Right to Marital Property Act and Economics of Marriage

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"A man marries a woman for four reasons: for her property, for her rank, for her beauty, and for her religion (and character). So marry the one who is best in the religion and character and prosper".
Prophet Mohammad (pbuh)

“I have always considered marriage as the most interesting event of one's life, the foundation of happiness or misery.”
George Washington

Introduction
Everybody in the world is mesmerised with the “Big Fat Indian Wedding”. Surely, there is no event in an Indian family as great as wedding. It brings together all kinds of socio-economic phenomena, from kinship bonding to expenditures. Families spend huge sums of money, especially from the bride’s side, on an event, which lasts just for a day. However, the effect lasts forever.
The question that needs to be answered is, ‘Why do people marry?’ May be, they want to legally satisfy their sexual desires, for procreation, to have somebody in whom they can confide, for the sake of society or it may be just a natural phenomenon.
Whatever be the reason, now that people are in wedlock, they would like that this collaboration be a success. By success, it is meant that the marriage should last until both of them are alive and on an average the collaboration should be pretty pleasant, discounting all ups and downs. However, in some or may be in many cases, such a collaboration is cut short by divorce. Divorce is a necessary evil! It is a provision given to the married couples to dissolve their collaboration anytime they think that things are not working well, as initially thought. Divorce is a more sensitive issue than marriage; hence, it is to be dealt with prudence, and pragmatism.
The Twelfth Five Year Plan Report of the Working Group on Women’s Agency and Empowerment has made certain recommendations, under the Family Laws, for the people who are in wedlock and, those who have decided to walk out of this wedlock.
Though the intention of the Working Group is good, however it seems their recommendations lack prudence and pragmatism, rather it seems they are emotion based. This paper attempts to bring forth the economic as well as social pros and cons of such recommendations.

Literature Review
The review of literature gives emphasis on why do people marry, why they prefer to live together and what makes them to get separate.
Marriage has a wide range of benefits. Marriage provides basic insurance against adverse life events and allows gains from economies of scale and specialization within the family (Becker, 1981). It is observed that married people earn more than single people, taking other factors into consideration and explicitly dealing with the possibility of reverse causation (Chun and Lee, 2001; Korenman and Neumark, 1991 and Loh, 1996). It has also been pragmatic from various researches that as compared to single people, married people have better physical and psychological health (e.g. less substance abuse and less depression) and that they live longer (Burman and Margolin (1992) and Ross et al.
(1990). Waite and Gallagher (2000) additionally survey evidence on income, health, mortality, children’s achievements and sexual satisfaction. Another benefit of marriage has been marked by Diener et al., 2000; Stack and Eshleman, 1998, see also Coombs, 1991 and Myers, 1999 depicting an effect of marriage on people’s happiness. It has been found that marriage goes hand in hand with higher happiness levels. Stutzer and Frey (2004) have shown that the higher happiness of married people is partly due to a selection effect (those to-be-married in the future are already happier than those to-remain-single, even before they marry), but not entirely.

Pertaining to divorce, when the marital surplus becomes too small or fails to exist (in the eyes of the couple); it means the couple should (rationally) divorce. Possible reasons could be when one of the partners wants to start a relationship with someone else his or her payoff from leaving the marriage suddenly increases in value to the extent that the marital surplus may become negative. Another example is when children grow and leave the nest, which does not induce a change in any spouse’s outside option but decreases the benefits from staying married (Muthoo, 2009).

Gardner and Oswald (2005) have shown that “divorcing couples become happier by breaking up”. On the contrary, Wydick (2004) argued that marriage makes it more costly for couples to break up and shows that in a repeated game setting marriage can foster cooperation. In a recent paper Powdthavee (2009), also shows that a negative correlation of spouses’ subjective well-being is associated with a higher likelihood of divorce. In a longitudinal survey, it has been projected that the divorced males have the highest ratios of mortality, relative to the married population, in Asian countries, North America and Europe (Hu and Goldman, 1990). However, this could stem from a selection effect, as Stutzer and Frey (2004) found that the lower happiness of divorced people was already observable during their marriage.

Chiappori et al (2005) integrated a model of marital bargaining into a marriage market framework to analyze the effects of changes in laws on the division of property in divorce. They also emphasize these legal changes have different effects on existing married couples compared to newly matched couples. Rasul (2005) uses state level panel data to present evidence of a causal relationship between the adoption of unilateral divorce law and declines in marriage rates. This suggests couples are aware of divorce laws when they marry, which is a necessary condition for any selection effect to be present. [306]

Given a thorough review of literature and women working group recommendations, we are in a position to link the pros and cons of the family laws and their economic implications. The same is discussed below.

Family Laws – Working Group Recommendations
Following are some of the recommendations of the Working Group:

- **Recommendation 1** – the law needs to recognize a woman equal partner with their husband and her contribution to the household or the productive nature of work that women do.

Let us dissect the word ‘equal’. As per the Oxford dictionary, the meaning of ‘equal’ is ‘being the same in quantity, size, degree, or value’. Therefore, it is implicit that both husband and wife are equally responsible to run their home. Keeping this in mind there are various situations that may come forth. One of these could be that husband takes the responsibility to go out for work and earn money to run his household, while the wife decides to stay at home and take care of all the household chores. In this case, the husband is taking full financial responsibility (rent, medical bills, daily transactions, going for vacations, spending money on children’s education etc.) of the home, and of the wife. Thus, wife has no financial responsibility of household or of husband.

The question that now arises is that whether the contribution of husband and wife in this situation is treated as, ‘equal’. We are leaving this question open for the readers to decide. Moreover, it is to be noted that, the work of the husband forms part of the gross domestic product (GDP) while that of the homemaker does not.
• **Recommendation 2** – *the law needs to treat all the movable and immovable assets that a married couple or a couple living together have acquired, as joint property, regardless of who has bought the property.*

This could become a draconian recommendation for the fairer sex. How? Let us elaborate on this. First, there needs to be a clarification on the word ‘have acquired’. Does it mean the property acquired by the couple after marriage, or whatever assets the couple have acquired before marriage also comes under the ambit of the law and will form the part of the joint property? This recommendation can have serious ramifications for the women. Let us discuss these cases separately. In case one, it is assumed that couple have no property before marriage and husband is working while the wife is homemaker, then such a law will deter the husband from acquiring any such property after marriage, as he may think of the worst-case scenario that is divorce.

In the second case, assume that wife gives the divorce, and husband owns the property. Thus, according to the recommendation, the property then would be shared equally with no contribution from wife to that property. This would prompt the husband not to purchase any property and/or other movable assets and keep the wife in a condition that is worse off, which otherwise could have been accomplished. The husband would enjoy life and spend money on him outside, while letting the wife live on the subsistence level only.

In case three, if a male has decided to marry, then he would look for a wife who is working and can contribute in acquiring movable and immovable property. Therefore, the husband would not bother about the divorce.

Yet in another case, suppose the male already has a property - a house, in his name before marriage. This can even be more dangerous to the society in general and woman in particular. This would increase the demand for dowry, as the bridegroom would ask for an amount that is ‘equal’ in value of the house in his name. The man would not settle for the consumption goods (the value of such goods decrease with time due to wear and tear) in dowry, rather he would opt for another house having same value. The house, now a joint property, can be rented, and the money acquired through rent would be used for purchasing the consumption goods. Thus, if the bride side is capable enough to settle for such a deal then she will be able to get married; else, if the bride is not rich but does belong to a family with ethics and morals might not be able to strike the marriage deal.

So the rich girls will find rich husbands and poor girls will find poor husbands or may not find husbands at all. This law would thus change the whole scenario of the marriage market.

• **Recommendation 3** – *review all laws to make mothers equal guardians of their children and to recognize that since normally it is mother who primarily looks after the children she should be listed as first guardian.*

It seems that Working Group does not want women to get re-married, though unintentionally, but they are doing it as per the above recommendation. Now, if wife is made the first guardian, then it implies that she is more responsible for her children than the husband is.

Unknowningly, an opening is provided to the father for not taking proper care of his children as he can now ‘say’ that mother being the first guardian, she should take greater responsibility of children while he will take wife’s responsibility only.

Mother, being the first guardian, at the time of divorce would have to keep children with her. This would be a double blow to the wife, since she is now not only a divorcee but also has children. Her chances of being re-married were already low, being a divorcee. Any such hope has now, been made bleak by having children from another husband. Here comes in the socio-economic aspect. Generally, it is observed that male and their families prefer marrying unmarried females, and this is human psychology. They may prefer a divorcee with no children, who is a decent woman and is young, but never a divorcee with children.

Suppose a person has married a female who has children from her first husband. Initially their life may be smooth, but gradually when wife will bore children to her new husband then problems might arise. The father and children from him might think that their stepbrothers and sisters are eating from
their pie, which otherwise could have the whole cake for them. This, in the longer run may bring discord among the family members, and again wife will be at the receiving end. Now if the divorce happens once again then imagine the position of the wife.

Family Laws – Authors Recommendations

Following are some of the recommendations of the Authors:

- **Recommendation 1** – the law needs to recognize a woman ‘equitable’ partner with their husband and her contribution to the household or the productive nature of work that women do.

We have replaced the word “equal” with “equitable” in our recommendation. The meaning of equitable according to the Oxford dictionary is ‘fair and impartial’. Here again Economics is at work. An employee working in a big firm for eight hours daily would probably be drawing, say, somewhere between rupees five thousand to ten thousand, on the other hand, a daily wager, working for the same number of hours daily may be drawing, say, somewhere between rupees two hundred and four hundred. So, why is this disparity, when both of them are working ‘equal’ numbers of hours daily? On this economic ground, the share of the wife should be ‘equitable’, that is, which is fair and reasonable. Assuming the husband has complete responsibility of the entire household, implies that he is a degree above wife.

- **Recommendation 2** – the law needs to give the women the right to demand security money, before marriage from the prospective husband, given the economic condition of the husband, and the reward for doing the household chores.

As it is a general opinion, that wife is the major sufferer from the act of divorce; hence, measures should be taken to provide financial security to her. At the time of marriage, the women should be given the right to ask for security money from the prospective husband. The negotiated amount then can be deposited in the wife’s account. After marriage, wife becomes the responsibility of the husband. It is his responsibility to provide the basic provisions of life, like food, shelter, clothing and other emotional and physiological needs to the wife, even if she refuses to do any household chores. If she agrees to demand any monetary reward against the household chores then the law should give her the right to demand such things as well. Nonetheless, it should be in accordance to the author’s first recommendation.

- **Recommendation 3** – Make father the first guardian of the children.

The reason for such a law is already discussed at length in recommendation three of Working Group.

Conclusion

As is quite clear that the intention of the Working Group is to provide ample security to the women, but the recommendations of the Group are somehow going against the women. This is a very delicate and sensitive issue. Therefore, ample prudence needs to go into it before formulating the law.

The first step in this regard is to conduct a comprehensive survey to understand the mindset and psyche of people of India, especially of the female gender, giving them options regarding various choices they would prefer, before making the law.

References