

PAPER.22

ARE WE CONDONING ?

By

D.K.Sampath

This is a repeated charge levelled against the mediator. "You are condoning an offence", the advocates assert. "You are overlooking what is patently wrong", the social activists complain. The feminists proclaim, "You connive with the wrong doer". They cannot forgive a man switching wives as though he is changing his dress.

A bus conductor developing an intimacy with a woman at the terminus where he has to make an overnight stay thrice a week. He has a wife at home and children too. Yet he goes through a form of marriage with the other woman. The wife finds her way to Tiruppur mediation centre and seeks its help in solving the problem. How to maintain herself and the children ? She is unable to furnish even the particulars of her husband's address.

A well digger from Salem district married a woman at the work place at Tambaram. When she became pregnant, she left for her parent's house, 50 km away. He goes back to Salem on finishing the contract of work without so much as a visit to his wife. She comes to Uthiramerur centre with her baby and seeks the help of the mediator to rejoin her husband. A visit by the field worker discloses that the well digger had married again in his native place in Salem district. How to solve this problem ?

A mason migrates to Madras in search of work leaving behind in his village his wife and a six year old child. There, he marries another girl who works with him as unskilled labour. He sets up a house in Madras with her abandoning his family in the village. The wife and child want the mediator to bring him back to the village.

A village boy (educated up to Pre-University) marries his aunt's daughter, an uneducated village girl. They have three children when he gets employed in Madras atomic power station at Kalpakkam, nearby. He is paid Rs.2000 per month. He finds his rustic wife embarrassing to him. He marries an educated daughter of another employee there. His wife protests and walks out. She asks the mediator how that employee agreed to his daughter marrying a man with a wife and children. What is the use of education ?, she demands.

That is one aspect of the conflict. If she had come to the mediation centre in time, an effort at averting the second marriage could have been made.

A well to do agriculturist in his forties wanted to marry again. His wife's brother contacted the mediation centre. When approached, the agriculturist justified his conduct by pointing that she was ill and that she was weak and often ill. She would even acquiesce in his second marriage. In fact she continued to live with him. The mediator's visit to the family was in vain. There, the parents of the bride for the proposed second marriage were contacted and it was explained how it was an offence and how a third marriage cannot be ruled out if there is no child by this marriage too. Why should you assume the wife to be barren ?, they were asked. They abandoned the idea of their daughter marrying

him after discussing it. Indeed there have been cases where mediation failed and an injunction order restraining the second marriage has been obtained in a suit by the wife.

But there is an added dimension when the abandoned wife surfaces at the mediation centre after her husband's second marriage and sometimes, after he has children by that void marriage. A spot of counselling may create an awareness of her rights that she alone has the marital status and not the other woman. But does it seek to solve the conflict? The life of the other woman has been ruined. If he is weaned away from her and restored to his wife, the other woman and her children would be on the streets. Any solution that the parties negotiate has to cater to the needs of both the woman and all the children.

Just because moral indignation becomes the mediator, he should not be moved by a sense of anger or a sense of outrage at the husband's conduct. Jailing the bigamous husband would leave both the woman and all the children helpless. Moral moderation promotes give and take, so necessary in settlement of a dispute. Making the best of a bad situation is not conniving at the offence of bigamy. The mediator is only enabling the parties to face the consequences of their own actions. In so doing, a realistic view of un-alterable facts of the situation must inform the thinking of the parties to the dispute. The other woman and her children cannot be wished away. Their life is also at stake. Just because the wife came to the mediation centre first, it does not mean that the other woman has to be denied her role in the resolution of the dispute. The mediator may find it difficult to help such a husband but, he has to be assisted in extricating himself from the coils of his own action, minimising in the process any damage to the others. Involvement in the negotiations may enable him to look at the point of view of others involved in the conflict. Recognising the context is not condoning the act that created the situation. However unpalatable, these facts inhibit the choices open to the parties and they have to find a consensus within these limitations. Judge may ignore the woman who had no legal status as a wife and even order restitution of conjugal rights to the wife or maintenance to her. He does so, because, law does not recognise the void marriage. But when parties themselves negotiate to find a consensual solution, they have to be guided by the realities of the situation and not only legalities or moralities. In fact this can be used to advantage as long as the objective is fair deal to all involved in the conflict situation. The target is 'fairness as justice'. Legal justice would ensure punishment to the deserving. That is the society's response to the wrong. But the disputant's consensus is not aimed at chastisement. They have already been chastened by all the suffering they have been through. Mediation looks upon that as adequate 'punishment', if at all as it has produced in them a willingness to find a solution for extricating themselves in time. Any support that society extends to mediation under such circumstances will only signify a recognition that a corrective step to annul the consequences of deviance is not the same as acquiescence. Of course, there is always the risk of such a gesture being wasted on some recalcitrant individuals. No risk; No gain.