

METTU UNIVERSITY

SCHOOL OF LAW

TITTLE:-APPLICATION OF ALTERNATIVE DISPUTE RESOLUTION (ADR) ON DISPUTE ARISING OUT OF DIS SOLUTION OF MARIAGE UNDER OROMIYA FAMILY CODE THE CASE OF METTU TOWN.

A RESEARCH PROPOSAL SUBMITTED TO METTU UNIVERSITY SCHOOL OF LAW FOR FULFILMENT OF THE REQUIREMENT TO DEGREE IN LAW (LLB).

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STATEMENT OF DECLERATION

I hereby declare that this thesis is my original work and has not been submitted or presented in any educational institution and all source of materials used for the paper has been fully acknowledged.

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Table of content

Acknowlgement.....i

Acronyms.....ii

Table content.....iii

Abrastract.....iv

CHAPTER ONE

1General introduction.....1

1.1Background of the study.....1

1.2Statement of the problem.....2

1.3Question of research.....2

1.4Objective of the study.....3

1.5 General objective.....3

1.6 Specific objective.....3

1.7Researcmethodology.....3

1.8Literature review.....4

1.9Significance of the study.....4

1.10Scope of the study.....5

1.11Limitation of the study.....5

1.12Organization of study.....5

CHAPTER TWO

Grounds of dissolution of marriage oromia family law:-General over view.....6

2.1Grounds for the dissolution of marriage under the oromia family law.....7

2.1.1BY death of the spouse.....8

2.1.2BY order of the court.....8

2.1.3By Divorce.....9

2.1.3.1 Divorce by mutual consent.....10

2.1.3.2Divorce by petition.....12

2.2Effect of dissolution of marriage under oromia family law 13

2.2.1Personal effect.....13

2.2.2Pecuniary effect.....14

2.3Decision render for dissolution of marriage Family arbitrators.....14

2.3.1 Arbitration.....16

2.3.2Family arbitration under oromia family law.....17

2.3.3Appointment of arbitrators.....18

2.3.4Responsibility of arbitrators.....18

CHAPTER THERE

Practical application of ADR mechanisms for resolution of 20

Disputes arising out of marriage.....20

3.1Dissolution of marriage disputes between the spouses.....20

3.2Oromia family law article 117vs social reality.....24

CHAPTER FOURE

Conclusion and Recommendation.....28

Conclusion.....28

Recomandation.....29

Acronyms

ADR **Alternative disputes resolution**

OFL **Oromia family law**

FDRE **federal democratic republic Ethiopia constitution**

UDHR **Universal declaration of human right**

CEDAW **Convention elimination discrimination against women**

Abstract

This research paper assesses the major legal framework on alternative dispute resolution mechanism in family disputes and Practical problem in application of this mechanisms with particular emphasis given to the oromia family law (OFL), Oromia regional state family code and the practice in Mettu town. Furthermore this paper give due regard to the International legal frameworks on ADR mechanisms. Even though both oromia family laws and regional family laws recognize the applicability of alternative dispute resolution mechanism to family disputes since such mechanism plays a major role in solving different societal disputes including the family disputes. Despite such recognition by law there are certain practical limitation in the use of such procedure, then the researcher assess whether or not the ADR mechanisms are properly used to solve the disputes arising out of the dissolution of marriage in Mettu town in line with the Oromia family code.

On the basis of the findings the study recommends that the courts in Mettu town; both Woreda court and high court give due regard to the ADR mechanisms by referring the family cases to such procedures and also the court in collaboration with Mettu University school of law have to give awareness the community living in Mettu town regarding the advantages of using ADR mechanisms.

CHAPTER ONE

.1.1 Background of the study

In contemporary world family is given legal protection under national laws and regional laws because family is a legal and social institution deserving legal guarantee for the manner and criteria of its formation as well as the manner of dispute resolution when such relationship breakdown for different reasons. Moreover those prominent International human right instruments such as Universal Declaration of Human Right, convention on the elimination of discrimination against women, convention on the right of child and regional human right instruments such as African charter on human and peoples right as well as domestic laws such as FDRE constitution, oromia Family law and respective regional family codes gives protection to family by stipulating different essential conditions for the establishment of family relationship including its dissolution and dispute resolution mechanisms.[1] Among those family dispute resolution mechanisms Alternative dispute resolution (ADR) is the prominent one which apply as an alternative to the formal court litigation. The major types of ADR mechanisms are arbitration, mediation, conciliation and negotiation. Art. 97 of the oromia

[1] Tilahun Teshome , International survey of Family Law. P.159

Family law provide the possibility of settling family disputes through arbitration.[2] Those ADR mechanisms are advisable to the society because of its different advantages such as time saving, cost efficiency and adaptability.

Even if such broad recognition is given to the Alternative dispute resolution mechanisms there is a doubt whether these mechanisms are properly implemented or used to solve the dispute arising out of dissolution of marriage. So this paper assesses what the practice looks like in Mettu town in light of oromia family law.

1.2, Statement of the problem

Family relationship from its very nature is a perpetual relationship as it is presumed to last for a long period of time. Despite such nature of Family relationship dispute is unavoidable in such relationship.[3] Among the dispute arising in family relationship dissolution of marriage is the prominent one. To deal with such problem or family dispute the law design different mechanisms which are either formal litigation or Alternative dispute resolution mechanisms that are undertaken by courts established by government and judge's chosen by the disputants themselves. However the researcher initiated to make sure whether those ADR mechanisms are properly used as provided by laws in Mettu town specifically for those disputes arising out of dissolution of marriage.

Therefore this research paper is supposed to deal with the following fundamental issues;

[2] Federal revised Family code, art.118, proclamation No. 113/2000,proclamation No 83/1996 oromia family law

[3] Family law teaching material, 2

Firstly, this paper focuses on whether ADR mechanism is properly employed in solving disputes arising out of dissolution of marriage, here the existing laws would be assessed in light of its practice in Mettu Town.

Secondly, these papers identify the possible practical challenges in applying the ADR mechanisms to family disputes.

1.3. Question of research

1. What is the role of Alternative dispute resolution mechanisms in solving the disputes arising out of dissolution of marriage?

2. Is the practical application of alternative dispute resolution mechanisms in Mettu town are in conformity with the oromia family laws?

3. Is Alternative dispute resolution mechanism is preferred than court litigation in Mettu Town?

4, what are the possible mechanisms to encourage the application of ADR mechanisms to solve disputes arising out of dissolution of marriage?

1.4 objective of the study

This research has both general objective and specific objectives;

General objectives

The general objective of this research is examining the existing laws dealing with ADR and its practical implementation in Mettu town.

Specific objective

- ✓ To analyze the legal framework pertaining to applicability of alternative dispute resolution mechanisms to family disputes;
- ✓ Assessing the legal controversies and challenges negatively affecting the family relationship;
- ✓ To assess whether the practice in Mettu town is in conformity with the oromia family laws

1.5, Research methodology

The methodology employed is qualitative focusing on the one hand on the laws dealing with Alternative dispute resolution mechanism and the practice in Mettu town on the other hand. The research is supported by structured and non structured interview with Mettu Worde Court presidant and with some dwellers of Mettu town.

So both primary and secondary data has been collected through questionnaires, interview with concerned organ, reading of different materials and books.

1.6. Literature review

For the purpose of this research different national laws dealing with the ADR mechanisms, regional laws dealing with the same issues and other Ethiopian legislation which deals with Alternative

dispute resolution mechanisms are consulted through proper rule of citation. Furthermore different researches undertaken by researcher on this issue are examined including books, magazines and journals by following proper citation rule.

1.7. Significance of the study

The significance of this paper is;

- To create awareness to the community living in Mettu Town regarding the possibility of solving their problem through ADR mechanisms and the advantages of such procedure;
- To help other researcher as a reference or source to conduct further study on this area;
- For the partial fulfillment of LLB in Law;

1.8, scope of the study

The scope of this research is limited to examining the existing laws on Alternative dispute resolution mechanism and its practice in Mettu town and the area of study is limited to Mettu town.

Regarding the examination of existing law some national frameworks and regional legislations dealing with ADR would be examined.

1.9. Limitation of the study

In conducting this research the researcher may face the following limitations;

- ✓ Shortage of time
- ✓ Budget constraint while addressing interview .

- ✓ Concerned groups might not disclose the right information about the topics.

Organization of study

The research organized in to four chapters. Following this introductory part, chapter two general overview regarding dissolution of marriage under oromia family law. then chapter three analyze the practical application of ADR mechanisms for resolution of disputes arising out of marriage. Finally chapter four concludes the thesis and provides possible recommendation.

Chapter two

Grounds of Dissolution of Marriage oromia family law 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[4] writers, more or less, seem to agree with the preceding 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”.[5]However, for planiol, the cause of dissolution of marriage is mainly two,\

death of one of the spouse and divorce. Judicial declaration of relatively nullity of marriage is an assimilate case of veritable causes.[6]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[7]

Death of one of the spouse automatically terminates the status of marriage and as such it poses no legal and factual problem[8]As one writer stated, “when a person dies ,therearvarious 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

The other cause for dissolution of marriage is judicial pronouncement of the nullity of marriage, or otherwise called voidable marriage.[9] If we consider the nature of voidable act, it is significantly different from the void act. “Voidable actions an act which, although it contains a defect, has intended legal effect[10]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 concerned. Likewise, a voidable

[4] Louisiana civil code Article 101.
[5]West’s legal thesaurus dictionary. 7
[6] Planiol.
[7] Cause of marital dissolution.
[8]Terminates the status of marriage.
[9] Louisian civil code art 101.
[10] Louisian civil code art 101. 8

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 return in to a void marriage.

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

The oromia regional family law has revised some of the existing principles and rules of family law under the civil code which have 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. Hence all laws and practices must be consistent with the fundamental principles and rules of constitutions.[11]

. 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.[12] 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.As a result of this, the newly enacted oromia family law of proclamation No 83 /1996 is applicable and enforceable in the oromia region.[13]

So much for the back ground of the oromia family code, and under the revised family code there are three /3/ major causes for martial dissolution of marriage provided under ART97proclamation No 83/1996

[11] 1960 civil code enacted in the unitary form of government.
[12] Adoption Federal democratic Republic Ethiopia Constitution.
[13]Oromia family law of proclamation No 83/1996

oromia family law. These are death, divorce and court order.[14] 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.

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.[15] 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.[16] 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.[17]

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.[18]Minor impediments are those impediments to the celebration of marriage which don't affect its subsequent validity such as none observance of period

[14] Article 97 proclamation No 83/1996 oromia family law,art75 revised family law.
[15] Law rence M Friedman ,(1984) Rights of passage divorce law in historical perspective Oregon law review , vol .63 , 653-655.
[16] Planiol
[17]West' legal thesaurus dictionary.
[18]Teaching material family law

ofidowed.[19]According to ART 33 proclamation No 83/1996 oromia family law. of the oromia family law. “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.[20]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.[21]

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.[22] 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.[23]

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[19] Minor impediments
[20] Article 33of the proclamation No 83/1996 oromia family law.
[21]Reletion ship ascendants and descendants .
[22] Planiol 630
[23] Friedman L.M A Hisatory of America law as cited by ira mark Ellman ,family law cases text problems 187 Herring ,80-81

The religious courts had been dominating enjoying exclusive powering 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.[24]

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.[25]

As far as divorce is concerned, the oromia family law has taken a different step compared to the civil code that the oromia family law recognized no fault based divorce. Here the only requirement for divorce is to show irreconcilable difference between the two spouses. Her divorce by mutual consent is explicitly allowed and the court is given the discretion to assess, evaluate and decide on divorce claim.[26]

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

[24] The religions courts had been dominating enjoying exclusive powering handling formation and termination of marriage before 1857.
[25] Mehari 86
[26] Mehari 87

fairness and equality.[27]Therefore, the oromia family law opts 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.[28]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.[29]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 104(1) proclamation No 83/1996 oromia family law 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.

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[27] Article 97of the proclamation No 83/1996 oromia family law makes to be the only competet organ to decide on divorce.
[28] Article 78/1 RFC
[29] Article 104(1) proclamation No 83/1996 oromia family law.,art77/2 RFC .

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.[30]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 those 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.[31]

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 oromia family law that either one of the parties or both of them conjointly to file a petition for divorce.[32] 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 104(2) proclamation No

[30] Planiol 643 12

[31] John H. Beckstron ,(1969). Divorce in urban Ethiopia ten years after the civil code , JEC vol. 6 No .2,283.

[32] Article 104/1 and 2proclamation No 83/1996 oromia family law.

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83/1996 oromia family law . 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 104(2) proclamation No 83/1996 oromia family law"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.[33] 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.[34]

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[33]See Article 79 and80 of the proclamation No 83/1996 oromia family law.

[34] Article 81proclamation No 83/1996 oromia family law.

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 oromia family law.

The dissolution of marriage puts an end to all the effects it produced As it is clearly 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 is 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[35]hence what is left for us is to consider the general effects of dissolution Of marriage.

2.2.1. Personal effects

Dissolution of marriage is an act contrary to 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 coup disappears and rendered free to conclude any subsequent marriage from then onwards. 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[36] Therefore, once the marriage is dissolved, the personal consequence resulted thereof, what

[35] Mehari 55.
[36] Article 49 RFC.

so ever it may be, will disappear and the previous spouses become strangers each other.

.2.2. 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, and the pecuniary relations between the spouses shall be liquidate 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) [37].Spouses property relation may be personal or common property. During dissolution, their property relation comes 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 [38]

2.3 Decision making procedure 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 people who seek for a solution to the problem are what we call now a day arbitrators, mediator and conciliators.[39]

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

[37]Planiol 518.
[38] Planiol 519.
[39] Jonathan Herring 118.

rules that were implemented while courts faced matter concerning marriage was only customary law.[40]

Under the customary law of oromia, 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 varies in every area.[41]

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 how to do it.[42]

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

[40] 1960 civil code.
[41] Akilu wolde Amanule (1973),the fallacies of family arbitration under the 1960 Ethiopian civil code ,journal of Ethiopia law , vol ,9 no.1 .176-179.
[42] Arbitration.

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.[43]

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)".[44]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."[45]

Starting from 1960 civil code up to the promulgation of the oromia family law proclamation No 83/1996 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 absolute essential. And the coming of the FDRE constitution in 1995 stimulated the enactment of the oromia family law proclamation No83/1996.[46]

With regard to the reform of family law concerning dispute settlement mechanism, among the departure of oromia family law as At Tuliahan has succinctly put it "The power of the family arbitration council have

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[43] Teaching material family law.

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[44] 1960 civil code is one step ahead for arbitration in Ethiopia.

[45] Draft of the civil codereasons family arbitration.

[46] Proclamation No 83/1996 oromia family law.

been substantially minimized with compulsory arbitration no more a requirement of the law.[47]

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 duty of Arbitrators.[48] Arbitration, which is laid down under section 3 of the oromia family law 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.[49]**

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 too established Tribunals of justice, and is intended to avoid the formalities, the delay, the Expense and the vexation of ordinary litigation.[50] From the above definition, the

[47] Tilahun family law concerning dispute settlement mechanism among the departure of revised family code.
[48] Oromia family law.

[49] Revised family code ,Federal democratic Republic Ethiopia constitution art37/1
[50] Blacks law dictionaries definition.

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 Outcome of the decision is.[51]Even though, the institution of family arbitration is retained in the proclamation No 83/1996 oromia family law 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 proclamation No 83/1996 oromia family law seems to target at reducing the powers, they were granted to the arbitrators in the civil code.[52]

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 proclamation No 83/1996 oromia family law is restricted to only resolving minor dispute other than dispute related divorce. As it is listed down under Art 97(a) and 97(b) proclamation No 83/1996 of the oromia family law disputes of marriage are divided in to two, that is , dispute of divorce (ART 97(a)) and dispute other than divorce (ART 97(b).[53]

2.3.2 Family Arbitration under oromia family law

[51] Blacks law dictionaries definition.
[52] Proclamation No 83/1996 oromia family law.
[53] Aschalew Ashagre ‘’ Involvelement of court in Arbitration proceeding under Ethiopia law’’ Ethiopia journal of business and development vol.2NO2 2007 PP1-3

According to the proclamation No83/1996 oromia family law arbitration could only serve as an alternative Mechanism of dispute settlement. In spite of the existence of the limitation in Family arbitration, the oromia family law has included arbitration in its section three. Arbitration under the proclamation No83/ 1996 oromia family law 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 Cannot 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 proclamation No 83/1996 oromia family law and the latter has incorporated how the arbitrators precede their work and the time Limit through which the arbitrators complete the settlement.[54]

2.3.3Appointment of arbitrators

under article 106 proclamation No 83/1996 oromia family law of the, 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 precede the case.[55]

According to Art 106(1) proclamation No83/1996 oromia family law. The parties are expected to submit the names of Arbitrators they have

[54] Proclamation No 83/1996 oromia family law. 19
[55] Tilahun teshome Ethiopia''reflection on the oromia family law of 2000'' The Imprnational survey of oromia family law may 2002 p.7

selected within fifteen day from the date they were told to do so.[56] As it is clearly stated under article 108 proclamation No 83/1996 of oromia family law 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 h reconciliation.Theresult of the arbitration or attempt of Reconciliation has to be submitted to the court within three months.[57]

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 106 proclamation No83/1996 of oromia family law they cannot pronounce Divorce. If it become beyond their capacity, they have the duty to report the fact to the court without delay.[58] Article 104 proclamation No 83/1996 oromia family law 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 104 proclamation No 83/1996 oromia family law as it is there to Grant the arbitrators the power to pronounce divorce. Therefore, what the Arbitrators do under article 104 proclamation No83/1996 oromia family law is only persuading the spouses to resolve the Issue through the arbitration and also which is the massage of Article 108proclamation No 83/1996 oromia family law/[59].

[56] According to art 106(1) proclamation No 83/1996 oromia family law.
[57] According to art 106(1) proclamation No 83/1996 of oromia family law.
[58] Under article 106 proclamation No 83/1996 oromia family law.
[59] Article 104 proclamation No 83/1996 oromia family law,article 82/2revised family law.

As it is provided under article 106 and 108 proclamation No 83/1996 oromia family law among the duties of the Arbitrator's submission of periodical report and reporting their attempt to resolve the dispute[60] failing to do this and its consequence are incorporated under article 109(1) proclamation No83/1996 oromia family law. The court close the case if the arbitrators fail to report in due time.[61]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.[62]Sub article one of article 109 proclamation No 83/1996 oromia family law 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 proclamation No 83/1996 oromia family law regarding the settlement of disputes of the Spouses, it provides provisions as to haw arbitrators should perform their work and assist the court and play a significant role in family matters.

[60] Article 104 proclamation No 83/1996 oromia family law
[61] Under article 106 ,108 and 109/1 proclamation No 83/1996 oromia family law
21
[62] Article 109 of the proclamation No 83/1996 oromia family law.

Chapter 3

Practical application of ADR mechanisms for resolution of disputes arising out of marriage

Mettu is located in south west of Ethiopia it far from 600 km from the capital of Ethiopia population 500,000 in mettu weorda court there are around 2000 case are file in a year among this around 55%-60% of the case is reletad marriage dispute .[63] Since mettu is one of among oromia region family law is applicable in mettu town.

3.1 dissolution of marriage disputes between the spouses.

As clearly indicated in the preamble part of the oromia family law and the FDRE Constitution of article 34, Family is the basic and the primary institution for Creating groups of people called society[64]. Family has three recognized sources Marriage, Filiations and adaptation.[65] 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.[66] While marriage is concluded, the presumption is

[63] Interview Ato addisu abdisa precedent mettu we rod court.
[64]Oromia family law and federal democratic Republic Ethiopia constution of article 34.
[65] Oromia Family law.
[66] Oromia family lawand .

that, the relationship is permanent and nothing will separate them.[67] 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 oromia family law set a mechanism or organs for resolving Family matters /disputes. These organs are courts and family arbitration.[68]Thus when dispute arises in marriage, the cases is 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 proclamation No 83/1996 oromia family law 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 have been under the FDRE constitution and the Ethiopian civil code are given only to the court. Thus the aim of the proclamation No 83/1996 oromia family law that is ART 97seems 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

[67] Teaching material family law. 22
[68] Oromia family law.

adjudication of dispute relating to personal and oromia Family laws in accordance with religious or customary laws, With the consent of the parties to the disputes. Particulars shall be determined by law." [69]In this regard, according to the above article, spouses are free to dissolution of marriage their Family dispute either customarily or religiously. On the contrary, article 97of the proclamation No 83/1996 oromia family law excludes religious and customary institution and gives the right only to the court.

This idea is clearly stated in art 97of the proclamation No 83/1996 oromia family law 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. 98 of this code.[70]" Therefore, according to the above provision, i.e. art97 proclamation No 83/1996 oromia family law, 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 to decide on divorce only to the court proclamation No 83/1996 oromia family law. 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 allows derive their force and validity from the constitution and enacted in line with the constitution [71] In this case, even if oromia family law are Empowered to enact their own family laws in line with the FDRE constitution and With their own socio – economic realities[72], {with their own customary and Religious principle}, the proclamation No 83/1996 oromia family laws

[69] Article 34 /5 federal democratice Republic constitution. 23
[70] Art 97 proclamation No 83/1996 oromia family law.
[71] Proclamation No 83/1996 oromia family law.
[72] Case of oromia family law enact Federal Democratic Republic Ethiopia Constutition.
24

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 proclamation No 83/1996 oromia family law Articles 117 of the oromia family law, art 98 which prohibit the spouses to their family dispute in religious and customary law.

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 oromia society is accustomed to those traditional arbitration which plays significant role in resolving disputes of marriage. 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.[73]

[73] Teaching material family law

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 97of the proclamation No 83/1996 oromia family law clearly states that only the count is competent to decide, decide on divorce and approve the effects of divorce.[74]

As clearly indicated in the former article (art 76/a/) of the proclamation No 83/1996 oromia family law, 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 themes that, approval by the court of law. Whereas, in the later article (art 97) of proclamation No 83/1996 oromia family law 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 proclamation No 83/1996 oromia family law 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, [75] and the proclamation No 83/1996 oromia family law was 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 addisu abdisa president in the mettu weroda Court according to art 76 /a/ of the Proclamation No 83/1996 oromia family law the spouses are free to decide on divorce by their own mutual consent and their agreement must be approved by the court. However, art 97proclamation No 83/1996 oromia family law gives the power to decide on divorce only to the court denying the right of the

[74] Art 97 of the proclamation No 83/1996 oromia family law.
[75] Louisiana civil code art 101.

spouses. The fact that denying the spouses' right to decide on divorce and gives this right only to the courts is not wise. [76] 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 proclamation No 83/1996 oromia family law gives priority to the spouse's right rather than to the court."[77] The writer of this paper believes with the above two assertion denying the spouses right seems unwise. Because this provision (Art 97) 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 proclamation No 83/1996 oromia family law will be at questionable. Therefore, in a well growing democracy, giving priority to the court instead of individual right seems unwise.

3.2 Proclamation No 83/1996 oromia family law article 97 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 proclamation No 83/1996 oromia family law the reason behind for the revision of the Ethiopian civil code is to make the existing oromia family law in accordance with the socio-Economic development of the present day oromia.[78] Therefore as clearly shown in the practice, the social reality towards divorce is outside the court room. The social reality towards divorce is that, spouses dissolve or end their marriage through customary way without going to the court. [79] However, the oromia family law without considering the social realties gives power to decide on

[76] Art 97 of the proclamation No 83/1996 oromia family law.
[77]Art 76(a)of the proclamation No 83/1996 oromia family law.
[78] Proclamation No 83/1996 oromia family law.
[79] Teaching material family law.

divorce only to the court which is not proper and wise. Various reasons could be forwarded to this effect.[80]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.[81]

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 without considering the social reality of the people to wards divorce making / giving the power to decide 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 97 of the proclamation No 83/1996 oromia family law 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 and article 97/and the unceasing development of social reality [82] Therefore, the opinion of the writer of this paper is that the proclamation No83/1996 oromia family law /article 97/ contradicts with the social reality /change. Because most spouses end their marriage outside 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

[80] Oromia family law.

[81] Oromia family law
[82] Art 97 of the proclamation No 83/1996.

personal effects of marriage creates on marriage institutions which are stated in the proclamation No 83/1996 oromia family law as follows:-

A. The spouses owe each other respect, support and assistance. The agreement of the spouses shall not derogate this rule. (Proclamation No 83/1996 oromia family law Art 65).

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. (Proclamation No 83/1996 oromia family law art. 66, 67).

C. The spouses are bound to live together and they shall have with one another the sexual relations normal in marriage unless these relations involve a risk of seriously prejudicing their health. This rule shall not derogate by contrary agreement and contrary to this rule shall be of no effect (proclamation No 83/1996 oromia family law ART 69) .

D. The other person effect of marriage is the husband and wife owes an obligation of fidelity to each other /proclamation No 83/1996 oromia family law ART 72). To begin with, marriage engenders special obligation between husband and wife who are the result of their status as spouses.[83] That is, marriage institution is useful, the advantages which always puts forth is the association of the spouses [84]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. [85]These duties are common to both spouses. When the above personal effects of marriage listed from A to D are not fulfilled, the

[83] Proclamation No 83/1996 oromia family law.
[84] Teaching material family law.
[85] Teaching material family law.

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.[86]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 without 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 without 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, [87] 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. However, our proclamation No 83/1996 oromia family law assumes income or property of the spouses received / acquired at the time when the spouses are separated in fact

[86] Mehari 55 ,Planiol 518, planiol 519,Jonathan Herring 118 28
[87] Teaching material family law.

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.

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. [88]Therefore, 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 mettu werode court the man deserted his wife, mother of his seven children and stayed away for about fifteen years. 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 for divorce. The court ordered payment of Birr 60 per month as maintenance

[88] Teaching material family law.

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 anything[89] 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.

[89] Proclamation No 83/1996 oromia family law.

Chapter Four

Conclusion and Recommendation

- As clearly indicated in art 34 of FDRE constitution and the preamble of the proclamation No 83/1996 oromia family law 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. However, the proclamation No 83/1996 oromia family law ART 97 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 proclamation No 83/1996 oromia family law ART 97 denies the right of adjudication either customarily religiously. Thus, the aim of the proclamation No 83/1996 oromia family law ART 97target 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 forms 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 proclamation No 83/1996 oromia family law clearly states that the existing oromia family law is enacted in accordance with the socio- economic development of the present day oromia. 31

As a result of this, the social reality towards divorce is outside the court room, that is, spouses
End their marriage without going to the court. However, the proclamation No 83/1996 oromia family law ART 97 was enacted without considering the social reality, which is outside the court room, gives the power to decide and approve the effect of divorce only to the court. Therefore, there is a collision between ART 97 of the proclamation No 83/1996 oromia family law 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 without 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 without the approval of the court.

RECOMMENDATION

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

Arbitration become one source of business than section, our culture is not just lik our culture

they are herewith respected and arbiter are not fairly dies the property and they are confirm **with** the federal oromia. Up to their dissolution only because mostly female are disadvantage the shimagles are not equally distribute property.

The constitution gives right to the spouses to adjudicate their case either customarily or religiously by their own free will. However, ART 97 denies this right and gives only to the court. Therefore, legislature should revise this and recognize customary or religious dissolution of marriage as an alternative dispute resolution mechanism by the spouses' free will Our society commonly conducts divorce outside the court room although the law empowers only the court to pronounce/decide divorce. Sometimes 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, without 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 has 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.

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