The Future of the Family: Divorce after Marriage

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INTRODUCTION

WHAT IS MARRIAGE?

The concept of marriage is one of the old, important, universal, and indispensable social institutions which has been in existence since the inception of human civilization. Marriage is one of the universal social institutions established to control and regulate the life of mankind. On the other hand, marriage is the legal union of male and female. It is closely associated with the institution of family. In fact both the institutions are complementary to each other. It is an institution with different implications in different cultures.

Marriage is an important factor influencing survival of society. The concept of marriage has been defined by Sociologists and Social Anthropologists in different ways. Marriage is a physical, legal and moral union between man and woman in complete community life for the establishment of a family. Marriage is a social union or legal contract between people that creates kinship. It is an institution in which interpersonal relationships, usually intimate and sexual are acknowledged in a variety of ways, depending on the culture or subculture in which it is found. Such a union, often formalized via a wedding ceremony, may also be called matrimony (Encyclopedia Britannica 1992).

The Sociologist Murdock define Marriage is the relatively permanent sexual relationship between two non-gay people as well as the economic separation of labour (Murdock 1949). Wetermark defined Marriage is a relation of one or more men to one or more women which is recognized by customs or law and involves certain rights and duties both in case of parties entering into the union and in the case of children born of it. According to Gough Marriage is the social recognition of children born to women as legal as a result of the relationship between a man and a woman and the social acceptance of those children as children of both parents (Gough 1993).

However Social Anthropologists have proposed several competing definitions of marriage so as to encompass the wide variety of marital practices observed across cultures. Malinowski (1944) define "Marriage is a contract for the production and maintenance of children." Marriage is a special relationship formed by the customs and rules of a society in which an adult man and woman have children as a result of having sex as husband and wife. Marriage is a kinship organization between husband and wife and their children (Nanda 1980). Marriage is a way of reshaping the social structure (Radcliffe-Brown 1950).

WHAT IS DIVORCE?

Divorce is the legal process through which a marriage is officially dissolved. It involves the formal end of the marital union and requires legal procedures to resolve various issues such as the division of property, alimony, and, if applicable, child custody and support arrangements. The specific steps and requirements for a divorce can vary depending on the jurisdiction and the circumstances of the marriage. The process typically involves filing a petition or complaint, possibly attending hearings or mediation, and finalizing the dissolution through a court order or agreement between the parties involved.

The definition of the Encyclopedia Britannica about divorce is as follows. “The legal act by which a valid marriage is properly dissolved is the divorce.” (Encyclopedia Britannica: 1989) The Oxford dictionary identifies divorce as “the legal dissolution of a marriage by a court or other competent body.” (Oxford Dictionary: 2001) There are some concepts which are closely related to the idea of divorce, such as Separation, Desertion and Annulment. “The divorce lets the husband and wife to permanently dissolve the marital union and frees both parties to remarry.” (Pothem 1996).

In the Sinhalese oral tradition the marriage between a man and a woman is known as "Kasadaya" while the severance of the ties is called "Dikkasadaya", thereby making the words marriage and divorce a pair of antonyms. According to Wikipedia - the internet encyclopedia, Divorce is the "final termination of a marital union, counseling the legal duties and responsibilities of marriage and dissolving the bonds of matrimony between the parties." (Wikipedia) (Amaratunga and Wickramaarchchi, 2018)

From a sociological perspective, divorce is a significant social phenomenon that reflects and impacts various aspects of society. Sociologists study divorce to understand its causes, effects, and implications on individuals and social structures. Divorce rates can be influenced by shifting societal norms and values. In societies where divorce is increasingly accepted, individuals may feel more comfortable ending an unhappy marriage. Conversely, in cultures where divorce is stigmatized, people might stay in unsatisfactory relationships longer. On the other hand divorce can alter family structures, leading to the creation of single-parent households or blended families. These changes can affect the socialization of children, the distribution of resources, and the overall dynamics within the family unit.

DIVORCE BACKGROUND IN SRI LANKA

Sri Lanka has experienced a gradual increase in divorce rates over the years. The rising trend reflects changing social attitudes towards marriage and divorce, as well as shifts in gender roles and expectations. The Department of Census and Statistics in Sri Lanka, along with other governmental and non-governmental organizations, tracks divorce rates. While specific yearly statistics can vary, overall data indicates an increase in divorce cases over the 2000-2020 period. The COVID-19 pandemic, which began in early 2020, had various effects on family life, including increasing stress on marriages and potentially affecting divorce rates.

By December 2022, nearly 50,000 divorce cases are reported to have been heard in the courts. According to statistics 48,391 divorce cases have been heard in the courts till December 31, 2022. This is considered a large number of cases for a small country like Sri Lanka. When examining this, many facts are revealed. Divorce is generally not socially accepted, but at present the trend of divorce is increasing in the country. Social, economic and cultural factors affecting divorce should be taken into consideration.

THE IMPACT OF FAMILY POVERTY

Observing the current situation of the District Court, it appears that divorce cases have been filed the most. The main question arises: What is the primary factor behind the ever-increasing number of divorce cases in Sri Lanka? Some of the divorce cases heard in district courts are filed within two to three months of marriage, and these cases are truly tragic.

The main reason for such early divorces is the breakdown of mutual relations between the spouses. Divorces often stem from the husband's refusal to listen to his wife, lack of loving care, and the wife's actions and words deviating from their mutual obligations. In most cases, the husband or wife abandoning the relationship forms the basis for most divorce proceedings. The Divorce Act classifies this situation as malicious desertion. Alternatively, some people focus outside of their partnership, leading to extramarital affairs and eventual family breakdown, leading to many divorce cases.

Adultery is another reason for divorce under the law and is a common problem. Domestic violence, especially spousal abuse, harms marriages. This abuse can manifest itself through a variety of methods, including harassment through phone calls, emails, social media, stalking and other forms of contact, as well as mental, verbal, emotional, physical and sexual abuse. Divorce proceedings involving an abusive spouse raise special concerns and considerations.

Another important factor contributing to the increase in divorce is poverty. Today's rapidly increasing poverty causes various financial problems in families and conflicts between husband and wife. In one divorce case, the husband stated that his wife had left him and eloped with another man, and that there were frequent arguments over the family's financial difficulties. This plight leaves their children extremely vulnerable.

THE IMPACT OF DOWRY

In Sri Lankan society, most of time dowry is often seen as a significant aspect of marriage in Sinhalese community. However the expectations and practices related to dowry can vary among different ethnic and religious groups.

Sri Lanka has legal provisions related to dowry, primarily under the Marriage Registration Ordinance and other related laws. While dowry is not legally mandated, it is a common practice in many communities in the country.

In cases of divorce, there might be cultural pressures and expectations regarding the return or settlement of dowry. This can affect negotiations and outcomes in divorce settlements. In some divorce cases, the issue of dowry may come up, particularly in terms of property division. The court may take into account dowry and other contributions made by each spouse when deciding on property settlements.

In practice, the impact of dowry on divorce can vary greatly depending on individual circumstances, including the specifics of the dowry agreement and the nature of the marital assets. For detailed guidance tailored to a specific situation, consulting with a local lawyer who specializes in family law would be advisable.

EFFECT OF SEXUAL RELATIONSHIP

Sexual incompatibility itself may not be a direct legal ground for divorce in Sri Lanka, it can have an indirect impact depending on how it affects the overall marital relationship and the grounds on which the divorce is filed.

If sexual incompatibility is claimed, it would need to be substantiated with evidence showing how it has led to the breakdown of the marriage or caused significant harm. Courts will consider the overall context of the marriage, including how sexual issues have affected the relationship and whether they contribute to a claim for divorce based on cruelty or irretrievable breakdown.

A man stated that he decided to divorce his wife because she refused to have sex. Some argue that sex is not an essential part of a genuine relationship, while others question whether there are other values in marriage beyond sexual intimacy. The issue of sexual compatibility is considered by some to be disgusting and embarrassing. Interestingly, 90% of divorces in Sri Lanka are due to sexual problems, with spouses having sex with other people contributing to these conditions.

THE ISSUE OF MOTHER-IN-LAW AND DAUGHTER-IN-LAW

A lawyer pointed out that problems between mother-in-law and daughter-in-law also affect divorce today. Parental interference in children's family life often hinders marital harmony. Family is the smallest unit of our society and many married couples cannot maintain separate marital homes due to cultural and financial barriers. Consequently, parents have an obligation to ensure that their children's marriages are trouble-free after marriage.

CONCLUSION

Children bear the impact of their parents' divorce in different ways. Seeing parental arguments and distress has a more significant impact on children than divorce. Because children respond to divorce differently, parents' responses must be tailored to meet the needs of each child. They may feel scared, confused, angry, or discouraged by one or both parents. Separation stress, especially if it involves a domestic move, can exacerbate anxiety, increase anger, lead to behavioral problems, social withdrawal, or disrupt sleep. Students may lose focus in class and their grades may suffer.

When entering married life, couples rarely consider divorce. Therefore, both husband and wife and their parents are responsible for supporting their children's married life. The Marriage Registration Ordinance establishes the common law of fault-based divorce in Sri Lanka. Section 19 of the Ordinance lays down three basic legal grounds for divorce. Divorce can be granted on three grounds: post-marital adultery, malicious desertion and incurable impotence throughout the marriage. Divorce is the only way to end a marriage.

In practice, if both spouses agree to a divorce, they can opt for an uncontested divorce. However, consent of the parties is not the sole ground for divorce in Sri Lanka. Regardless of whether the divorce is contested or uncontested, the proceedings must wait for the required three months before issuing the decree nisi absolute.

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