ST, MARY'S UNVERSITY COLLAGE

FACULTY OF LAW

LLB THESIS

ADJUDICATION OF DISPUTES ARISING OUT OF DISSOLUTION OF MARRIAGE UNDER THE REVISED FAMILY LAW OF ETHIOPIA. THE LAW AND PRACTICE

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ADDIS ABEBA ETHIOPIA

JULY, 2008

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Submitted in partial fulfillment of the requirements for bachelor degree of law (LL.B) at Faculty of law St. Mary's University College.

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JULY 2008

Acknowledgment

Many persons have contributed to the making of this paper. I received substantial support and assistance from my families and friends. I greatly appreciated their contribution and thank them all and thanks to God.

My Advisor Ato Nikodimos Getahun deserves special acknowledgment for his constructive advice and help. Ato Filipos Ayenalem, Judge of Federal High Court also deserves special acknowledgment for indicating me the problematic area and the practice.

My sincere thanks also extended to my family for their unreserved moral and material support through out my educational life.

I would also like to thanks all my interviewees for providing me with important ideas. I further acknowledge for my mother Ayelech Demissie and for my father Hailu Tufa for their constructive financial support.

Last but not least I am profoundly great full to my sister Meseret Taddese, to my brathers Fekadu Hailu and werknehe Hailu and my friends Zera Taddesse , Dagim (mimy) and Yetagesu for their dedication, support and assistance to my success.

Thank you all

Tewodros Taddess

STATEMENT OF DECLERATION

I have by declared that this paper is my original work and I take full responsibility for any failure t observes the conventional rule of citation.

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Signature _____

Introduction

The purpose of this senior research paper is to show the major legal and practical problem in relation to the law and practice of adjudicating family disputes especially divorce in the R.F.C and to some extent in regional family law and then by suggest certain solution.

This paper is divided in to three chapters. The first chapter lies down the definition of dissolution of marriage, divorce and annulment.

The second chapter takes up the grounds for the dissolution of marriage and much more discussion abut arbitration. Arbitration is among those alternative dispute resolution methods, which incorporate the mechanism by which disputes are resolved. Therefore, when disputes arises in marriage, the cases are considered in either of the two competent institution arbitration and courts.

The third chapter revolves around the problematic areas. It explains the power/ right of the spouses to adjudicate their family dispute especially divorce. This means that the constitution give that to the spouses to adjudicate their family cases either customarily or religiously by their own free will. The social reality towards divorces that is, as indicated in practice most spouses end their marriage outside the court room. And show the practice in relation with the law.

Chapter One

Dissolution of Marriage: A general over view

1.1 Dissolution of Marriage

When a man and woman exchange their respective consents to live together as husbands and wife, they leads in to their new relation ship and the presumption is that the marriage will last for life, i.e. they assume their relation ship is permanent that nothing will separate them.[1] The goal of this agreement between the spouses, as it is stated is a lasting martial relation ship, the union which remains binding throughout the life time of the parties (Spouses)[2].

However, the presumption does not hold always true. Different factors may hinder the spouse relationship from attaining such goal. The hindrance may result from the behavior of the spouse themselves or from other external circumstances. It is the purpose of this chapter to deal with the concept of dissolution of marriage.

1.1.1 Definition of Dissolution of marriage

To begin with its definition, planiol defined as fallows. "The dissolution of marriage is the braking of the conjugal bond and the cessation of the effects of the spouses produced either as regards themselves or as regards third parties. The dissolution of marriage assumes its validity."[3]

Blacks law dictionary also, after defining the term dissolution as an act or process of dissolving; termination defines the phrase dissolution of marriage as the act of terminating marriage.[4] Therefore, if we consider these definition closely, especially of planiol, the basic assumption is that there was a marriage proceeding dissolution; that marriage was, at least conceptually, assumed valid and that it had produced some consequences on spouses as well as on third parties. Hence it is

only if we have marriage that we can talk of dissolution of same. That is if there is no valid marriage, there is no such thing as dissolution of marriage. So we can say that the legal action through which the valid martial relationship of the spouse as and its consequence come to an end is called dissolution of marriage.

According to the west's legal thesaurus dictionary "A termination of martial relationships by a judgment or a decree. And some times it refers to a legal separation. A limited divorce or a divorce from bed but does not dissolve the marriage.[5] As one could see from the above definition there are three kinds of dissolution embodied in the definitional part.

- It is dissolution of a valid existing marriage. These type of dissolution could arise for a cause arising out of the marriage.
- It could be dissolution affected through annulment of the marriage. This could be for non fulfillment of essential conditions of marriage.
- It could be a dissolution effected through separation of husband and wife through board and bed. This type of dissolution is considered as partial divorce since it has effected only by suspending the effect of marriage so far as the cohabitation of the parties are concerned

When we come to our laws, in almost all regional as well as federal, the definition of dissolution of marriage are not clearly defined. But by observing general situation, the kinds of dissolution embodied are more or less the same[6]. This are:-

- The decree of invalidation of a defective marriage due to the violation of one of the essential condition of marriage by the court.
- Decree due to the death of one of the spouse
- Decree of absence of one of the spouse
- A Valid decree of divorce

1.1.2 Definition of Annulment

According to Black's law dictionary "annulment is to nullify, to abolish and to make void by competent authority." In addition an annulment is the declaration that a marriage never really exist or was void from the very begining.[7] This kinds of dissolution of marriage some times granted for reasons such as fraud and undue force exercised against one of the spouses or both of them. A marriage can also be annulled if either of the parties is underage or if both parties /spouses/ declare that they consider the marriage as the mere declaration or joke[8]. This is done or performed for the purpose of traveling or moving abroad (diversity visa.) and other purposes such as changing a work place from rural to urban areas and to have a right on government owned rental house[9]. Annulments differ from divorce which has the effect of dissolving the valid marriage.

Annulling a marriage can be made only if it was void or voidable at the time it was concluded or performed or practiced. Sometimes annulment has been used as an alternative to divorce.

1.1.3 Definition of divorce

Many countries many have defined divorce in different ways. For instance planiol defined divorce as "The rapture of a valid marriage during a life of the spouses."[10] This definition seems to imply the exclusion of a void, avoidable and death as a termination /dissolution/ of marriage. Corpus juris secundum, the restatement of American law, also put the term, in its strict legal sense, as the dissolution of a valid existing marriage, which are as if used in the wider sense, it also includes separation and annulment.[11] However, the latter two are inconsistent with the modern usage of the term. It is added that "When the word divorce" is confined to its strict legal sense, it means the legal dissolution if a lawful union for a cause arising after marrieage.[12] Here we can see important elements in this definitional analysis- the fact that the cause for the action of divorce is the occurrence of some changes to the spouses relationship during their marital life,

i.e. after the celebration of marriage. Hence, there can be no doubt as to the fulfillment of all legal formalities during the conclusion of the marital union.

Finally according to black's law dictionary, "divorce is the legal separation of man and woman effected by the judgment or decree of court and either totally dissolving the marriage relation."[13] So that as we clearly understand from the given definition, unless and otherwise given a decree of dissolution of marriage by the courts of law, there is no divorce.

1.2 Dissolution of Marriage comparative overview of different countries.

1.2.1 Dissolution of Marriage in U.S.A

Marriage dissolution in euphemism /in a better way/ divorce or annulment. According to the modern legal usage dictionary "dissolution of marriage in 1970 the word divorce was struck from many states and repealed /Changed/ by the euphemism dissolution of marriage."[14] So that the overview can be written about divorce and annulment. Many religious groups and most states in United States of America have strict laws saying that first cousins may not marry each other, If two persons have consanguinity and they conclude a marriage, that marriage could be automatically annulled. In the states of United States of America annulment is granted or given for fraud or undueforce exercised against one of the spouses. In addition annulment is granted for either at the parties /spouses/ are underage or if both parties /spouses/ declare that they consider the marriage as the mere declaration at the time it was performed or concluded.[15]

Therefore, "Annulment of marriage is a legal declaration that the marriage was void from the very beginning or inceptions because of the violation of some marriage laws, and in addition to this some states of United States of America fraudulent intent is one of the grounds for making the marriage void. Underage

and bigamy are the most common and widely accepted grounds for annulment of the marriage. Other important grounds which are used for annulment are impotence, illegal marriage and failure to observe /wait out/ a legally established. Waiting period.[14]

According to the American Encyclopedia “divorce is a civil action brought before the court of United States of America.” If the judge grants the divorce, they immediately issue the divorce decree that include the terms of divorce such as custody, finance support of the children for one of the marriage partner and division of common property.[15]

If there is fault, then the divorce is granted. In accordance with state law, the party seeking divorce can file the complaints against the other party /spouse/ giving grounds for a divorce. If one of the spouse does not want the divorce, he/she may contest or may as one of the spouse /party/ files another complaints in which he/she give grounds for seeking the divorce.[16]

The grounds of divorce are differing from one states of U.S.A to other states of U.S.A even though in concerning of abandment, desertion, adultery and physical cruelly are the same. None support and neglect of duty and mental cruelly are the grounds of divorce in some states of U.S.A. The court must proof when the plaintiff /the party seeking divorce/ is a fault action for divorce that the spouses is guilty of actions specified in the compliant and that these sanction constitute the ground for divorce. If the complaint is contested the spouses has the opportunity of answering the charge, the judge then decide whether the divorce would be granted and under what condition it would be done.

1.2.2 Dissolution of Marriage in Western Europe

Western Europe and United States of Americas divorce have under gone the same kinds of changes. Mutual consent, separation and irretrievable breakdown are the key concept in the new law. The trend is away from adversary proceeding and the listing of specific matrimonial offences is grounds for divorce. Beginning form 1967 brought Britain, France and Western Germany to the point

that separation by mutual consent or some combinations was the common basis for divorce proceedings.

The sole ground for divorce is irretrievable breakdown of marriage in Britain but separation by mutual consent for two /2/ years is accepted as demonstration of the irretrievable breakdown. Italy gives divorce on ground of five /5/ year's separation. Divorce not recognize in Spain among the countries of Europe.[17]

1.2.3 Dissolution of Marriage in Eastern Europe

In 1917 in Soviet Union, after the Bolshevik revolution, all divorces are strictly private affairs. This means that all divorce is not public affairs. No longer requiring the involvement of eclectically courts or public agency. This makes it private affairs.

In 1926, divorce becomes merely a registration, the fact that it is not longer existed in absence of this. Divorce had been nearly impossible, very expensive and time consuming during the year 1944. In 1968 marriage was built on the concept of irretrievable breakdown. After that a more modern divorce law is effective and marriage is dissolved if the court ascertains that a couple continues cohabitation and preservation of the family are impossible. Without any court proceeding, if there is no minor children, spouses may divorce by mutual consent.[18] This means that if the spouses have a minor children, they cant dissolve their marriage by their mutually consent rather than court proceedings.

So much for the conceptual analysis and definition of the term, then what is the cause for dissolution of marriage? The next chapter one devoted to this question.

Chapter Two

Grounds of Dissolution of marriage:- General Over view.

There can be several causes for the disruption of the valid martial relationship of the spouses. For the purpose of convenience, they can be grouped in to three or four as the case may be. For instance, the Louisiana civil code Article 101 provides that death, divorce, Judicial declaration of nullity of marriage and absence of one of the spouse declare by court are the four causes for dissolution of marriage.[1]

Most writers, more or less, seem to agree with the preceeding one, which is clear from the following text. "A valid marriage may be terminated by a decree of divorce, or if voidable, by a decree of nullity and will be terminated by the death of either party".[2] However, for planiol, the cause of dissolution of marriage are mainly two, death of one of the spouse and divorce. Judicial declaration of relatively nullity of marriage is an assimilated case of veritable couses.[3] He also rejects absence as a cause of dissolution of marriage. He also argued that considering absence as cause of marital dissolution is illogical for it is uncertainty regarding life or death[4].

Death of one of the spouse automatically terminates the status of marriage and as such it poses no legal and factual problem[5]. As one writer stated, "when a person dies, there are various consequences, the most important which will concern the status of her/his spouse if the deceased was married and the distribution of many property the deceased owned[6].

The other cause for dissolution of marriage is judicial pronouncement of the nullity of marriage, or other wise called voidable marriage[7]. If we consider the nature of voidable act, it is significantly different from the void act. "Voidable act

is an act which, although it contains a defect, has intended legal effect."[8] The defect in the voidable act is not so serious as to prevent it from coming in to effect.

Therefore, Voidable act gives rise to the intended legal consequence, but at the same time gives a right to the other party to neutralize those consequences in so far as the person is conserned.

Likewise, a voidable marriage is different from void one in that the former is regarded as a valid for all practical reason unless it is annulled during the life time of the parties, which means that until that point, it has the potential to be turned in to a void marriage.[9]

2.1 Grounds for the Dissolution of Marriage under the revised family code.

The federal revised family code has revised some of the existing principles and rules of family law under the civil code[10] which has been in force since 1960. The main reasons behind the revision of the exisisting law are the discrepancy between the federal constitution and the civil code. Constitution is among other things, the socio-economic manifesto of the people under consideration and also the supreme law the land.[11] Hence all laws and practices must be consistent with the fundamental principles and rules of constitutions.[12]

. The 1960 civil code was enacted in the unitary form of government. But with the adoption of FDRE constitution, the unitary state was divided in to nine /9/ regional states through which these state ware vested with legislative, Executive and judicial power in matter within their jurisdictions, one of which is the power to enact their own family laws taking in to account the socio-economic realities of their people.[13] Similarly, the federal government has the power to enact laws in federal jurisdictions which includes the federal family law enforceable in administrations directly accountable to the central government.[14] As a result of

this, the newly enacted Revised family law of proclamation No 213/2000 is applicable and enforceable in the federal government.[15]

So much for the back ground of the revised family code, and under the revised family code there are three /3/ major causes for martial dissolution of marriage provided under ART 75. These are death, divorce and court order.[16] All this grounds for dissolution of marital relationships are equally applicable to all form of marriage, that is religious, customary and civil marriage, and has the same effect as to conclusion and dissolution.[17]

2.1.1 By death of the spouse

One of the grounds for dissolution of marriage is the death of one of the parties' /spouse/ or both of them.[18] Marriage while concluded was intended to last forever or the life time of the spouses. And legally speaking the existence of marriage presupposes the existence of two parties' /Spouses/. So that if one of these parties dies so does the marital relationship and the law recognizes them as widow and widowers.

2.1.2 By the Order of the Court

Like other legal system, the formation of marriage must make regard to some basic / essential/ conditions of marriage. The observance of the essential Condition of marriage makes that marriage valid. But the non-observance of the essential condition of marriage amounts to dissolution.[19] Here invalidation by the order of the court is the other cause for dissolution of marriage. In order to be valid marriage there has to fulfill the legal requirements laid down by the law.[20] There are some impediments that may invalidate marriage. These impediments of marriage that bring the invalidation may be classified as minor, absolute and relative impediments.[21] Minor impediments are those impediments to the celebration of marriage which don't affect its subsequent validity such as none

observance of period of widowed.[22] According to ART 16 of the RFC "a woman may not remarry unless one hundred eighty days elapsed since the dissolution of the previous marriage." When we look at it, this art is peculiar in that it imposed the duty of delay before the conclusion of subsequent marriage. Relative impediments are those impediments that ought to prevent the marriage from taking place but render its validity through the exposit facto removal of the impediment by the passage of time. These are:- age, bigamy and consent. [23] The other impediment or obstacles which are so grave and that they can never be cured and us result the marriage can never valid are an absolute impediments. Marriage between person related by consanguinity and affinity are absolute impediments. Prohibition of marriage between close relatives such as ascendants and descendants are universal.[24]

2.1.3 By Divorce

The final ground for the dissolution of marriage is divorce. To begin with its definition, many have defined it in different ways. For instance, planiol defined as the rupture of a valid marriage during the life of the two spouses.[25]on other hands the doctrine with respect to divorce law of western legal tradition was indissolubility of marriage based on the Roman Catholic Churches view of marriages as permanent institution. In those periods family problems were given exclusively under religious courts (ecclesiastical courts) jurisdiction.[26]

The religious courts had been dominating enjoying exclusive power in handling formation and termination of marriage before 1857. Until then, the civil courts had no power to grant a decree of divorce that terminates a valid marriage. However, the social advancement and contact with the external world the customary laws are replaced by statutory laws.[27]

The rational for the recognition of divorce is that, even if spouses have entered in to a marriage contract of permanent nature, it does not necessarily imply

indissolubility of martial life. The same is true here in Ethiopia. It signifies the dissolution of per-existing valid marriage for a reason arising after marriage, which was concluded with the full consent and capacity, was broken down and the union of the two couples harmoniously is turned to be impossible. This makes the spouses to dissolve their marriage by ways of divorce.[28]

As far as divorce is concerned, the revised family code has taken a different step compared to the civil code that the revised family code recognized no fault based divorce. Here the only requirement for divorce is to show irreconcilable difference between the two spouses. Here divorce by mutual consent is explicitly allowed and the court is given the discretion to assess, evaluate and decide on divorce claim.[29]

The civil code approach which is fault based sought to deliver a moral justice which rewards the good spouse and punishes the bad spouse. It was justice based on compensation for good behavior. But the approach taken by the revised family code ignores both moral character and moral history as the bases of awards. Instead it seeks to deliver fairness and equality.[30] Therefore, the revised family code opt to choose proceeding of divorce both by mutual consent and by petition of the parties to the court of law.

A- Divorce by mutual consent

The recognition for divorce by mutual consent seems to follow from the twin principle namely, that marriage is a contractual relation between the parties /spouses/ entitled to the same amount of freedom. And secondly that, the normal grounds on which divorce is expressly permitted are in adequate to cover factors which play prove fatal to martial happiness.[31] In divorce by mutual consent, if spouses lodge a file for divorce there is a logical and general understanding that they should get. There are some procedural mechanisms and rules that need to be observed by the court, which are considered as

marriage preservation method or mechanism. As to the writer of this paper one way of protecting method is refusing spouses not to have divorce decree or even to file their agreement for divorce if they have not stayed in marriage for about six months.[32] The intension of the legislator is that, if we allowed divorce before six months, seen by the court, we are in away encouraging divorce. Besides this two relayed rights will make couples not to think the seriousness of their commitment. By reading between line of Art 77/2/ would give us a meaning, that is divorce by mutual consent, an exclusive right of the spouses, is entertained after the couples have stayed in marriage for about six months.

The other reason that makes divorce by mutual consent an exclusive right of couples is, they are not obliged by the law to state the reason their decision to be divorced.[33] In this type of divorce, the decision to be divorced is left in the hands of the two spouses. The court is there only to approve their agreement.

The other method of marriage preserving mechanism is counseling the parties by discussing with them jointly or separately with the view of counseling them to renounce their intension.

The court before approving the condition of divorce should make careful assessment on the proposed condition. Such condition should be sufficiently protect each spouse and the interest and well-being of the children.[34]

Conclusively the rule should be well establish that any agreement, weather between husband and wife or between third party intended to facilitate or promote the procurement of divorce of its consequence is contrary to public policy and should not be subject to approval by the court of law.

B. Divorce made through petition of the spouse or both of them jointly: -

This the other way of proceeding divorce. It is possible in R.F.C that either one of the parties or both of them conjointly to file a petition for divorce.[35] What makes it different from divorce by mutual consent is that, there may not be prior knowledge as to the intension of one of the party to institute divorce, even if there may not be consensus as to the dissolution of the marriage by divorce and the condition for divorce. This fact calls for almost protection by the court while entertaining such cases.

The required protection seems to be forwarded by the law when we take a close reading of Art 82 of R.F.

In the first place the court after receiving petition speaks to the spouses jointly or separately. This as we said so far, is to persuade them to renounce their intension. But if the attempt has failed or likely to fail then there seems an additional option to the court to propose that is, it may direct the spouses to settle their dispute through arbitration of their own choice. But if the spouses did not agree on such proposal the court is left with no option rather to dismiss them by giving cooling period. ART 82/3/ "The court may dismiss the parties by giving them cooling period." From the wording of this article we could see that granting cooling period is not mandatory if both of the parties or one of them show to the court that they have been trying to fix their marriage but failed, and there is no other possibility of them to live together then there is no need of granting cooling period by the court to the spouses.

Spouses who file divorce by mutual consent after they dismissed by the court to observe cooling period, they have the right to re-apply new petition for divorce even prior to the expiry of cooling period.[36] But in divorce by petition there is no such thing of re-application prior to the expiry of cooling period.

In divorce by mutual consent we have seen that parties are not obliged to state the reason of their divorce. However, in divorce by petition of parties (spouses), the spouses or one of them may state in the petition the reason for divorce.

In deciding divorce condition though it is similar with that of divorce by mutual consent, when the spouses do not agree on the condition for divorce the court face additional duty. That is to invite arbitrators or experts or to use any other method it thinks appropriate and will help the court in deciding divorce condition.[37] deciding on the condition of divorce may require /need/ close inspection of the property of the ex-spouses and some technical expertise. This stage show the role that the court plays to protect the family by using appropriate method it thinks fit to strike.

2.2. Effect of dissolution of marriage under the revised family code of Ethiopia

The dissolution of marriage puts an end to all the effects it produced 38. As it is clefrly discuss latter, marriage has both personal and economic consequences on the lution of marriage has personal, pecuniary effects and child custody.

Strictly speaking, the consequence that may result from the fact of death, nullity and divorce are not the same. For instance, death of one of the spouses opens succession to the deceased's estate and child custody will be given to the surviving spouses[39].hence what is left for us is to consider the general effects of dissolution of marriage.

3.1.1. Personal effects

Dissolution of marriage is an act contrary t marriage. The decree of dissolution of marriage destroys the personal status of spouses and also ends the rights and duties that they owned reciprocally to each other. Their status as married couples disappears and rendered free to conclude any subsequent marriage from then on words. This is summarized in the following.

The decree of dissolution of marriage has constitutive effect in that it terminates the marriages in the eyes of the law, already ceased to function. The parties are rendered single and are free to embark on other matrimonial venture should they so desire[39]

Therefore, once the marriage is dissolved, the personal consequence resulted there of, what so ever it may be, will disappear and the previous spouses become strangers each other.

3.1.2**. Pecuniary effect**

When marriage is dissolved by any cause that is as a result of death of one or both spouses, declaration of absence, count order or divorce, the pecuniary relations between the spouses shall be liquidated[40].

Pecuniary effects may be of two kinds between the spouses and as regards third parties. During marriage property relation of spouses may be regulated either by contract of marriage or in the absence of this (if the spouses fills to agree), by the operation of the law (long regime) [41.]

Spouses property relation may be personal or common property. During dissolution, their property relation come to end. And the liquidation shall be, primarily, effected according to the manner set in the contract of marriage, if any, or by statutory rules [42].

2.3 Decision render for dissolution of marriage by Family arbitrators. General over view and Historical back ground.

The idea or concepts of arbitration mechanisms are exited long centuries even before the creation of formal and organized judicial system and codes of law. More than twenty five /25/ centuries ago ancient societies had the tradition of resolving disputes by using means very much related with mediation and arbitration. It is a general fact that disagreement between persons existed many centuries ago and it is the duty of the society to come up with a solution to that dispute. Those person who seek for a solution to the problem are what we call now a day arbitrators, mediator and consilators.[43]

Prior to the promulgation of the 1960 civil code, there was no law of marriage in Ethiopia except for the Feteha Negest. Thus the body of rules that were implemented while courts faced matter concerning marriage was only customary law.[44]

Under the customary law of Ethiopia, the common feature of marriage contract is that, it is conclude before elders and who are not members of the families serve as witnesses to the contract of marriage. The guarantors both the man and the woman presents are known as “marriage father”. After the conclusion of the marriage, the marriage father keeps the copy of the marriage contract. It is common that the marriage will face even a little difficulty through time and so it will be the responsibility of the marriage Father to try his best to avoid the trouble in their marriage. Moreover prior to the promulgation of the 1960 civil code, there was no unified divorce law and the high court relies on customary law that vary in every area.[45]

The shimagles are selected among the groups of people that disputant are in and they mostly have previous relationship with them or at least know both of them /the parties/ because as it is stated earlier they are picked up among friends, village elders and religious leaders from whom a proper and responsible resolution

of problems are expected. This enables them to identify from the very beginning of those disputes, which have the chance to end up in reconciliation. Generally, the shimagiles in the old arbitration know haw to do it.[46]

Compromise and arbitration were used together or separately by the shimagiles while they settle their disputes. The two terms are treated as the same under customary law unlike the modern arbitration. The court enforces the award given by the shimagiles and the parties will be bound by it. Both parties and the court select /appoint/ "an arbitral ad hoc". In addition to other arbitrators, the parties to the dispute or the court always select "arbitral ad hoc" who help in bringing the disagreement to settle amicably.[47]

The promulgation of the 1960 civil code is one step ahead for arbitration in Ethiopia. The drafter of the civil code has stated the aim of the code regarding arbitration in the following way:-

> "We have tried to take account of the custom and to preserve the institution of arbitration which is so much diffused in Ethiopia. The provision of chapter Ix aim at maintaining a well established, and which appears to be an eminently respectable tradition (the institution of arbitration)".[48]

The drafter of the civil code gave three reasons to incorporate family arbitration in the civil code:-

A- "Arbitration being a well established tradition worth preserving.

B- Arbitrators being more qualified than courts in settling family disputes and

C- Providing a special forum for settlement of family disputes."[49]

Starting from 1960 civil code up to the promulgation of the R.F.C of Ethiopia in 2000, it was actually the provision of the civil code on family law that had been used by courts to settle family disputes. After sometime, it was felt that the revision of the family provision in the civil code on family disputes was absolutely

essential. And the coming of the FDRE constitution in 1995 stimulated the enactment of the Revised family code in July 2000.[50]

With regard to the reform of family law concerning dispute settlement mechanism, among the departure of revised family code as Ato Tilahun has succinctly put it "The power of the family arbitration council have been substantially minimized with compulsory arbitration no more a requirement of the law.[51]

2.3.1Arbitration

Arbitration is one of the traditional ways of avoiding disputes between conflicting parties saving the cause of the dispute being of different origin. It is one of dispute settlement mechanism and most people choose because of its simplicity. Traditionally, bringing certain dispute to an agreement is taken as a duty of Arbitrators.[52]

Arbitration, which is laid down under section 3 of the revised family code, gains recognition by F.D.R.E constitution. This is because of art 37/1/ of the constitution, which states that: - "Everyone has their right to bring a justifiable matter to, and to obtain a decision or judgment by a court of law or any other competent body with judicial power." Form the above definition, it is important to single out the phrase "Competent body with judicial power." And it is to mean this competent body is one which the law confers judicial powers but other than courts.[53]

Generally, to have a brief concept of what arbitration means it is better to refer Blacks law dictionaries definition.

> "Arbitration is a process of dispute resolution in which a neutral third party renders a decision after a hearing at which both parties have an opportunity to be heard. Where arbitration is voluntary, the disputing parties select their arbitrators who have the power to render a binding decision.
>
> An arrangement for taking and abiding by the judgment of selected person in some disputed matters, instead of talking it to established tribunals of justice, and is intended to avoid the formalities, the delay, the expense and the vexation of ordinary litigation.[54]

From the above definition, the important element that we pick out is that, whether the parties like it or not, they are to be bound by the decision of the arbitrators whom they have selected with their own consent. From the very moment they select the arbitrators, they give their consent to agree to whether the out come of the decision be.[55]

Even though, the institution of family arbitration is retained in the R.F.C, as it has been tried to discuss, its power were so much reduced. Except for reconciliation of the spouse, all other powers of arbitrators which had been under the civil code are given to the court. Thus the aim of R.F.C seems to target at reducing the powers, they were granted to the arbitrators in the civil code.[56]

Arbitrators play significant role in resolving of dispute of marriage partners in especially countryside. This is because as it was discussed earlier, people living in Countryside knows each other very well and since the arbitrators are selected among the friends, village elders and religious leaders. And it is for them to find out the actual causes of the dispute of spouses and seek for solution. Despite this fact, there power under R.F.C is restricted to only resolving minor dispute other than dispute related divorce. As it is listed down under Art 117 and 118/1/ of the RFC, disputes of marriage are divided in to two, that is , dispute of divorce (ART 117) and dispute other than divorce (ART 118/1/)[57]

2.3.2 Family **Arbitration under RFC**

According to the RFC arbitration could only serve as an alternative mechanism of dispute settlement. In spite of the existence of the limitation in family arbitration, the R.F.C has included arbitration in its section three. Arbitration under the RFC is not compulsory UN like the 1960 civil code and the role of the arbitrators also reduced to the extent of reconciling the parties and they can not decide a divorce. It is only the court, which is competent to decide on divorce. It has to be noted that the provision of the 1960 civil code concerning arbitration would not have a direct application after the promulgation of the RFC and the latter has incorporated how the arbitrators precede their work and the time limit through which the arbitrators complete the settlement.[58]

2.3.3Appointment of arbitrators

Under article 119 of the RFC, it is up to the disputant to appoint the arbitrators and the number of arbitrators are not limited under the same article, what is simply put is that their number can be one or more than that. Previously under the 1960 civil code in its family provision concerning arbitration, the arbitration tribunal had been working in substitution of the court thus, the procedures the arbitrators fallowed in regular courts and as the same time the law limit their number. Under the present family law, the parties appoint the arbitrators by themselves but the arbitrators are under the control of the court. The court makes an uninterrupted follow up on the arbitrators and gives direction as to how they proceed the case.[59]

According to Art 119/1/. The parties are expected to submit the names of arbitrators they have selected within fifteen day from the date they were told to do so.[60]

As it is clearly stated under article 121/1/ the sole duty of the arbitrators is to make an exclusive /exhaustive/ effort to reconcile the spouse. And article 119 specifies the court to give the proper direction to the arbitrators as to how they help the spouse reach to reconciliation. The result of the arbitration or attempt of reconciliation has to be submitted to the court with in three months.[61]

2.3.4 **Responsibility of Arbitrators**

Under our law, the role of arbitrators is to settle the dispute of the spouse through amicable means. As indicated under article 119 they can not pronounced divorce. If it become beyond their capacity, they have the duty to report the fact to the court with out delay.[62] Article 82/2/ takes about the parties who petitioned for divorce and if the court is unable to reach the level of persuading the parties to renounce their petition for divorce and solve their dispute amicably, then it will direct the case to the arbitrators. So that the dispute will end up positively in friendly manner. As indicated, one should not confuse article 82/2/, as it is there to grant the arbitrators the power to pronounce divorce. There fore, what the arbitrators do under article 82/2/ is only persuading the spouses to resolve the issue through the arbitration and also which is the massage of Article 121/3/ [63].

As it is provided under article 119 and 121among the duties of the arbitrators submission of periodical report and reporting their attempt to resolve the dispute[64]. Failing to do this and its consequence are incorporated under article 122. The court close the case if the arbitrators fail to report in due time.[65]

While the parties did not reach to an agreement i.e., did not renounce their petition for divorce, and the arbitrators abstained from reporting such fact to the court, the court will be obliged to close the file because the latter will be in difficult to issue a divorce where there has been no report presented before it about the failure of the spouse to an agreement. This doesn't mean that the case is closed for good but if the spouses present their reason to the court and petition for the reopening of their case then the court after examining their reason will reopen the

case and gives appropriate decision.[66] Sub article one of article 122, doesn't prohibit the spouse from petitioning a new and from asking for the court for the case to be reconsidered as long as the husband or wife or both of them can Shaw to the court that the arbitrators have failed to appropriately discharge their responsibility.

All in all, the purpose of RFC regarding the settlement of disputes of the spouses, it provide provisions as to haw arbitrators should perform their work and assist the court and play a significant role in family matters.

Chapter 3

Issue Related to Adjudicating Family Dispute, The law and Practice

In this chapter the writer intended to deal mainly with the following issues. All of them have central role in the matter involving adjudicating divorce. The first section mainly deals with the power of Adjudicating family disputes especially divorce.

The second section of this chapter deals with the social reality towards divorce
The third part of this chapter deals with the law and practice related to divorce

3.1 Powers of Adjudicating disputes between the spouses.

As clearly indicated in the preamble part of the R.F.C and the FDRE constitution of article 34, Family is the basic and the primary institution for creating groups of people called society[1]. Family has three recognized sources marriage, Filiations and adaptation[2]. For the purpose of this topic, we have to discuss marriage only. Therefore, marriage is the fundamental, basic and starting point for the existence of a family, and thus intended to stabilize family life, providing for the economic and social needs to the members of the family and reinforces cultural rights/ norms.[3] While marriage is concluded, the presumption is that, the relation ship is permanent and nothing will separate them.[4] However, this is not always true, because so long as human beings create society to live together, no one could escape from indisputable situation to each other. Thus Family dispute is one of the disputes happened/ created between the spouse/ husband and wife/ and this requires special kinds of treatment so as to settle the problem /dispute.

Therefore, our constitution and the R.F.C set a mechanism or organs for resolving family matters /disputes. These organs are courts and family arbitration.[5] Thus when dispute arises in marriage, the cases are referred to one of the two competent institutions /organs. Therefore, as clearly indicated in chapter two 2.2.1 of this paper, arbitration is a non-judicial mechanism of settling family dispute by which the parties /disputants/ entertain their cases, among those alternative dispute resolution techniques, which incorporate the Fundamental mechanism by which disputes are resolved.

Therefore, even though the institution of family arbitration is retained in the R.F.C, as it has been tried to discuss before, its power was so much reduced. That is, except for reconciliation of the spouses, all other powers of arbitrators which has been under the FDRE constitution and the Ethiopian civil code, are given only to the court. Thus the aim of the R.F.C that is ART 117 seems to target at reducing the power that were given /granted to the arbitrators by the Ethiopian civil code and the FDRE constitution.

The FDRE constitution gives right to the spouses to bring their Family cases either to customary or religious institution as their own choices. This idea is clearly stated in article 34/5/ of the FDRE constitution as follows:-

> "This constitution shall not preclude the adjudication of dispute relating to personal and Family laws in accordance with religious or customary laws, with the consent of the parties to the disputes. Particulars shall be determined by law." [6]

In this regard, according to the above article, spouses are free to adjudicate their family dispute either customarily or religiously. On the contrary, article 117 of the R.F.C exclude religious and customary institution and gives the right only to the court. This idea is clearly stated in art 117 of the R.F.C as follows.

> "It is only the court which is competent to decide on divorce, decide or approve the effects of divorce in accordance with art. 83 of this code.[7]"

Therefore, according to the above provision, i.e. art 117, religious and customary institutions are excluded and do not have the capacity or power to adjudicate the family dispute which divorce is and this power is given only to the court. This power given only to the court is not only found in the R.F.C., but also regional family law gives the power to decide on divorce only to the court.

As a result of this, the write of this paper agrees on the contention that, although the two provisions contradict to each other, the one which has the higher rank should prevail over the lower one. So that the constitution is the higher and all laws derive there force and validity from the constitution and enacted in line with the constitution .[8] In this case, even if federal government and regional states are empowered to enact their own family laws inline with the FDRE constitution and with their own socio – economic realities [9], {with their own customary and religious principle}, the family laws enacted were not in line with the constitutional provision/ principles, which up hold right and denied the right of spouses to adjudicate their family dispute according to their own free wish. Therefore, this law should be in line with the constitution. Thus, all family law articles such as art 117 of the revised family law, Oromia family law art 98, Amhara family law art 128.Tigray National regional states family law art 97 and southern nation and nationality peoples of regional states family law art 132, which prohibit the spouses to adjudicate their family dispute in religious and customary law are fond to be un constitutional.

As a result of this, giving the case of divorce only to the court is against the fundamental provision of the constitution. Therefore, it is good that the court is not burdened to preside over all kind of disputes arising between spouses. And also the Ethiopian society is accustomed to those traditional arbitration which plays

significant role in resolving disputes of marriage, especially in the country side. This is because as it has been discussed in chapter two of this paper, people living in country side know each other very well and since the arbitrators are selected among the friends, village elders and religious leader, it is easy for them to find out the actual cause of the disputes of the spouses and seek for solution. Despite this fact, their power is restricted to only resolving minor disputes other than dispute related to divorce. Therefore, leaving everything to arbitrators except divorce is not wise.

The other issue, which needs to be raised in this chapter, is that, the status /power of the spouses to decide on divorce. As it is indicated in chapter two 2.1.3 of this paper, marriage shall be dissolved by divorce where:-

A. The spouses have agreed to divorce by mutual consent and such agreement is accepted by the court. Or
B. The spouses or one of them made a petition for divorce to the court.[10]

As one clearly understands from the above provisions /articles of the Revised Family Code, marriage is dissolved by divorce in to two ways. The first one is “vM“ T>e~ ueUU’ƒ KSõ ƒ u^d†¨< eM×” uT>Å[Ó ¨<d’@ ¨<”:: In this type of divorce, the decision to be divorce was left /given in the hands of the two spouses. And the court is there only to approve the agreements of the spouses. On the other hand, on dispute settlement in marriage part, that is, divorce and its effect, the power to decide on divorce is left only to the court. That is, article 117 of the R.F.C clearly states that only the count is competent to decide, decide on divorce and approve the effects of divorce.[11]

As clearly indicated in the former article (art 76/a/) of the R.F.C, the decision for divorce was left in the hand of the spouses. This means the spouses have the right to decide the divorce by their own mutual consent and what is expected from them

is that, approval by the court of law. Whereas, in the later article (art 117) of the R.F.C, the decision for divorce /decide on divorce is given / left only to the court. Thus, the former article gives right to the spouses to decide on divorce, however, the later article gives the right to decide on divorce only to the court. Therefore, the above two provisions of the R.F.C were inconsistent to each other /contradictory. As result of this, the writer of this paper agrees with the opinion that since martial relationship is a democratic social contract of the spouses, [12] and the R.F.C were enacted to enforce this democratic right: thus, we have to give priority to the democratic right of the spouses. As it is clearly indicated by Ato Filipos Ayenalem, judge in the Federal High Court and lecturer in St, Mary's University College states that, according to art 76 /a/ of the R.F.C, the spouses are free to decide on divorce by their own mutual consent and their agreement must be approved by the court. However, art 117 gives the power to decide on divorce only to the court denying the right of the spouses. The fact that denying the spouses right to decide on divorce and gives this right only to the courts is not wise. [13] To strengthen the above assertion, the family law judge in Ada'a Wareda court, Ato Berhanu Megera While stating the above issue claimed that " both articles of the same code contradict to each other, the one gives right to the spouses, whereas the other denies this right and give to the court. "And I believe that the R.F.C gives priority to the spouse's right rather than to the court."[14] The writer of this paper believes with the above two assertion denying the spouses right seems unwise. Because this provision (Art 117) obliges the spouses to decide on divorce not by their own mutual consent, rather by the court.

So that unless the spouses decide on divorce by their own mutual consent, there right which is given by article 76/a/ of the RFC will be at questionable. Therefore, in a well growing democracy, giving priority to the court instead of individual right seems unwise.

3.3. Revised family law article 117 Vs. social reality

The other fundamental and basic issue of this paper is the social reality towards divorce. As clearly indicated in the preamble part of the R.F.C, the reason behind for the revision of the Ethiopian civil code is to make the existing Ethiopian family law in accordance with the socio-Economic development of the present day Ethiopia.[15] There fore as clearly shown in the practice, the social reality towards divorce is out side the court room. This idea is clearly supported by Ato Emeru Bitew, the judge at Ada'a Woreda court, " the family law is not in line with the social reality".

The social reality towards divorce is that, spouses dissolve or end their marriage through customary way with out going to the court. [16]" However, the family law without considering the social realties gives power to decide on divorce only to the court which is not proper and wise. Various reasons could be forwarded to this effect.[17] First, most people live away from courts and they are unaware of even the need to take divorce cases to the attention of the court. Second, many people do not like the publicity of their family affairs and avoid court proceedings.[18]

Therefore, the writer of this paper agrees for the view that family should be enacted in line with the socio-economic reality of the people. However, our revised family law and regional family laws were enacted with out considering the social reality of the people to wards divorce making / giving the power to decade on divorce lefts only to the court. That is, the family law does not reflect the social reality as it is indicated in the preamble part of the family laws and gives the power to decide on divorce only to the court.

As a result of this, there is a collision between article 117 of the R.F.C and the unceasing development of social change /reality. If a certain way out is not formulated, it is obvious that there will be a collision between the law /article 117/

and the unceasing development of social reality [19]. Therefore, the opinion of the writer of this paper is that the revised family law /article 117/ contradicts with the social reality /change. Because most spouses end their marriage out side the court room without going to the court. Owing to the prevalence of the practice of divorce, it seems reasonable to suggest the legal recognition of an extra-judicial divorce.

The other fundamental and basic problem which necessitated the writer of this paper is that what is the effect of the un fulfillment of the personal effects of marriage creates on marriage institutions which are stated in the R.F.C as fallows:-

A. The spouses owe each other respect, support and assistance. The agreement of the spouses shall not derogate this rule. (R.F.C Art 49).

B. The spouses shall, in all cases, cooperate, to protect the security and interest of the family to bring up and ensure the good behavior and education of their children in order to make responsible citizen and equal right in the management of the family. This rule shall not derogate by contrary agreement of the spouses. (R.F.C art. 50.51).

C. The spouses are bound to live together and they shall have with one another the sexual relations normal in marriage unless these relations involves a risk of seriously prejudicing their health. This rule shall not derogate by contrary agreement and contrary to this rule shall be of now effect (R.F.C ART 53) .

D. The other person effect of marriage is the husband and wife owes an obligation of fidelity to each other /RFC ART 56).

To begin with, marriage engenders special obligation between husband and wife who are the result of their status as spouses.[20] That is, marriage institution is useful, the advantages which always puts forth is the association of the spouses [21]

This means the man and the woman are united together under the same roof to help each other by mutual assistance to bear the burden of life. In addition to this, marriage results in creating reciprocal duties between spouses. [22] These duties are common to both spouses. When the above personal effects of marriage listed from A to D are not fulfilled, the union of the spouses is destroyed and the end of marriage is not attained.

The obligation imposed by the law, that is personal effects of marriage such as cohabitation, assistance and fidelity to each other should be observed by the spouses. This jurisprudence holds that the unjustifiable /non fulfillment of personal effects of marriage or non fulfillment of the relationship with each other constitutes a violation of the obligation imposed by the law, that is personal effects of marriage.[23]

Therefore, the writer of this paper endorses the above contention that the non fulfillment of the personal effects of marriage, especially living separately for long period of time with out prior agreement and with the intension not to live together, will result in destruction or disturbance of marriage and then marriage will no longer be alive -it ceased to exist.

Therefore, in order to consider marriage alive, there must be the fulfillment of the personal effects of marriage. However, our revised family law and regional family laws enacted with out considering the personal effect of marriage, especially without considering the long time separation of husband and wife with the intension not to live together as spouses in the future and uses another personal effect of marriage or had other relation as indicated in practice, on the mere ground that the previous marriage was not dissolved through a divorce procedure, the marriage is a live, [24]

The other issue which needs to be raised here is that, what is the character or the status of the income /property of the spouses received / acquired at the time when the spouses are departed/ separated in fact but not in law. This may be for instance while the spouses are living separately pending the divorce proceedings.

In states of U.S.A, community system of matrimonial property statutes provides that the property earning of either spouses while they are living separate and apart pending divorce proceeding, is their personal property [25] [Interpretation is mine]. However, our R.F.C assumes income or property of the spouses received / acquired at the time when the spouses are separated in fact for long period of time with the intension not to live together as husband and wife pending divorce proceedings is common property. That is, it doesn't clearly show the cause and effects relationship of personal and pecuniary effects of marriage. As a result of this, spouses who respect the personal effects of marriage and those who do not respect the personal effects and engaged in other relation and uses other personal effects of marriage have equal right on the property that one had acquire /get through his/her arduous effort, on the mere ground that the previous marriage was not dissolved through divorce procedure/ court decision on the effect of divorce.

Therefore, the writer of this paper become inline with the Americans contention that the property/ earnings of either spouse while they are living separate and apart, pending divorce proceeding, is their personal property. To strengthen this, the law makes all income / property acquired/ derived by personal effort of the spouses and from common and personal property shall be common property which is not by mere concluding of marriage rather by fulfilling the personal effects of marriage, that is Assistance, cohabitation and fidelity to each other. [26] There fore, at the time when they are separated for long period of time with the intension not to live together in the future, it would not be fair and just to share the property or income of one spouse to the other while the latter is not discharging to the common interest of the spouse, on the mere ground that the previous marriage was not dissolved through divorce procedure.

In one case, the man deserted his wife, mother of his seven children and stayed away for about fifteen yeans. During this time he fathered eight children from different women, while his deserted wife was taking care of the seven children alone. The man with the intent of partitioning their common house and other properties that were the result of the efforts of the woman during his desertion,

petition fordivorce. The court ordered payment of Birr 60 per month as maintenance until the divorce and partition of property is decided. We can theoretical extend the case in this way. The man deserted the woman as a result of serious poverty together with her seven children. However, the woman had succeeded in making money through her arduous efforts. The man after fifteen /15/ years of desertion and after being fathered of eight children, came back and petitions for divorce claiming that the marriage is still there and the court punished the woman by surrendering half of her property to the philanderer who did not contribute any thing[27] by the mere fact that divorce was not taken through court procedure. In the above case, the decision given by the court is not very much rational and convincing, because income /property of the spouses becomes common property only when spouses are cohabiting and discharging their mutual duty of support assistance and fidelity to each other. However, at the time when they have been separated, it would not be fair and just to share the income/ property of one spouse to the other spouse while the later is not discharging his/her duty of support and contributing nothing to the common interests of the spouses, on the mire fact that the marriage was not dissolve through court procedure.

3.3 The Law and practice

It is now a common place practice that people who are married each other and live as husband and wife, their motives for the conclusion of this marriage are forming family, leading a real family life and their marriage is sustainable at law.[28] Therefore in order to satisfy this goal, the spouses live together, assist each other and support. So that one of the most important personal effects of marriage is that, spouses owe each other respect, support, assist and cohabit each other. This rule is not set aside by agreement.[29] To realize this rule, the law obliges the spouses to live together. When these rules are not observed, it would be difficult to imagine a true marriage and the essence of marriage is missing.[30] Of course the spouses can agree to live separately for definite or indefinite period of time, however, does this assumption work when the spouses live separately without prior agreement and with the intension not to live together as husband and wife in the future? The other purpose of this paper is to answer this question and show the practice in relation to law.

When spouses live separately for long period of time with the intension not to live together as husband and wife in the future, it would be inappropriate to consider that the marriage is alive or it exists. As it can be discussed before in 2.2, divorce can take place only by fulfilling the legal requirements, that is, only through divorce procedure by the court.[31]Any act sort of this can not bring the marriage to an end. However, the literal application of this rule sometimes results in absurd consequence and some times courts consider the marriage ceased to exist when both spouses live each other separately for long period of time with the intension not to live together as husband and wife in the future. This idea is clearly supported /strengthened by the following case.

In the case between w/ro Birtu Gerba VS Abebech Angore, both spouses claim as wives of the deceased- Ato Bekele Gebre. In this case Ato Bekele and W/ro Birtu

Gerba concluded a marriage and had a marriage certificate, however, due to the disagreement between them, they lived separately with the intension not to live together us husband and wife for twelve (12) years with out actually or procedurally /lawfully dissolving their marriage. Ato Bekele Gebre remarried W/ro Abebech Angere and W/ro Birtu Gebre in turn kept an irregular union with Ato wrku Haile during the twelve (12) years separation. Up on the death of Ato Bekele, two women appeared claiming that each of them was wife.

The High Court decided that the former marriage, that was with W/ro Birtu Gebre was dissolved by divorce as a result of the actual and long time separation between the spouses and the fact that they maintained relation with other person and hence, only the spouses of the later marriage that is, W/ro Abebech angera was the wife of the deceased- Ato Bekele. [32]

The spouse of the former marriage, W/ro Birtu Gerba appalled to the Supreme Court claiming that she was the wife of the deceased and the decision of the high court to be reversed.

The Supreme Court ruled that: as marriage comes in to existence through formal procedure, so it is true for its extinction; the fact that the spouse had lived separately for long period of time and concluding another marriage do not dissolve the previous marriage; and hence both women are wives of the deceased.

But, one of the judges of the Supreme Court explained in his dissenting opinion as follows:-

“I do not agree with the opinion that unless a marriage is dissolved through a certain formality that is divorce procedure, it would stay alive. Particularly when the parties lived separately for long period of time and they were engaged in other relationship, there is no reason to maintain the old marriage. It is clear that in many parts of the countries people get divorced without going to the court. When a person appears before the court alleging that he/she has a marriage with a person by producing a certificate of marriage, after he/she lived separately for long period of time and after he/she established another relation, on the mere ground

that the previous marriage was not dissolved through a divorce procedure, that is by court, I consider it is dangerous to entertain the allegation in the positive."[33]

Therefore, the writer of this paper is in line with the opinion of the dissenting judges of the Supreme Court and with the decision of the high court. Because in order to consider marriage alive, there should be first the fulfillment of the requirement of the law, that is, the personal effect of marriage should be observed. However, without cohabiting and discharging their mutual duty of support and assistance to each other, it would not be fair to say that marriage is alive, by the mere fact that the previous marriage was not dissolved by divorce procedure.

The following case supplies additional strengthens the above arguments. In this case, the husband was accused of a crime of bigamy and sentenced a six month imprisonment by the Federal First instance Court. Up on appeal to the federal high court, the man was acquitted of the crime of bigamy.
Because the Federal High Court did consider that the former marriage was dissolved although the divorce was conducted by mere separation without being approved by the court.[34] Therefore, this shows that the decision of the High Court is based on the actual separation of husband and wife for long period of time with the intension not to live together in the future which makes the former marriage ceased to exist by considering the personal effects of marriage and give priority right to the spouse to decide divorce by mutual consent .

As a result of this, courts show some degree of inclination to accept the dissolutionof
marriage by divorce even if the procedural requirements of divorce are not fulfilled. That is, with out being approved by the court.

Conclusion

- As clearly indicated in art 34 of FDRE constitution and the preamble of the RFC, family which is being the natural basis of the society, shall be protected by the society and by the state. And marriage is the fundamental and starting point of the family, dispute is inevitable between spouses. If dispute arises in marriage, the spouses can take their case either of the two competent institutions- courts or arbitration. The constitution gives right to the spouses to adjudicate their family dispute either customarily or religiously as their own choice. How ever, the RFC ART 117 and all regional family laws excludes religious and customary adjudication and gives the power to decide, approve the effect of divorce only to the court .That is, the constitution gives right to the spouses to adjudicate their family case as their own choice, where as the RFC ART 117 denies the right of adjudication either customarily religiously. Thus, the aim of the RFC ART 117 target at reducing the power that were given to arbitration by the FDRE constitution.

-A Society is always being in a state of change socially and economically, in the same manner, family relation changes it form from time to time. As a result of this, laws which are enacted to regulate these relations have to consider the dynamic nature of these relationship./ realities. Therefore, the preamble of the RFC clearly states that the existing Ethiopian family law is enacted in accordance with the socio- economic development of the present day Ethiopia. As a result of this, the social reality to wards divorce is out side the court room, that is, spouses end their marriage without going to the court.

However, the RFC ART 117 and regional family laws were enacted with out considering the social reality, that is out side the court room, gives the power to

decide and approve the effect of divorce only to the court. There fore, there is a collision between ART 117 of the RFC and the unceasing development of social reality.

- When spouses lives separately in fact but not in law for long period of time with the intention not to live together as husband and wife and they are engaged in another relationship, sometimes courts considers that the marriage is alive with out considering the personal effect of marriage and on the mere ground that the previous marriage was not dissolved by divorce procedure. And also sometimes courts consider the marriage has ceased to exist when both spouses lived each other separately for long period of time and remarried, even if the procedural requirement for divorce are not fulfilled, that is with out the approval of the court.

RECOMANDATION

In the view of the proceeding discussion and the defects identified, the writer proposes the following recommendation as a possible solution.

The constitution gives right to the spouses to adjudicate their case either customarily or religiously by their own free will. However, ART 117 denies this right and gives only to the court. Therefore, legislature should revise this and recognize customary or religious adjudication as an alternative dispute resolution mechanism by the spouses' free will.

Our society commonly conducts divorce out side the court room although the law empowers only the court to pronounce/decide divorce. Some times even courts consider the marriage was dissolved in customary way even if the court did not approve/decide customary divorce. Owing to the prevalence of this practice, the law should recognize divorce that has taken place through customary ways, with out affecting the mandatory provision of the law.

Sometimes marriage becomes dead / ceased to exist although the law empowers only the court to pronounce divorce. This usually happens when the parties lives separately for long period of time with the intention of not to live together as husband and wife again. Having regarded the situation of the parties, the law must devise a mechanism to declare such marriage as a non – existent. And the law should recognize the property or income of the spouse while they are living separate and apart pending divorce proceeding is their personal property / income of the spouse.

For the dispute which could arise at any time concerning divorce and its effect, legal interpretation have to be made / given by realizing in accordance with the idea of marriage and its effect.

When spouses are separated by divorce, they are obligated to accomplish their responsibility through the court. And in addition, education about family law should be given for the members of the society through mass media or in any other means of communication in order to create awareness among them.