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PROBLEMS SURROUNDING DIVORCE IN FEDERAL REVISED FAMILY CODE LAW AND PRACTICE

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CODE
LAW AND PRACTICE***

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Lists of Abbreviations

UN United Nations

UDHR Universal Declaration of Human Rights

FDRE Federal Democratic Republic of Ethiopia

RFC Revised Family Code

Introduction

For the success and the development of every country and society family has very significant role. Society establishes from each and every family member who live in the country. Every person is the citizens of the country. In this case each and every family has great responsibility. Especially, spouses have the fundamental responsibility beyond love each other and they have to support each other in every aspects of their life. And also spouses have another great responsibility to their child/children. Since family is the fundamental area to rear children. It should be relatively the safest and protected environment. Spouse's responsibility to each other deals with financial, economical and any other supports and treatments. In addition to this nurturing of child generally takes place in families and first and foremost, parents are those who are responsible and as much as the first and the best care takers to satisfy the needs of their child/children. Therefore secured and stable family is very important for the well-being of the whole family, and society especially for child/children and mothers. And also, there are so many factors can affect the stability of the family. Most of the times different kind of problems shall be arise. One of the main problems is conflict between spouses/ husband and wife. Sometime this kinds of conflicts lead them to divorce/or dissolution of marriage. Dissolution of marriage/divorce has its own bad consequences

The consequence can create many hardships upon child/children and mothers life. In this difficult time the law must have the solution to protect child/children and mothers right in different ways of remedies. One of the solutions will be the provision of custody and maintenance.

Different Ethiopian legal codes and the constitution, have mentioned about custody and maintenanc. But, all this books stated of custody and maintenance in the general form. The issue of custody and maintenance is very difficult when it arises in the courts case. Judgment or decisions may not fair and justiec. Therefore, decisions/judgments on custody and maintenance is mostly based on equity. This kind of decisions highly affects the life of child/children and mothers. In addition to this the society can be affected, because the family and each citizen are part of the society.

- Question 1.** Why judges pass decisions in the principle of equity rather than fair and justify ways of accordance with the existing and legal cods and provisions?
- Question 2.** How could the courts to giving better fair and justify decision according to the existing of the very low?
- Question 3.** International, Federal and Regional States laws, and other laws are sufficient to protect the rights of child/children and mothers beyond equity and fair decisions? These are some questions writing of this paper.

1. CHAPTER ONE : Background of the study

The FDRE Constitution and substantive law give emphasis for the protection of marriage and family. It is very essentials for the creation of developed and sustainable society.

Marriage is the social institution by which a man and woman are legally united and establish a new family unites; the relationship living together as husband and wife.

Divorce is a legal desolation of marriage that results in the separation of husband and wife.

One of the courses of what marriage shall be dissolved is divorce. If the husband and wife agree to dissolve their marriage, divorce may be acceptable by the court. Also one of the spouses claim to the court to divorce the court may be allowed. Practically divorce is the main causes of dissolving marriage by any legal circumstances. In order to handle the liquidation of pecuniary relation of the spouses and the custody of children divorce may be very complicated.

And also, marriage can be dissolved by court decision and by the death of the spouse. According to Revised family Cod code anyone who claims divorce can be acceptable, if one of the spouses submits a petition for divorce to the court. When the spouses agree to divorce and claim and accepted by the court, divorce will be executed.

One of the consequences of divorce is liquidation of pecuniary relation between spouses. The other effect is custody of children. And separation of spouse to live alone is another effect of divorce.

1.1 Statement of the problem

The main objective of this study deals with the law and practice of the current Ethiopian jurisdiction. At the time of concluding of marriage certain rules must be full filed according to the law. The rules and practices are different from one community to other. There are such different kind of marriage celebrations, civil marriage, customary marriage, and religious marriage.

On the other hand, marriage may be some time end in divorce is the very cause of dissolving of marriage. And it will follow by legal requirements. This requirement is very complicated and difficult upon the spouses, children and society. The most difficult issue in divorce is the broken away of pecuniary relations between spouses. Also the custody of children is very complicated problem. The liquidation of pecuniary relation practically, the most problematic process to the court and the spouses. Because, it can affect the economical life of the spouses and children. And it will be burdensome for the court and for the participant bodies to settle the liquidation processes.

Therefore liquidation of pecuniary relation is the big problem of divorce according to the current Ethiopian jurisdiction of courts. It is stated in revised family code.

Divorce has another serious psychological problem. The society doesn't accept divorce. Because, marriage has very respected value in the society. Therefore divorced spouses couldn't get the honor of the society. In this case divorce has its own negative effect upon the spouses and the children in relation to the society. Divorce has another big psychological problem upon the spouses and the children. It has its own negative consequences. The divorced spouses have not confidence upon what they are working. They are also suffered by guilty conscious. They couldn't consider themselves equal to the other people thinking of indifferent directions. And also they may be suffered in different kind of health problems related to their psychological pain. The children of divorced spouses are also suffering by different kinds of psychological and emotional problems. They directly suffer by the separation of their spouses.

Beside of their friend may be raised this issue whenever they are with them. It may be painful to them. This circumstance may create character disorder upon the children and it may affect children's academic and social life.

The Ethiopian courts have no strong jurisdictions systems to solve divorce problems and for the protection of marriage. In general divorce has very serious and negative consequences, such as liquidation of pecuniary relation. And also it has the problem that long litigation process before the court and before customary arbitration bodies. It has also another complicated problem upon children future life. In this case we shall see better legal remedies.

1.2 Objective of the Study

The objective of this records innumerate as follows.

- a) To search the secrete behind divorce
- b) To protect marriage and to reduce divorce
- c) To enhance more researches and to identify legal options.

1.3 Methodology of the study

- a) Search and evaluate different printed matters, modules, codes, websites, and other materials related to the issue
- b) To show case analysis how the victims of divorce affected.

1.4 Significance of the study

This research has the following outcomes

- a) It can remind the importance of protection of marriage and the effects and problem of divorce.
- b) It shows the responsibilities of the judiciary and the customary dispute settlement system.
- c) To create awareness about the effects and problem of divorce.
- d) To indicate better legal solution.

1.5 Limitation of the study

- a) May be impossible to get some important references
- b) And also may not get the appropriate person in interview or requesting to accomplish the research.

1.6 The research and related questions

I can't say that only these are the essential questions in the research, but I tried to put some of related questions.

- What are problems of divorce?
- How could it adjudicate?

- What are the legal remedies / solutions?

1.7 Literature Review on Parental Duties and Responsibilities, spouses to each other and towards their own child /children in marriage and after Divorce

Spouse's /parents have big responsibility to administer their chilled /children properly. In most cases marriage has reciprocal responsibilities between spouses. They have also duties of love and supporting each other in every aspect of their interactions. And they have to give each other honor and respect as husband and wife relationship. In addition to this they have the responsibility of rearing of their child /children. Secondly, if spouses even agree to divorce their responsibility shall continue. ***“They have to facilitate the availability of custody and maintenance to their child /children¹***. Separation of husband and wife is very painful. and this can make their life very difficult.

It is also suffering for themselves and to their chilled/Children. Literates say that ***“separation of marriage/divorce can affect and hampered the life of spouses and chilled/children, economically, physically, and emotionally. And in every aspects of their life hindered to the development of their future life”²***. Therefore parents are responsible in the day to day activities of their chilled / Children.

This is the very significant factor to every activities of chilled/ children in every circumstances. After dissolution of marriage provision of custody and maintenance will be the main issue. Because chilled/Children are the very victims of divorce. In this case the future life of chilled /children shall be affected in different directions. ***“Regarding to custody and maintenance the amount of maintenance and the availability of custody shall be decided by the court³***. Each of the parent has the right and obligation individually and jointly in keeping and protecting in the mere facts of essential interest of the chilled/children.

¹ Peter G.Jaffe. at 2003 (G.C) Child custody and domestic violence page 1

² ibid p3

³ Ibid p3

“Divorce and separation of marriage may be harmful for chilled /Children for every family in different conditions. Where as it can be disadvantageous for child/children. Dissolution of marriage / divorce is inevitable the effect on child /children particularly depends on the parents economic grounds to resolve the conflict”. ⁴ The UN Resolution Article 44 /24 November 1989 States that *“parties must keep the right of child / Children by giving medication or health care, feeding over all treatments and rehabilitation. In addition to this special care and assistances must be given for each and every child without any discrimination”*⁵ According to the above explanation custody and maintenance especially, after desolation of marriage/ divorce is the basic issue and very essential and the best interest for evry chilled /Children. *“The theory of the bets interest of a chilled, may be seems easy but when it is going to be practical related to international and national laws, it shall be very idifficult”.*^{6a} Mostly related to maintenance custody and courts can not easily give decisions according to specific cases because different circumstance and cases influences on the activities of the courts. Economic backgrounds, job, age and the health condition of the parents may be the main factors of on the decision of the court, regarding to custody and maintenance. In Ethiopian Judiciary system parents are liable for maintenance and custody.

The 1960 (GC) Ethiopian Civil cod that assured (*tender years*) and (*the best interest of the chilled/Children*) this legal presumption had been very important article which is repealed by the 2000 (GC) FDRE revised family code. *”When the court deciding dissolution of marriage, also should decide as to whom spouses shall give custody education, medication and maintenance”.*^{6a} and also the right of the parent and the chilled /children to visit each other must be kept. But the decision of courts should consider the income, age, health, living condition of spouses and the best interest of the chilled/children respectively.

To sum up, the responsibility of supplying of custody and maintenance is the duties and responsibilities of the parent in marriage and after dissolution of marriage.

⁴ Suprantote 6, Article 89 (1)

⁵The 2000 G.C FDRE Revised family cod Article 113

⁶ The 2000 (G.C) FDRERvised Famtiy Cod

CHAPTER TWO

Responsibilities of Parents to each other and towards their child/children in Marriage and after Divorce.

2.1 General Background of spouses responsibilities

The first and foremost responsibility of spouses to each other is giving continuous love, help and respects each other. Based on this they have big responsibility towards their own children, they have to keep them from any kind of harmful things. Also they have the responsibility of raising their children properly and they have to provide medication and education. Because, all this general and basic necessity of children and the obligations are also duties of parents. Therefore each and every family must be able to protect their children in every aspect of circumstance and their life. *“The family is the natural and fundamental unit of society and is entitled to be protected by the society and the government.”*⁷ And the state and the society must keep and protect the institution of the family at large.

2.1.1 Responsibility One

From the very beginning, spouses have reciprocal responsibilities toward each other. In this case beyond loving each other they have to relationship help and support each other economically and financially in every aspects of their life.

⁷The 2000 GC FDRE Revised Family Cod

In addition to this they have responsibility individually and jointly take care of their chilled /children. This treatments are very interesting and essential for the general development of the chilled/children.

This responsibility starts from the first day of marriage. Beside of this at the inception time of the embryo it goes to after born of a chilled and it shall continue even at divorce time. And giving leadership, of their basic necessity as much as possible feeding clothing, medication and education is the responsibility of parents. Deferent kind regular and periodic, physical, emotional and intellectual exercised is also very essential. Personal reading and different kind academic practices must be exercise under the control of parents.

2.1.2 Responsibility Two

In the process of chilled /children care and growing parents must understand and facilitate the things which are very important to physical and mind development to their chilled /children raring with the provision of dignity from their parents. Consequently they learn and giving honor and dignity through out their life time, and also parents must avoid fear and ill treatments from their child /children. In these situations, enable to create justice and peace at large in the community. Child/ children have the right of getting special time to weight and sharing ideas with theirs parents. It is very essential to create mentally and morally efficient and equipped and empowered chilled /children. In addition to this natural law / Gods law and basic international and national laws, the history of great scientists, authors, inventers and other very important personalities life history and works must be tolled to chilled / children by parents.

This circumstances is in able chilled /children to differentiate their identity and also they can understand their ability to specialized their learning according to their natural gifts and talent. This situation can create very strong social development.

2.1.3 Responsibility Three

In addition to this, spouses must support their chilled/children enable home reading, writing and reading according to the school curriculum and syllabus. Spouses are also responsible to give parental love to their chilled /children to build up their emotional wellbeing. Because, they are the next prospect generation to administer the country. If they are not well treated in every part and aspects of their life they can not able to be responsible in their future life.

Therefore parents are responsible to provide every economic and financial support to their Chilled / children. The main basic essential thing is provision of custody and maintenance because these things are vary important to grow-up of the child/children and that is useful for the physical emotional and psychological well-being of them.

CHAPTER THREE

Theory and Analysis of Legal practices from the point of International and National Laws

3.1 International laws

UDHR of the UN charter plays a great role through international laws covenants, treaties, and declarations for instance the “*principle of equality as formally expressed in law, without differentiation between men and women*”.⁷ In most circumstances those instruments enforced women’s, right activists to promote the differentiation between formal and substantive equality.

3.1.1 Women’s Rights

The U.N. general assembly resolution Article 34/180 of 18 December 1979 adopted and opened for ratification and accession. The dignity and worth of the human person and equal rights of men and women is enshrined in the Universal Declaration of Human Right Resolution Article 217 states that Principle of Inadmissibility of Discrimination and Problems, that “*all mankind are born free and equal in dignity and rights and freedom is entitled to all the rights and freedoms set forth pretend without discrimination of any kind of including distinction*”.⁸ *Development of countries discrimination against women should be protected.*

⁷The 2000 GC FDRE Revised Favised Family Cod

⁸ *ibid* Article 217 cited at 7

In this case contribution of women in every dimension is very significant. Equality of men and women facilitates; women freedom in the political, economic, social, cultural, civil and other right”⁹ the development of countries depends on by maximum participation of women on equal terms with men in all fields. Measures should be taken subsequently by state parties. The contribution of women in every aspect is very significant. Equality of men and women facilitates women freedom in the political, economic, social, cultural, civil and other rights”⁹ The development of countries depends on by maximum participation of women on equal terms with men in all fields. Therefore, Measures should be taken subsequently by state parties.

3.1.2 Chilled/Children Rights

Resolution 44/ 25,20 of November 1989 By U.N. assembly states principles for the foundation of freedoms, justices and peace of the world and better standard of life is depends on human rights and in the dignity of the human person. In UDHR every one is entitled rights and freedoms without distinction of any kind of race, color, sex, language, religion, political or other rights and opinions and without national and social origin, property, birth and other status. UDHR. states that, *“child-hood is entitled to special care and assistance. Article 1 states that every human being below of eighteen is chilled”*.¹⁰ Parties shall respect and assure the rights of each chilled, without discrimination of color sex, language, and religion, political and other opinion. National, social-origin, property, disability birth or other status. Children are to all forms of discriminations, and punishment, must be protected. Article 24 states that, *“the rights of children must be recognized in highest engagement, standard of health treatment of illness and rehabilitation of heals. Mothers must be taken to pursue full implementation of rights by stats parties. Medical assistance and health care should be facilitating on the development of primary care to diminish infant and child mortality”*.¹¹

⁹ UN General Assembly Resolution of Article 22, November 1998

¹⁰ UN General Assembly Resolution of Article 22, November 1998

¹¹ Ibid Article 2b

In 1979 the United Nations declared about the right of children. The first draft which is legally binding document has been promulgated. However, this draft is binding, it is constantly dynamic. ***“Moreover, vis-à-vis the state, parents bear primary education and other basic responsibilities are on the behalf of parents. If parents are not able to fulfill those obligations, it is legitimate for the state or society to interven¹²”.***

The effect of divorce, custody, and maintenance after divorce is very huge. Courts must pass decisions based on the law. What are weak and unfair decisions rendered by Ethiopian courts? These judgment and decisions shall have impacts especially, up on the life of child/ children and mothers. What are the best interests of shilled/children must be considered by the courts? What are the remedies for those decisions render by court. This senior research paper shall focus on the cause of divorce, which affects the life of spouses and chilled/children, and the legal practice of the law.

Those problems are ***“economic, social, physiological and other,. but the basic issue must be settled regarding to maintenance and custody”.***¹³ In this case the issue gone be to the court. Practically in Ethiopian courts decision are unfair, injustiec and without uniformity. Mostly courts’ have decided regarding to Custody and maintenance based on equity rather than justice and accordance with stated in deferent provisions. ***“These circumstances highly affect the life of children and mothers. And it has also negative consequence upon their life and to the society”.***^{14a}

¹² *ibid* article 44/25-

¹³ *convention on the Rights of children November, 1998 Paragraph 4, Article 44/25*

¹⁴ *ibid* Article 2/

3.2 National Laws

3.2.1 The 1995 (E.C) FDRE Constitution

It has contained deliberately the universal declaration of human right UDHR, International covenants on human rights and other International Instruments.

Article 34 (3) of UDHR stated that *“The family is the natural and fundamental unit of society and is entitled to protect by the society and the state, as stated in this article family is a basic place to build strong and developed society”*.^{14b}

Some time in different problems family may be broken or dissolution shall happen. FDRE constitution Art 34(1) of the constitution explicitly stated that *“laws shall be enacted to insure the protection of right and interests of child/children after divorce”*.¹⁵

In addition to this FDRE constitution stated that, in the consistency of the international instruments. Article (34)2 clearly stated that *“in all actions concerning child/children under taken by public and private institutions; courts of law, administrative authorities or legislative bodies, the primary consideration shall be the best interest of child”*.¹⁶

^{14ab} The 1995(EC0 FDRE Constitution Article 34/3

¹⁵ *ibid* 34/2

¹⁶ The 2005 FDRE Criminal Code Article 658/a

3.2.2 The 2000(E.C) Revised Family Code of FDRE (RFC)

This FDRE revised family code of 2000 (G.C.) in acted in the preamble stated the notion of: *“Giving priority to the well being, up bringing and protection of child/children in accordance with the constitution and other international instruments, which Ethiopia has ratified”*¹⁷ Article 13, says to facilitate the amendment of the X-law when disputes arise in families to give fair and justice decisions in Ethiopian courts. Custody and maintenance has been addressed that, *“the court when shall deciding the dissolution of marriage also decide as to which spouse shall have custody and care of their child/ children including education, health, maintenance and also the rights of the parents is deserved to visit their chilled/ children each anther, but when giving decisions the court shall take into account the income, health condition of living of the spouses and the age and the best/ interest of the child/children”*.¹⁸

3.2.3 The 2005(E.C) FDRE Criminal Code

Proclamation 414/2004 that has been promulgated in the federal Negarit-Gazeta, May 09, 2005(E.C) stated that, custody and maintenance of chilled/children. The cod explain what punish those who fail fulfilling their obligation. FDRE constitution Article (34)2, clearly explained *“In all actions concerning children under taken by public and private well force institutions. Courts of law, administrative authorities or legislative bodies, the primary consideration shall be the best interest of a child”*.¹⁹ This stated in the criminal code of FDRE Article 658(a) accordingly. This punishment is able to start from simple impressments exuding six months. *“And also those parents who are not performed their responsibility upbringing their children would be with punishes”*. This punishment can be from simple impressments to or fine. If the case may be very serious of depriving the right of a chilled/children the court can punished according to the very case.

¹⁷ The 2000 FDRE G.C Revised Family law Article 13

¹⁸ *ibid* Article13

¹⁹ *ibid*

²⁰ *bid*

3.3 Laws of Regional Stats of Ethiopia

Ethiopian constitution established on the based of ethnic group and different regional and sub-divide nations, nationalities and people aggregations. This situation constitutes such kind of federal system based on language and ethnic arrangement of federal system. These circumstances created federal and regional states in Ethiopian territories. Federal judicial system has promulgated family code with its collect (RFC). And also, regional states have their own family codes. The existence of these kinds of laws shows that the commitment of the government bodies to worked for the protection of marriage. ***“Women and child/children right also has the activity tries to protect dissolution of marriage and divorce”.***^{21a}. Based on this concept, I preferred some Regional States family laws.

^{21a} The 2005 G.C FDRE Criminal cod Article 658

3.3.1 THE 20039(G.C)Amhara Regional State Family Law **(Zikre-Hig)**

In 2003 of June the Amhara regional state family law is promulgated. In proclamation No 79/2003 Article 124(1) and (2) stated that the best interest of child/children that are very similar with the federal revised family code. The federal revised family code has extensive consideration of living standards of the parents, health and age. But the 1960 civil code has very essential point that the mother to have custody on the issue of *“tender year is circumstance that forces the court to reverse its decision, the court is obliged to entitled the mother to have custody over the child/children who are under the age of five years and must be under her custody until they reach the above mentioned age ”*^{21b} Children less than six years of age must be kept by their mother because in this age they need their mother love more than the other age.

The revised federal family cod has suspended the 1960 civil cod of that is entitled *“Tender years”* presumption. The Amhara regional state law has not neglect the 1960 civil code Art 3 which is very significant provision. It is also very important *“to protect and keep watch the best interest of the child / children”*.²² The 2003 (G.C) the federal revised family cod also stated provision of maintenance Art 209-210 (a) *“any responsible person who is liable to give maintenance to the creditor. The provision of maintenance must be use full to the treatment of the creditor, for food clothing, shelter, education and medication according to the social and customary condition of the society”*.²³

^{21b}The 2003 G.C Amhara Regional State Family Law Article 124 1,2,

²² The 1960 G.C. Civil code Article 13

²³ The 20039(d.C)FDRE Revised Family Code Article 209.210/a

3.3.2 The 2003(G.C) Draft of Oromiya Regional State Family Law

This law has included the *custody and maintenance provisions*. It stated in Article 129 bought custody. It gives guide line to the courts to interpret and decide on *custody of chilled/children*. And also this law mentioned the critical custody years of chilled. It declares that any chilled/children, who are under the age of five years old, must be kept and treated by his mother.

However some time conditions that is very essential for the very interest of a chilled must be evaluated and decided by the court. In this code on Article 2 stated that, ***“The court shall take into account the age and best interest of the chilled “And also this law is obliged the creditor to pay maintenance for the beneficiary Art 209”²⁴***

²⁴ The 2003 G.C The Oromia Regional State Draft Family Law Article 129

3.3.3 The 1991 (E.C.) Regional State of Tigray Family Law. Proclamation No33/91 “Negarit-Gazeta Tigray”.

Proclamation No 33/91 “Negarit-Gazeta Tigray” Family Law. Article, 111 States that **“in the best interest of the chilled /children and to create the circumstances of up growing decision of custody is very essential issue”**.²⁵ In addition to this the law mentioned that the provisions of maintenance as the obligation of the creditor. **“The beneficiary has the right to get the basic necessity. The creditor also has the responsibility to give maintenance according to article 111”**.²⁶

According to Article 111 **“the best interest of a chilled /children to create better circumstances of up growing decision custody is very important issue”**.²⁷ Also in this family cod the mother has authorized and entitled in the *tender years* of her chilled, and she has also the right of custody on her child. Beside to this, the law mentions that the provision of maintenance is the obligation of the creditor. **“The beneficiary has the right to get the basic necessities from the creditor and also, has the responsibility to give maintenance according to the law”**.²⁸

This code has similarity with the Federal Revised Family Code. But it has no the tender year presumption that is not included in the Federal Revised Family Code, which missed tender treatment.

²⁵ The 1991E>C Regional State of Tigray Law Article 111/a

²⁶ *ibid* Article 111/b

²⁷ *ibid* Article 112

²⁸ The 1991 (EC) Regional State of Tigray Law Proclamation No 33/9

In addition, this law mentions that the provision of maintenance as the obligation of a creditor. ***“For the beneficiary of the best interest of a chilled /children to create better circumstances of up growing decision custody is very important issue”.***²⁹

Also in this family cod the mother has authorized in the tender years of her chilled /children to custody.

In addition, this law mentions that the provision of maintenance as the obligation of a creditor. ***“The beneficiary has the right to get the basic necessities to live and the creditor also has the responsibility to give maintenance according to the law. This code has similarity with the Federal Revised Family Code. But, the tender year presumption that is not included in the Federal Revised Family Cod.”***³⁰

²⁹ **ibid** Article 111/b

³⁰ **ibid** Article 112

CHAPTER FOUR: Proposed Solutions

What should be done in Ethiopian National and Regional States Laws to be Harmonized with the International Laws

4.1 International Laws

Since, Ethiopia has been one of the first founder countries of the (UN) adopted different kinds of international laws. For instance, the 1989 convention on the right of child/children (C.R.C) to protect and the rights of child/children, In accordance with the UN Universal Declaration of Human rights. Proclamation the right of chilled /children entitled to special care and assistances.

Beside of this the (C.R.C) agreement, Article 9(1) states that, *“A child shall not be separated from his/her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, when that separation is necessary for the best interest of the chilled / children .”*³¹ Related to separation from parents, also (C.R.C) articles 9(3) states that *“if it necessary to determine separation of chilled/children from parents of child from parents one or both parents must maintain personal relations and directly contact with both parents regularly, unless and otherwise it is contrary to the interest of a chilled/children,”*³² what say international laws and federal and state laws of Ethiopia regarding to custody and maintenance of child/children.

Therefore, Ethiopia has obligation to insure the right of a child/children concerned to custody and maintenance through accepting the (CRC) convention.

³¹ UN general Assembly Resolution Article 9/1 November. 1989

³² *ibid* Art 9/3

Ethiopia has to honor and insure the (CRC) convention as to the national laws and like the FDRE constitution of 1995 (G.C) and the FDRE refused family code of 2000(E.C) to protect the right of child/children. Regarding to custody and maintenance the best interest of the child” must be considered. Economic problems are the main hinderers to create healthy and productive society. There are so many types of economic problem in which the world. Sevier poverty may be the main cause of divorce. In this case, the sovereignty and wellbeing of the society will be in danger for example the current situation of Somali and the poverty in Ethiopia.

4.2 Different Economic Factors and Other problems which are the causes of Divorce.

4.2.1 Economic Problems

The migration of the young productive generation in different parts of the world affects the economic development of the third world countries, for example, the current world economic crises affect so many families all over the world. It has also many bad effects, especially on the well-being and rights of mothers and children. Economic problem is one of the causes of divorce, it can be expressed as fraud, limitation of income, extravagancy, unbalanced economic background, unnecessary wedding expenses and etc...

4.2.2 Economic Fraudulent

This means one of the parties in order to be getting married with his /her fiancée he/ she approaches as if he /she are rich and has a lot of money. So by borrowing money of other form his /her friends try to fulfill the needs of the another party. This kind of gifts and invitations are to attract each other till they are married. But after marriage such things will not continue as financial problems arise to lead the condition as before. So gradually this brings conflict between the spouse and the final destiny will be divorce. In addition to this sometimes particularly youngster get married because of love without preparing themselves, i.e. having a plan that they will change themselves for the future by working hard but conditions will not run as they thought. So as they start to have more children and can't afford what they need, what was thought vanishes from their sight/mind/and paves away to divorce.

4.2.3 Extravagancy

If one of the spouses is extravagant, for example intoxication, etc or supports his/her extended family members without the knowledge of one of the spouses, it brings some kind of suspect.

4.2.4 Unbalanced Economic Background

This is the background of the spouses before marriage for example, if the wife is from a well being family and husband is the vice-versa and most of the home expense after marriage is covered by the female spouses family what gradually lacks the male spouse is respect ion from his waifs parents or family members so such thing makes the husband as he is in bondage and forced to divorced his wife.

4.2.5 Unnecessary Wedding Expense

Traditionally what is known in our country is that people suffer with their weddings ceremony and waste a lot of money, and to get fames, from others. So to keep this tradition either by borrowing or any means. If the wedding ceremony is being in a wonderful way what comes next, i.e. after marriage is to refund the money borrowed and this gradually makes the spouses economically poor and the case for marriage dissolution as covering home expense become harder and harder.

4.2.6 Addiction

Drunkenness, addiction to alcohol and, chewing chat (to some extent), etc. could be reasons for divorce. When people started these addicted things such as alcohol, narcotic drugs, etc...They started easily but they face serious problem. In this case they spend more money beyond their economic capacity. This problem leads them to be extravagancy. Extravagant people haven't money for their day today activities. Also they have not money to afford to their family basic needs. Unless their family gets enough money they would fail down to very Sevier problems, Drunkenness, addiction to alcohol such as hunger, lack of shelter, they may be facing other hectic economic problems. ***“In addition, to this the children would go to street and they will be arrogant and gangsters, tiffs and prostitutes’. They also exposed to different kind of disease like HIV AIDS and drag abuse.”***³³

³³ www.VCB JUN 16/2007

In this problem there may be happens lose of good citizens and loss of generation and educated and productive people.

4.2.7 Manner

Article 53(2) of the RFC revised formally code of FDRE stated that, “*husband and wife are bounded in towards each other to exercising regular sexual intercourse*”.³⁴

That means sexual intercourse must be done only between husband and wife. However, if husband and wife one of them committed sexual intercourse with other person, it can be the course to dissolution of marriage.

4.2.8 Adultery

A serious case for divorce Is voluntary sexual intercourse between a married person and one who is not his or her spouse some legal jurisdictions have defined it as crime against marriage opposed to infidelity.

³⁴ The 2000 G.C FDRE Revised Family Code Article 53/2

4.2.8.1 Definitions of Adultery

Although the definition of “adultery” differs in nearly every legal system, the common law legal system punishment in sexual relation outside of marriage.

For example, New York defines an adulterer as a person who engages in sexual intercourse with another person at a time when he has a living spouse, or the other person has a living spouse. *“While in North Carolina adultery is when any man and woman, lewdly and lasciviously associate, bed and cohabit together.”*³⁵

Minnesota defines adultery as or not, both are guilty of, when a married woman has sexual intercourse with a man other than her husband, whether married adultery. Adultery was known in earlier times by the legalistic term “criminal conversation” (another term, alienation of affection, is used when one deserts the other for a third person). The term originates not from adult, which is from Latin a-dilscere, to grow up, mature, a combination of a,(to, dolor, “work”, and the processing compou but from the Latin ad-ulcerate (to commit adultery, adulterate/falsify, a combination of ad, “at”, and alter, “above”, “beyond”, “opposite”, meaning, “on the other side of the bond of marriage. A marriage in which both spouses agree that it is acceptable for the husband or wife to have sexual relationships with other people other than their spouse is a form of no monogamy. The resulting sexual relationships the husband or wife has with other people, although could be considered to be adulterer in some legal jurisdictions, are not treated as such by the spouses. Some cultures have a distinguished interpretation of the term infidelity. *“In some legal systems, it might be tolerated as long as it does not fit the jurisdictions legal definition of adultery. On the other hand, infidelity is not only a sexual term, but is the Latin word “unfaithful””*.³⁶ (fides: faith). (Having no faith can also mean the religious belie).

³⁵ US Supreme Court Desertions Sins 1965 Laurens Texas

³⁶ Laws of Manu, V, 154; VIII, 371

4.2.8.2 Legal Penalties for Adulterer

Historically, adultery has been subjected to several sanctions, including the capital punishment and has been ground for divorce under fault-based divorce laws. In some places, the methods of punishment for adultery is stoning to death. In the original Napoleonic code a man could ask to be divorced from his wife if she committed adultery, but the Philander of the Husband was not sufficient motive for divorce unless he had kept his concubine in the family home. In some jurisdictions, including Korea, Taiwan and Mexico, *“adultery is illegal. In the United States, laws vary from state to state. For example, in Pennsylvania, adultery is technically punishable by two years of imprisonment or eighteen months treatment of insanity that is (for history, see Haymow) (criminal statute replaced 1972), while in Michigan the Court of Appeals, the states second highest court ruled that a little-known provision of state criminal law means the adultery carries a potential life sentence . In Maryland, adultery is punishable by a fine of ten dollars”. That being said, such statutes are typically concede red blue laws and are rarely, if ever, enforced. In the U.S. military, adultery is a court-martial able offense only if it had been “to the prejudice of good order and discipline” “of a nature to bring discredit upon the armed force ”.*³⁷ This law has been applied to cases where parents command of the others, or one partner and the other spouse where members of the military, particularly. *‘The enforceability of criminal sanctions for adultery is questionable in light of Supreme Court decisions since 1965 relating to privacy and sexual intimacy, and particularly in light Canadian law, adultery is defined under the Divorce, Act.*³⁸ Through the written definition sets it as extramarital relations with someone of the opposite sex, the recent change in the definition of marriage gave ground for a British Columbia Judge to strike that definition owned. In a 2005 case of a woman filing for divorce, her husband had cheated on her with another man, which the judge felted was equal reasoning to the union. A majority of nations in the European Union, such as the Netherlands or Sweden do not persecute voluntary coitus between adult persons of their status in marriage as adultery.

³⁷ Codex Justin, XLVIII, 5-13; Lacky, History Ethiopia Moral II 31338

³⁸ (Lqws of Manu, 154: VIII,371)

4.2.8.3 Effects of Adultery

(How to catch a cheat)? the unfaithful person in his/her guilt he/she may resign his high profile job/ position or be under pressure to do so in order to maintain moral standards results/ effects of adultery (How to catch a cheat)? The unfaithful person , in his/her guilt he/she may resign his/her high profile job/ position or be under pressure to do so in order to maintain moral standards.

- You may get demoted or expelled, if you work for certain type of organizations.
- You may too ashamed to face the world and decide to commit suicide.
- You may go into depression or keep a low profile hoping it will die down.
- If you are a high-profile personality, the press will splash it on their front page.
- People who looked up to you will lose respect for you.

4.2.9 Responsibility of the Government

Protection of human rights and fundamental freedoms are related with modern democratic and human write principles. The right of all human race enshrined in fundamental human rights of all human rights treaties covenants conventions and declarations. One of the reasons is the protection of marriage and the entertainment of the victims after divorce *“Concern must be given for protection of marriage by identifying the causes of divorce and its effects, By applying systems protect women’s and chilled rights as well as divorce, because the main victims of divorce are children and women”*. *Beside of this, the government bodies, different institutions, are responsible for the protection of marriage”*

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³⁹ The 1995 GC FDRE Constitution Article 34/3,35.,36

The duties and responsibilities of government bodies according to the constitution is “*Those institutions can use different medias to address the people. Such institutions for example ministry of education can make including in curriculum, learning of gender issue and marriage. And also different ministerial offices such as ministry of circumstance teaching the society at large bought the duties of marriage and the bad effect of divorce through different government bodies, institutions*”⁴⁰

⁴⁰ FDRE constitutions Article 34/3, 35/36.

5. Cases, analysis and the current practice of courts on custody Maintenance and custody.

We have seen extensively in the previous chapters about the problems of divorce including the issues of maintenance and custody. In such a way that, we have absolved different international and national and regional state laws which are working in the current practices in Ethiopian courts. Those laws are mostly motivated when disputes arise between husband and wife. These laws have very determinant value on the future life of the parents and especially upon the chilled /children.

The most serous problem emerges in the true world practice on the claim of maintenance and custody issues mostly after separation or divorce. In practical situation the decision may be unfair and injustice. This problem starts from insufficient skill and knowledge of the judges. In this case they can not properly interpret the law and unable to give the appropriate decision. And also the law has the short coming of to be special indication related to the case. It has also the problem giving a quid line to give the right and the correct decision to each and every case to the courts. In this case judges are fully biased on the ground of giving decisions. There for courts are mostly based on equity influenced decisions rather than codified based decisions.

According to the above and other factors, many parents and chilled /children have been affected by the unfair decisions. In addition to this, also they suffer by economical, financial, psychological and other social problems. And the possibilities are very narrow to reverse decisions on the appellate counts.

In this case I tried to write this research paper, that the essential preliminary feed backs are the original cases being already adjudicated in the problem and effects of diverse including maintenance and custody.

5.1 The first case

Case of children custody between husband and wife after divorce

Case of dispute on children custody

W/ro Mestawot Teshome Vs

Ato Mebratu Tammen

Federal First Instance court

Ledeta Bench

Addis Ababa

May 23 2001 E.C.

File No 29774

This case is presented to the court to the appellate court decision between W/o Mestawot Teshome and Ato Mebratu Tammen. The plaintiff (mother) asked divorce and the court accepted and has given divorce decision. And also she asked the custody of their children to her elder brother who live in United Kingdom. Her elder brother presented before the court and accepted custody of children. The defendant (Father) automatically rejected the custody. He stated that their children are Ethiopian and they may be in the different cultural and other problems when they leave in that country. And also they have to learn and in their country in their own language and culture. And also he can give their children custody to his (mother) who living in Addis Ababa.

The applicant (mother) opposed this deference because his mother is very aged but she may not follow up and giving administration too .But, the father stated on the litigation their children are living with his mother who is the grand mother and they are very familiar and have good relation ship

with his mother. And this is very important and better opportunity to continue their learning in their own native place. There for the father asked the court to grant to his mother full custody. While he stated that to the court because he is an American by citizenship he can take their children to U.S.A and asked the court to custody of his children. After fifteen days appointment the court decided that to forward the case to psychology specialists to give decision. The court has accepted and considered the opinion of the psychological specialists. According to the specialist report the court decided as follow. The children must live with their father in their up- bringing and learning ages. While, in their vacation time they can stay with their mother.

In the issue of the joint physical custody, the judges heard both parties' interests. But the mother claimed that after the end of they existing year. She would like custody their children because, she could teach their children. But the (father) said that the children must have continued their summer (kiremt) learning with him in the currant existing school.

The court considered the International Human Rights Instruments and the African child right and welfare charter that Ethiopia has accepted. For that mater, it is better to keep the best interest of the children as much as possible. After hearing of both parties the court rendered decision. Stating that the children have right to get equal care, love and protection from both parents and considered of the right of movement from place to place of the children.

There fore the count decided that to the mother possible to stay the children in charismas vacation with their mother. And the mother turns in back to their father before one week of opening schools. Finally the court dismissed the case and returned the file to the record office. We can understand from the above decision, that the lower court is not efficient to render the right, fair, and the appropriate decisions to the problems are reforming the appropriate International National and other instruments. In addition to this the court is not tried to refer similar previous cases. The other short coming is failing to consider and understand the best interest of a child.

⁴¹ Federal First Instance Court Lidet Bench Case No 29774 May 23 2001 E.C

5.2 The second case

Decisions of cassation bench on dispute of custody

Ato Tesema Mamo Vs

Wr/ro Mulu Gobena Federal High Court

Cassation Bench

Addis Ababa

February 14, 2002 E.C.

From the very beginning this case submitted to federal first instance court passed through federal Supreme Court. This case decided and reviewed by cassation bench of Addis Ababa. This dispute has been emerging between the father of the son whose name is Ato Tesema Mamo and the son of the grand mother Wr/o Mulu Gobena. Both parties want to have the custody of the son Tamerat Tessema, who is seven years old. And he has lost his mother when he was six months old. From the very beginning of the mother's death his grand mother has raised him till he is seven years old. In this case father of the son who disappeared for about seven years, he claimed to the court custody of his biological son. The father never helped and supported his son at all. When father understood that w/ro Mulu Gobena has the custody of the son to take his deceased wife's property he gone be the court claiming custody.

This case has been started from Federal First Instance court and directed to the Federal High court and finally to the cassation bench. The two lower courts decided grant to custody Ato Tamerat Mamo. But Wr/o Mulu Gobena went to cassation bench to explain the case behind. Ato Tessema Mamo who is the father of the son that the interest of Ato Tessema Mamo to possess the deceased mother of the son. The cassation court based on FDRE constitution article 36(2) which says in all actions concerning children under taking by public and private welfare institutions courts of low administrative authorities or legislative bodies, the primary consideration shall be the best interest of the child is living with biological parents. This issue is internationally accepted principle if one of the parents passed away the other parents have the right and responsibility of co-custody of the child. But parents some times must accept the best interests of the child in different ways accordingly.

In this case the cassation bench identifies properly the best interest of the son and the rational behind the claim of the biological father Ato Tesemma Mamo. And also the court understood that the father's wish is not the best interest of the child.

In addition to this, the lower courts can't pass through International and National child right principles and laws. There for they were not capable of giving the right and fair decision related to the best interest of the child.

The interest of the father was to posses the immovable property of his deceased ex-wife. The deceased's home was under the control of her mother who is the grand mother of the child. This issue was entertained wisely by the cassation bench.

The lower court couldn't understand the intention of the father and the best interest of the child. There fore the decision of the cassation bench is fair and justice.

⁴² Federal High Court Lideta Bench File No 35719 February 14, 2002 EC

5.3 The Third Case

This case is entertained in Federal High Court.

Federal High Court

Lideta Bench

Addis Ababa

Ato Mulatu Wodajo (Father) Vs

Wr/o Almaz Bekele (Mother)

File No. 75877

December, 28,202 E.C.

In this case, we can see that the Father who is responsible to give maintenance to his child claims that termination of custody to the court. He has been paid maintenance payment amount of Birr 287.00 (Two Hundred Eighty Seven Birr) monthly payment. When his son reached eighteen years of age, the father claimed to stop the maintenance payment mainly because he attained the retirement age, and secondly because he wanted to take his child to custody.

But the mother, who is the defendant, opposed the claim and she stated that the case is not within the jurisdiction of the federal high court but rather that of the federal first instance court. In addition to this, she opposed the claim of custody of the child to his father because; if her child is put under the control of the step mother he may face harsh treatment. In Ethiopia, step mothers are considered as bad people who do not care much about those step children who are in their custody. In this case, the Federal High Court stopped to entertain this case. Therefore we can understand that the issue of maintenance and custody mainly get answered through the culture and custom of the society. That means even if the minor has attained the age of eighteen, unless and otherwise having any means of subsistence it is very difficult to stop maintenance and custody. Therefore the case shall change to equally rather than entertained according to legal basies. Also based on the above issue the mother claimed that the court shall reject the request of

custody of the child to her father. Hence, the court terminated the case. The court already closed the case and turned the file to record office.

Therefore, the court decided this issue in accordance with the pervious civil code 808 and art 812 which says that the obligation of maintenance supply is determined and issued when the requesting creditor is able to pay maintenance and when the creditor is facing a problem.

Meanwhile, the promulgation of the revised family code issues that maintenance payment is entertained according to the above articles which are in the civil code.

On the other hand, the revised family code(RFC) article 320 says that the above articles which are in the civil code are replaced by the decision rendered based on that. Therefore, the previous Ethiopian Civil Code and the Federal revised family codes are in the same ground in the case of maintenance and they go hand in hand. Finally, the court has completely dismissed the case and turned the file to the record office. To conclude from the view point of social and cultural condition, there are practical conflicts between the law customary practice.

To sum up, due to shortage of time and other constraints additional practical cases regarding this issue could not be incorporated in this research paper. However, these three cases clearly reflect the objective scenarios and the most relevant cases accordingly.

43 Federal High Court Lideta Bench File No 75877 Decembers 28, 2002

Conclusion

Problems and effects of divorce in Ethiopia have many negative consequences upon the society. Women and children are the victims of divorce to a large extent. In most cases, Ethiopian courts have not been international instruments. The Ethiopian judicial system's current practice especially in the lower courts is not efficient. Usually, judges do not render fair decisions and also different regional state laws are very difficult to implement on the daily basis of courts' duties. State laws in FDRE constitution, human rights, women rights, child/children's rights are enshrined in international standard. But in Ethiopian courts the implementation is very poor.

In addition to this, the FRFC federal revised family code has its own shortcomings. It opens for spouses to be divorced without any legal restrictions. Whenever one of the spouse claims divorce there is no obligation to give maintenance to the other spouse.

The other controversial issue in Ethiopian courts is the claims of custody and maintenance between spouses as well as to their child/children. After the end of their marriage it is also stated in different federal and regional states laws. Besides, it is enshrined in international instruments.

The other interesting issue is the law of the best interest of the child. Ethiopia's lower courts are mostly rendering decisions regarding to the best interest of the child and their final decisions are very significant to improve the law in relation to family codes and laws.

Therefore, there is a big professional capability vacuum between the lower and the above courts of Ethiopia. The other problem concerning the best interests of the child in the lower courts is that they do not have reference for different national regional state laws and other international instruments such as human rights, women and child/children's rights. Court decisions in the lower courts depend on equity rather than based on the written law. Besides, they do not infer many related and essential printed materials that are very significant to fair decision making.

To sum up, Judges at any level must be trained especially related to their day to day activities. The family cases must give more consideration.

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