should be examined so that in future such cases mentioned above will not crop up.

In the cases arising under Section 13 (1A) when a relief is sought by either spouse on the ground that there is no cohabitation between them after passing a decree of

restitution of conjugal rights or judicial separation the Courts are strictly following the judicial norms contemplated under the Act. They are disposing of the cases with a combined reading of Section 23 (1) (a) of the Act the cases filed under Section 13 (1a) are being disposed of. The relief of Divorce will be granted to the applicant only if he or she does not take advantage of his or her own wrong, by using the decree obtained earlier only as a ruse for getting Divorce. In a number of recent cases the Apex Court did not grant relief to the husband on the ground that he thwarted the efforts to work out the decree for restitution of conjugal rights or judicial separation. The Courts are throwing the responsibility on the males/husbands to obey the decree.

It is the solemn duty of the Courts to make efforts for reconciliation. But the Courts should keep in their mind the value of time that is spent and the time limit that is prescribed under Section 21-B of the Act. The above section enjoins upon the Courts to try the petitions as early as possible and endeavour should be made to conclude the trial within six months from the date of service of the notice upon the respondent. The trial when commenced should be continued from Day to Day. Even the appellate Court should observe the time limit of three months from the date of service of notice of appeal on the respondent as stated in 21-B (3) of the Act.

The word 'Cruelty' has not been defined in the Act but the Courts have to deal with the aspect of cruelty in relation to human conduct and behaviour of each individual. As has been rightly observed by the Lordships Justice *Ramesh Madhav Bapat* and Justice *Dalava Subrahmanyam* reported in 2002 (2) ALT 16 that it is a matter of inference to be drawn by taking into account the nature of the conduct and its impact on the complaining spouse:

Their Lordships further observed : "The cruelty alleged may largely depend on the type of life. The parties are accustomed to their economic and social conditions. It may

also depend on their culture, human values to which they attach importance. We, the judges and lawyers therefor, should not impart our own notions of life. We may not go in parallel with them. There may be generation gap between us and the parties. It is better if we keep aside our customs and manners. It would also be better if we less depend on the precedents” What a wonderful and practical approach of the Judges have exhibited in their lucid expression which the judges should follow as a Golden rule? Unfortunately Section 498-A IPC is contributing to the breakup of marriages. Filing of the criminal case alleging Dowry harassment and other types of violence is being taken as one of the grounds of cruelty. In fact when a party pleads cruelty another party also puts forth his or her version separately denying the allegations made by the applicant. For the proof of cruelty there cannot foolproof and independent evidence. The Courts should not draw the conclusions merely because there is a criminal case. There will be misuse of any law and especially the women will be persuaded to resort to file criminal cases by some extraneous forces. The parents and the lawyers also may be playing their respective roles. It is also a fact that most of the cases are being compounded at the instance of the Courts and sometimes settlements are taking place. Even the acquittal of the husband and in-law may take place due to want of proof and due to the loopholes in the criminal Justice System. The husbands are filing Divorce cases in the matrimonial Courts taking the ground that reporting to the police, and filing of the criminal cases against them either under 498-A IPC or under the Dowry Prohibition Act, would amount cruelty on the part of the wives. Whatever may be the motive the filing of criminal cases against the husband will definitely lead to break of marriage.

Now coming to the disposal of matrimonial cases by the High Court, much time is being consumed. The cases should be disposed of as early as possible keeping in view the time limit fixed by the Statute. In fact the appellate Court need not try for reconciliation but the judges in their anxiety to preserve

the marriage are trying but it may not fetch the desired result. The reconciliation is the occupied field of the Matrimonial Courts. In fact the family Court judges have to seek the services of welfare experts to avoid wastage of time. If the work of reconciliation is entrusted to the experts speedy disposal of the cases is possible and the judges can dispose of the cases with an unbiased mind.

The estranged couple at the appellate stage will be more eager and anxious to have speedy disposal and at the time of reconciliation both couple will ventilate their feelings in emotional outbursts and if any comments are made by the judges the parties feel frustrated and may come to the conclusion that they may not get justice in that Court.

The society is changing fast with new ideas, trends and new concepts. We are all part and parcel of the changing society and we have to accept since we cannot fight out the Courts of law have to render speedy justice on the facts and circumstances of each case it is desirable if the lawyers and judges restrain themselves while discharging their respective duties. It is relevant to quote a passage by Sri Justice *V.R. Krishna Iyer* while giving a forward on book ‘judicial Strictures’ by Dr. *Triloknath Arora*. The learned Judge quoted a passage from the book which is as follows:

‘The judge’s Bench is a seat of power. Not only do judges have power to make binding decisions their decisions legitimate the use of power by the other officials. The judges have the absolute and unchallenged control of the Court Domain. But they cannot misuse their authority by in temperate comments or undignified banter. The Court has the inherent power to act freely upon its own conviction or any matter coming before it for adjudication but it is a general principle of the highest importance of the proper administration of Justice that derogatory remarks ought not to be made unless it is absolutely necessary for the decision of the case to animadvert somebody’s conduct’.

If the judicial strictures are obeyed by the judges the people who knock the doors of justice will not have any obsessions or ill-feelings about the judiciary.