

# Inaugural Address

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I DEEM it a privilege to have been asked to inaugurate the Seminar on the Hindu Marriage Act and Special Marriage Act with special reference to the comments of the Law Commission. I, however, still wonder as to why and on account of what qualification I have been selected for this task relating to matrimonial affairs. Brother Mathew, who asked me for this purpose, has a young and warm heart, and as matrimonial affairs relate primarily to young men and women, I personally thought he was eminently suited for the purpose. Judging from the enigmatic Mona Lisa smile on his face and the twinkle in his eyes which I could well see I have a feeling that there was something more than a mere compliment when brother Mathew declined to accept my demurrer.

Marriage, it has been said, is the usual fate of most of the adult persons. Their happiness in life to a great extent depends not only upon the state of their physical health but also upon the health and well-being of their marital relations. A happy married life is undoubtedly a great boon and a good many achievements of some of the stalwarts of history can be traced to their domestic happiness and the inner strength and support they received while facing the turmoil of life from their life companions. The converse, however, is not true and it would not be correct to say that strained marital relations would necessarily affect success in life. In the face of such examples as Tolstoy and Abraham Lincoln, it would indeed be idle to make that assertion.

The institution of marriage is of vital importance to society. According to Bentham, under whatever point of view the institution of marriage is considered nothing can be more striking than the utility of this noble contract, the tie of society and the basis of civilisation, and that to perceive its benefits, it is only necessary to imagine for a moment what men would be without that institution. Sick marital relations pose a problem not merely for the related spouses, they have much wider implication. They have their repercussions and impact upon society and the same give rise to social problems.

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Harmony in society is inconceivable where there are dissatisfied parties that make a home which is one of the most crucial units in the hierarchy of social institutions. Emotional stability of society is linked with the institution of marriage. Concepts underlying matrimonial relations affect not only happiness of the individuals, they are also concerned with social norms and ethical mores. The institution of marriage has facets which are both public as well as private in nature. They impinge, as inevitably they would, upon our notions of public and private morality. Being human, we all have our angularities and weaknesses. As in other associations and relationships of human beings, so in marriage cracks occasionally appear and fissures develop. Broken homes and strained marital relations are not only a source of extreme anguish for the individuals concerned, they are also symptomatic of a social malaise and call for rational and sympathetic approach. It is, therefore, no wonder that legislators and jurists have shown special solicitude for laws governing formation of the jural relationship of marriage and its dissolution.

Divorce is sometimes described as a social innovation and an escape valve for the inevitable tensions of marriage. Some modern writers reject the prevalent notion of divorce being a relief to the aggrieved or innocent spouse. According to them, mismatching is not one-way traffic. Divorce, they assert, involves no penal idea but is the consequence of failure or fault of both the spouses. View is also expressed by another school that the remedy of divorce could itself become a cause of divorce since the opportunity of release helps to weaken the marriage tie and marital stability.

It may be appropriate at this stage to refer to some of the amendments proposed in the Hindu Marriage Act. One such amendment is in section 11 of the Hindu Marriage Act. According to this amendment, it would not be necessary that a petition for nullity of marriage should be presented by either party thereto. The object apparently is to make the relief in question available at the instance also of other parties who may have a legitimate interest in seeking such relief. This amendment has been opposed by the Law Commission because the effect of "it is to bastard and disinherit the issues who cannot so well defend the marriage as the parties both living themselves might have done". The proper remedy in such a case of the third parties, according to the Law Commission, is to have recourse to a decree for declaration under the Specific Relief Act.

Another proposed amendment is in section 13 of the Act by making cruelty, which at present is only a ground for judicial separation, to be also a ground for divorce. It is further proposed to reduce the period of two years mentioned in section 13(1A) to one year. As the provision stands at present either party to a marriage may present a petition for dissolution of marriage on the ground that there has been no resumption of cohabitation as

between the parties for two years after a decree of judicial separation, or that there has been no restitution of conjugal rights as between the parties for two years after a decree for such restitution. The following ground is further sought to be inserted in section 13 of the Act for obtaining a decree for divorce at the instance of the wife :

that an order has been passed against the husband by a Magistrate awarding separate maintenance to the petitioner, and the parties have not had marital intercourse for three years or more since such order.

The same should, according to the recommendation of the Law Commission, be the position if a decree awarding maintenance to the wife has been awarded under section 18 of the Hindu Adoption and Maintenance Act, 1956.

Section 14 of the Hindu Marriage Act at present prohibits the court from entertaining a petition for dissolution of marriage by a decree of divorce, unless, at the date of the presentation of the petition, three years have elapsed since the date of the marriage. Power has, however, been given to the court to allow a petition to be presented before the lapse of three years on the ground that the case is one of exceptional hardship to the petitioner or exceptional depravity on the part of the respondent. The court has also in such an event to have regard to the interests of any children of the marriage and to the question whether there is a reasonable probability of reconciliation between the parties before the expiration of the said three years. The amendment now sought to be made is that the period of one year should be substituted in place of three years. The Law Commission has recommended the deletion of section 14.

According to section 16 of the Hindu Marriage Act, where a decree of nullity is granted in respect of any marriage, any child begotten or conceived before the decree is made, who would have been the legitimate child of the parties to the marriage if the marriage had been dissolved instead of having been declared null and void, shall be deemed to be their legitimate child, notwithstanding the decree of nullity. The right conferred upon the child of such marriage does not extend to the property of any person other than the parents in any case where, but for the passing of the above Act, such child would have been incapable of possessing or acquiring any such rights by reason of his not being the legitimate child of his parents. It is now proposed to amend the section so that it shall not be a condition precedent to the applicability of the section that there must have been actual legal proceedings resulting in a decree. The above proposal has been supported by the Law Commission. The commission has, however, opposed another amendment,

according to which section 16 would apply only if at the time of the act of intercourse resulting in the birth (or at the time of the celebration of the marriage, where the marriage follows the act), both or either of the parties reasonably believed that the marriage was valid. In the context of the above amendment it would be pertinent to refer to the observations in an American case that "a statute which punished innocent children for the transgressions of their parents has no place in our system of government which has as one of its basic tenets equal protection for all".

The amendments which are sought to be made in the Special Marriage Act are substantially on the same line as those in the Hindu Marriage Act. There is one provision of the Special Marriage Act which has no corresponding provision in the Hindu Marriage Act or other similar laws. This provision relates to divorce by mutual consent and is contained in section 28 of the Special Marriage Act. According to that section, subject to the provisions of this Act and to the rules made thereunder, a petition for divorce may be presented to the district court by both the parties together on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and they have mutually agreed that the marriage should be dissolved. On the motion of both the parties made not earlier than one year after the date of the presentation of the petition and not later than two years after the said date, if the petition is not withdrawn in the meantime, the district court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit, that a marriage has been solemnized under this Act and that the averments in the petition are true, pass a decree declaring the marriage to be dissolved with effect from the date of the decree. Matrimonial cases often entail washing of dirty linen before others and leave a trail of bitterness. All this can be avoided if there were to exist a provision like section 28 of the Special Marriage Act in the Hindu Marriage Act and other similar laws. Question whether it should in fact be so done can be the subject matter of fruitful discussion.

Another subject which must engage our attention is of limping marriages. Certain forms of marriage are recognized according to the laws of one country but not according to the laws of the other country. Likewise, the existence of certain facts constitutes a valid ground for obtaining a decree of divorce or nullity of marriage according to the laws of one country, but not so according to the laws of the other country. Situations have consequently arisen where a decree of divorce or nullity granted in one country is not recognized in another country. The result is that the same persons according to the laws of one country would be considered as husband and wife but not so according to the laws of the other country. This is essentially a matter

which relates to private international law but as it has its impact on the matrimonial law, you may well consider the feasibility of making it a part of the discussion.

I agree with the Law Commission that every effort should be made to avoid delay in the disposal of matrimonial cases. These cases are the offshoot of marital disputes. Many a young man and woman after marriage find that they cannot adapt and adjust themselves with each other. This incompatibility results in quarrels and strained domestic relations. There are also cases of a spouse treating the other with cruelty. Sometimes physical or mental infirmity of the other spouse comes to light after marriage and causes the breakdown of marriage. In such cases justice requires that there should be no delay in the disposal of matrimonial cases. It is distressing to find matrimonial cases take a slow, meandering time-consuming course. If a matrimonial case lingers on for about six or seven years from the date of its institution till its final disposal in appeal, one can well imagine the anguish it must cause to the party concerned. As it is I know of matrimonial cases which have taken longer to be finally disposed of. The affected parties resort to judicial remedies and seek relief of divorce so that they may go in for a second marriage when they are still young. If parties grow old by the time the matrimonial case is decided, it is as good as denying an effective relief to them. Delay in the disposal of matrimonial cases not only causes acute frustration, it also results in other evils which raise their ugly head when a young man or woman has to spend long period of youth without the company of a spouse. Delay in disposal of cases pending in courts is always undesirable and represents an unhappy state of affairs. In no field, however, such a delay constitutes a greater stigma on the administration of justice than in that of matrimonial cases.

Having dealt with a very large number of matrimonial cases as a trial judge I can say that these cases call for a broad, sympathetic and humane approach. There is no relationship which is so intimate as that of husband and wife. The two share together many a happy moment and other secrets of life. There can, therefore, be no greater human tragedy and no worse catastrophe for the individual than the falling apart of the husband and wife and the breakdown of their relationship. When on account of that the husband and wife go to the court, it is essential that the presiding officer who deals with the matter should be an understanding and sympathetic judge. A wooden, abstract or pedantic approach on his part, if anything, would aggravate the situation and make things worse. Many a dispute between wife and husband are such that a sympathetic judge can give the healing touch and bring about reconciliation. There are, however, other cases when the breakdown is so complete and irretrievable that it would be cruel and

unreasonable to compel the husband and wife to live together and keep up the semblance of marriage. It would appear to be an academic exercise in such an event to dilate upon the question as to who is in the right and who is in the wrong. For such a situation I can do no better than repeat what I said while giving a judgment of the Full Bench of Delhi High Court. Referring to the insertion of sub-section (1A) in section 13 of the Hindu Marriage Act I observed that the underlying object of the aforesaid provision seems to be that :

If there has been no resumption of cohabitation or no restitution of conjugal rights as between the parties to the marriage for a period of two years or upwards, after the passing of a decree for judicial separation or for restitution of conjugal rights, the Court should assume that the relations between the parties have reached a stage where there is no possibility of reconciliation and as such it might grant the decree of divorce. The aforesaid object is in consonance with the modern trend not to insist on the maintenance of union which has utterly broken down. It would not be a practical and realistic approach, indeed it would be unreasonable and inhuman, to compel the parties to keep up the facade of marriage even though the rift between them is complete and there are no prospects of their ever living together as husband and wife.

It is gratifying that the Seminar has attracted scholars from all over the country. I hope that your deliberations would be fruitful and you would be able to discuss the various facets of the subject. I offer my felicitations and best wishes to the participants.

Thank you.