

Reconciliation in Matrimonial Conflicts under Hindu Law : Emerging Judicial Trends-An Appraisal

Marriage among Hindus is a sacred relationship which is not limited to this life only. According to Hindu mythology it is the tie which is once tied cannot be untied. According to their belief it is not merely a sacrament and inviolable union, but also an eternal union which subsists across the seven or more lives to come. This traditional belief has undergone certain changes with the enactment of Hindu Marriage Act. Special provisions have been incorporated for its breakdown, when it becomes difficult for the parties to remain in nuptial knot. Though the marriage has become more lenient after codifying the laws for the same and any unbearable circumstance can retribute to divorce, but the breakdowns on flimsy grounds cause more trouble than rectifying the same. Thus in case of any dispute between the married couple the law as well as the court favour the reconciliation. When there is impossibility of continuance of the marital relation then it is allowed to be get dissolved. In this backdrop, in this paper an attempt has been made to analyse the provisions of Hindu Marriage Act which encourages mediation and reconciliation in case of marital conflict and also the attitude of courts when matrimonial disputes are brought before them for adjudication.

Keywords: Court, Divorce, Dispute, Marriage, Mediation, Reconciliation, Settlement.

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Introduction

Marriage between Hindus is basically a subject of personal law. It was considered as sacrament and no concept of dissolution existed under the Hindu Customary Law. With the advent of time the codified law pertaining to Hindu Marriage, enacted by the Indian Parliament contain the provisions regarding divorce.¹ Divorce, basically is a legal cessation of the matrimonial togetherness. Kussum considered it as a golden key to the legal cage of marriage.² In view of Letourneau the institution of divorce is the final milestone in the process of freeing the woman from slavery of man in marital relationship.³ Though by the passage of time the marriage has become more lenient and any unbearable circumstance can retribute to divorce, but the breakdowns on flimsy grounds cause more trouble than rectifying the same. When the Hindu Marriage Act was enacted, provisions for the matrimonial relief including the divorce were incorporated in the statute. According to Derrett, these provisions were incorporated in the Hindu Marriage Act to save the ill-fated women from ill treatment.⁴ However, in order to enforce any right provided under the legislation parties required to follow a technical procedure of the Court. According to Thomas E. Carbonneau, the adversarial adjudication process is based on "the limitations of semantics, the fallibility of memory, the will to prevaricate, all contribute to unpredictability and uncertainty."⁵ Matrimonial Conflicts themselves are very painful arena for someone's life as they disturb the life of two partners and when it is adjudicated in the Court of Law, it would act like fuel on fire over the miseries of the parties. In respect of the emotional disturbance by the parties during judicial proceedings, court can neither revert the damages caused nor can force the spouses to build up more affirmative attitude. Beside this the after effect of divorce is highly disturbing for the children. The Children lacking in proper grooming, consequently suffers various problems like depression, anxiety, uncertainty, impractical expectations, personality disorders, poor academic conduct and complications with opposite sex. Therefore, it must be understood that neither divorce is the remedy for all matrimonial problems nor is it the only vehicle to dispense justice and should be resorted when

the conjugal bond is unbearable. In this context the spouses should be given opportunity to pursue them, to realize their emotional crises, to allow them to shoulder responsibility and thereby to achieve more sensible understanding about their marital relation.

Moreover, marriages among Hindus are considered as sacred alliance for life, it is not just a union between two persons but between two parties. Nonetheless, it is a relationship between two people and since no human being is perfects it is highly probable that two people do not feel compatible with each other so as to live together a whole life. Even, there can be difference in their nature and understanding. That is why, the cases of divorce are fast rising even in Country like India where marriages are considered to be made in heaven. Under such circumstances a need of amicable resolution of dispute between the parties is much needed which saves time, money and even makes the endeavour to reconcile the parties.

Aim of the Study

Hindu Marriage Act though provide the provisions regarding dissolution of marriage, but such dissolution this dissolution not only effect the spouse but whole of the family. Moreover the procedure for adjudication of matrimonial disputes generally is so cumbersome and lengthy that during the trial parties loses their marital age and thereafter become unable to remarry. Whereas, in Hindu Marriage act there are provisions for reconciliation and mediation and also under section 9 of Family Courts Act, 1984 courts are also required to make endeavour for settlement between the conflicting spouses. With these consideration in this paper is being written with the following objectives;

1. To analyse the provisions concerning reconciliation in HMA, 1955.
2. To analyse the provisions concerning mediation in HMA, 1955.
3. To analyse the attitude of courts when petition concerning matrimonial dispute are instituted.
4. To analyse the judicial activism in promoting reconciliation in matrimonial disputes.
5. To know whether the court in reality endeavour to settle the matrimonial dispute before adjudication or not.

Review of Literature

This paper is based on the doctrinal research. For this purpose the researcher studied different books, journal, Law Commission's Reports, journals of Supreme Court and different High Courts and commentaries. The relevant provisions of Hindu Marriage Act, 1955 and Family Courts Act, were 1984 were reviewed. The books of Hindu law especially the text books having commentary over the mentioned legislation were gone through by the researcher. Different research papers relevant to this study were also reviewed by the researcher. As the main focus of the study is the judicial trend with regard the referral of parties for mediation, reconciliation or settlement outside the court when a matrimonial suit is instituted before the court, the researcher has gone through

various cases especially latest cases decided by the Supreme Court in the year 2017 and 2018.

Reconciliation under Hindu Marriage Act

The modern Hindu law contrary to its customary law allows the parties to dissolve their conjugal relations when these relations become poison for each other. At the same time the law advises to make the endeavors of reconciliation first and if they fail to make settlement then proceedings under Section 13 can be operationalised. In this context while enacting the Hindu Marriage Act, the legislatures incorporated Sub-Section (2) to Section 23 of Act. Under this Sub-section a duty has been imposed upon the Court to make efforts to bring about reconciliation between husband and wife if any of them approach for any relief under the Act.⁶ Hence in any type of petition in which a relief is sought under Hindu Marriage Act, every Court is duty bound to attempt reconciliation. From trial Court to the Supreme Court, it is not left to the discretion whether or not to make an endeavour for reconciliation. The Apex Court also held that a Court is expected, nay, bound to make all attempts and endeavours for reconciliation in matrimonial disputes.⁷

The duty of Courts to make endeavour for reconciliation is a feature of matrimonial litigations only. In other civil cases though under order 10 of Code of Civil Procedure, Courts can ask the parties for outside Court settlement, but this is purely procedural in nature. More over Courts are not bound to advise the parties to remain united in partition or property related suit. But, in matrimonial litigations even if the relief is claimed under Section 9 or 24 of the Act,⁸ the Courts are under obligation first to persuade the parties to resume living together or to maintain each other without any decree of the Court. The reason obviously is that, if relief is granted under these sections in the form of decree it would afford them a ground for divorce. In the opinion of Karnataka High Court, even where the opposite party remains ex parte, the Courts are duty bound to make endeavour for reconciliation. Court held that there may be a reasonable cause for the absence of that party.⁹ According to the Court in such circumstances the court trying the matrimonial petition can again issue notice to that party to appear in person before the Presiding Officer to enable him to persuade the parties to reconcile the differences. Even the Supreme Court has clearly advised the courts that to make the endeavours for reconciliation between the parties. While dealing with the matrimonial cases in order to bring reconciliation the court may order the personal appearance of the parties before the court.¹⁰ In another case the Supreme Court strongly reiterated that it is the duty of the Court to make every endeavour to bring about reconciliation and it is mandatory. The Apex Court held that a decree passed without having made efforts for reconciliation at the first instance, cannot be sustained. Thus the court has to make the efforts for reconciliation from the start of the case or at any time before the Court proceed to grant relief.¹¹ In this state of affairs the

court may face some difficult situations for which Krishna Iyer, J., aptly stated:

"A judgment often possess a sublime essence and a humdrum component and in its happy conclusion holds out the higher lesson that hate and fight are dissolved by basic human fellowship, even after litigative struggle, if the Bench and Bar pursue consensual justice, and bringing into play conciliatory process, and successfully persuade the parties to seereason and right beyond bare law. If the efforts succeed, the Court and counsel derive spiritual fulfillment and get satisfaction".¹²

The learned judge further added;

"The sublime element which we advert to in the beginning consists in the optimistic endeavour to bring parties together so that the litigation may not cut them as under..... We consider it a success of the finer human spirit over its baser tendency for conflict. We should like to emphasise that endeavour is a path finder for the subordinate courts in dealing with family or like disputes. We commend this example to the judiciary and to the Bar and reinforce it with what Gandhiji has recorded in his autobiography..... I realised that the true function of a lawyer was to unite the parties driven under ... as a lawyer I was occupied in bringing about private compromises of hundreds of cases. I lost nothing thereby Nor even money certainly not my soul".¹³

In V. K. Gupta Vs. Nirmala Gupta,¹⁴ the Supreme Court very aptly said;

"It is the fundamental that reconciliation of ruptured marriage is the first essay of the judge aided by the Counsel in this noble adventure. The sanctity of marriage is, in essence, the foundation of civilization and therefore, Court and Counsel owe a duty to society to strain to the utmost to repair the snapped relations between the parties. This task becomes insistent when an innocent offspring of the wedding struggles in between the disputed parents. At the end Before proceeding to grant any relief in the matter of matrimonial cases it shall be the duty of the Court in the first instance in every case where it is possible to do so consistently with the nature and circumstances of the case to make every endeavour to bring about a reconciliation between the parties".

Though the Section 23(2) of Hindu Marriage Act, directs the courts for making the endeavours of reconciliation when matrimonial disputes are brought before them, and when the Court will satisfied that there is no chance of reconciliation only then adjudicate upon the matter formally. But technically, it is not feasible for every Court. The function of reconciliation can be properly discharged only by the persons who have special training of all the aspects of matrimonial problems. The person must be mentally equipped to tackle and resolve such problems. The ordinary Civil Courts are not ideally suited for it. In this context Justice Rajinder Sachar of the Delhi High Court (as he then was) has rightly pointed out:

"In practice what is happening is that the courts do in pursuance of the mandate of Section 23(2) have a small sitting and talk with the parties concerned to see whether it is possible to have a

reconciliation but by the very nature of the working of courts and because of the ever pressing burden of the accumulated arrears weighing on the Court, it is obvious that a very perfunctory and casual kind of sitting with the parties can take place."¹⁵

For reducing the conflict between the husband and wife and bringing about amity between them the judge should personally talk to the parties. He should not go by the statement of the Advocates that reconciliation is not possible. The Patna High Court has held that relying of Courts on Advocates only, is on the one hand practically not a good approach and on the other hand it would fall short of the duty of the Court of making every endeavour to bring about a reconciliation between the estranged Spouses.¹⁶ The Court in the matrimonial proceedings cannot become a disinterested or unconcerned umpire. In the opinion of the Jammu and Kashmir High Court, if the Court orders a party to file an objection without first trying for reconciliation, as it should, the order would be erroneous.¹⁷

It is submitted here that the amicable resolution of a matrimonial conflict is a serious issue. If the parties will be indulged in the civil courts, then their reunion will become difficult. Therefore, for the application of Section 23(2) there should be the proper family Courts where reconciliation actually can be made between the parties. Thus, conciliation proceedings have a great value even if there is little chance of legally saving the marriage. The basic objects of reconciliation under the Act is only to bring the parties nearer and making them live together. So the Court has to make the serious efforts for bringing about reconciliation between the spouses before it grants the relief under the Act. In the opinion of Allah Abad High Court where the court does not grant the relief but dismisses the petition, the purpose of Section 23(2) of the Hindu Marriage Act is defeated.¹⁸

However, the endeavour for reconciliation depends upon the nature and circumstances of the case. Where a party seeks decree of nullity of their marriage under Section 11 of the Act, the nature of litigation demand the passage of a decree instead of reconciliation. Some of the grounds for divorce mentioned under Section 13(1) of the Hindu Marriage Act, are also of such a nature that they contain a minimum possibility for reconciliation. Keeping in view such impossibilities and also the recommendations of Law Commission,¹⁹ the Parliament in The Marriage Laws (Amendment) Act, 1976 has engrafted a proviso to Section 23(2) which provide an exception to the efforts of reconciliation.²⁰ After this amendment if a petition for dissolution of Hindu marriage on the ground of respondent's conversion to another religion, or mental unsoundness of the respondent, or virulent and incurable leprosy of the respondent, or respondent's venereal disease in a communicable form, or respondent's entry into a religious order by renouncing the world or respondent's disappearance for seven years or more is sought, courts will not be bound to make reconciliation.

Mediation under Hindu Marriage Act

Mediation is a process in which an impartial third-party mediator facilitates the resolution of a dispute by promoting voluntary agreement by the parties. The mediator facilitates communications, promotes understanding, focuses the parties on their interests, and seeks creative problem solving to enable the parties to reach their own agreement. Mediation in the context of matrimonial conflicts is different in its form and content from that in the context of other disputes. The matrimonial disputes are distinct from other types of disputes on account of presence of certain factors which are not obtained in other disputes. These factors may be motivation, sentiments, social compulsions, personal liabilities and responsibilities of the parties. It may also be the views of two parties regarding life in general and to the institution of marriage in particular, the security for the future life so on and so forth. In this context the mediator may attempt to encourage exchange of information, provide new information, help the parties to understand each others' views, let them know that their concerns are understood, promote a productive level of emotional expression, often in separate sessions with each party learn about those interest the parties are reluctant to disclose to each other and invent solutions that meet the fundamental interests of all parties.²¹

The Supreme Court feels that there is a growing need of mediation for matrimonial disputes in India. In *K. Srinivas Rao v. D.A. Deepa*,²² the Supreme Court stated,

"Quite often, the cause of the misunderstanding in a matrimonial dispute is trivial and can be sorted. Mediation as a method of alternative dispute resolution has got legal recognition now. We have referred several matrimonial disputes to mediation centres. Our experience shows that about 10 to 15% of matrimonial disputes get settled in this Court through various mediation centres. We, therefore, feel that at the earliest stage i.e. when the dispute is taken up by the Family Court or by the court of first instance for hearing, it must be referred to mediation centres. Matrimonial disputes particularly those relating to custody of child, maintenance, etc. are preeminently fit for mediation".

Prior to 1976, in Hindu Marriage Act there was only concept of reconciliation under Section 23(2). Where a petition was filed before the Court, its duty was to conduct reconciliation proceedings by itself. In pursuance of the mandate contained in section 23(2) the courts used to hold chamber meetings to try reconciliation. It was a sort of judicial reconciliation and the mandate of Section 23 (2) was not properly utilized by the parties. In fact, a conducive environment was much needed to the parties involved in matrimonial litigations in which they could rethink of their decision of litigation. Reconciliation by courts was deemed as a part and parcel of the litigation and a mere procedure on the part of the courts to enter into the formal proceedings. Realising these difficulties and on the recommendations of Law Commission of India,²³ Sub-

Section (3) to section 23 was inserted by the Marriage Laws (Amendment) Act of 1976. It authorises the courts to take the assistance of a third person for effecting reconciliation between the parties.²⁴ It can be done either at the desire of the parties or itself by the Court if it thinks it just and proper. This third person, popularly known as Mediator, may be named by the parties. In case the parties fail to name any person as mediator Court itself can nominate him. However, the provision of clause (3) of Section 23 is discretionary in nature not mandatory like clause (2). In the opinion of Calcutta High Court, where the court has itself tried its best for reconciliation in terms of Section 23(2) but it fails to reunite the parties, it may reject the prayer of a party to appoint an expert to take his services.²⁵

It is submitted here that such discretion must be used by the court with utmost care and caution. Even if its own efforts do not make the parties to reach a positive conclusion, it should refer the matter to the mediator. It may be possible that the Mediator may be a better expert of dispute resolution and a psychologist as compared to the presiding officer of the court concerned. His efforts may yield a positive result. Where a matter is referred to the Mediator under clause (3) of Section 23 of Hindu Marriage Act, he has to make his efforts and report to the Court with in a period of fifteen days. This period of time is not sufficient for every case. In some case much time is required to be utilized to enable the parties to understand their dispute and overall impact of it on their life. So if the Court thinks it necessary, it can again extend the period. But the extension in one go should not exceed fifteen days. Condition precedent for such extension will obviously be the report of the mediator that the reconciliation between the parties can be or has been affected. If the Mediator in his first report would suggest that there is no chance of reconciliation between the disputed parties, court will proceed in the petition according to law. The Court is bound to pay due regard to the report of the Mediator while disposing of the proceedings. It can neither avoid the report nor can go against it without giving a good reason for it.

The Supreme Court of India has even directed Criminal courts dealing with complaints under section 498 A of the Indian Penal code (IPC) to refer the parties to the mediation centres before the stage of hearing of the complaint. The court observed that this reference should only be done in case where parties to the disputes are willing to settle the dispute or facts support the existence of settlement. Offence under Section 498 A of IPC are non-compoundable offences wherein compromise cannot be reached and hence the court issued this direction. Section 498 A of IPC provides complaint of harassment, cruelty or demand of dowry filed by wife against husband and relatives of husband. The court observed that the rigour, purport and efficacy of this section should not be diluted in the said process of reference of parties to mediation and further observed that the courts discretion to grant bail or not to grant bail is also not curtailed with respect to the section. The apex court also directed that all mediation centres to set up pre-

litigation centre/desks to settle disputes at pre-litigation stage and to highly publicize them so as to encourage the process of mediation. The court issued all these directions in view of the deplorable situation of matrimonial disputes in India so as to provide an opportunity to settle disputes amicably. The Apex court was hearing a Civil Appeal filed by the Appellant- husband *K. Srinivas Rao v. D. A. Deepa*²⁶ against the order of High Court wherein a matrimonial dispute stretched to an extent that it strained the relationship beyond repair. The Decree of divorce was granted in the favor of Appellant-husband by the Family Court but the High court set aside decree of divorce and thereafter the above mentioned appeal was filed by the appellant-husband against the said order. Justice Ranjana Prakash Desai pronounced the judgment and issued the above mentioned directions in view of the interest of victims of matrimonial disputes. The Court observed that the present dispute could have been settled amicably through mediation if the parties had been referred to Mediation Centre.

Judicial Response

An attempt for reconciliation has been remained a principal thrust of the Court in family matters. Courts in various cases gave new direction to the parties to save their marital relation. The Kerala High Court in one of the case set aside the order of dissolution of marriage passed by a family Court on the ground of conversion.²⁷

The main contention of the appellant in this case was that by conversion alone the marriage does not ipso facto get dissolved. Whereas the plea of the respondent was that, the conversion to another religion is a ground of divorce which has been expressly excluded from the operation of Section 23(2) of the HMA. However, the High Court held that a settlement in matrimonial dispute need not necessarily be based on strict legal grounds but more on parties perceive on a just and reasonable settlement bases on mutual concessions. Such a compromise acceptable to the parties need not also coincide with the terms of a legally correct decision. If the law expects that refinement, reconciliation and settlement is to be first attempted, without following such a procedure. The Court further observed that it is not necessary that by mere conversion the marital tie should be broken. In a secular country like India and a literate State like Kerala even the parties can disagree on matters of faith and still they can lead a happy marital life if they could be convinced that matters of faith should not stand in the way of union of hearts.

In *Jivubai Vs. Ningappa*,²⁸ the Mysore High Court observed that the intention of the provision contained under Section 23(2) of the Hindu Marriage Act, 1955 undoubtedly is to render all possible assistance in the maintenance of the marital bond and if at any stage of the case the circumstances are propitious for reconciliation it will be the Court's duty to make use of such circumstances irrespective of the stage. If no endeavour had been made by the Court, it will undoubtedly be a serious omission.

The Karnataka High Court also quashed the order of the Family Court where the matter was not

initially referred to the Mediation Centre for settlement. The Court in its decision referred the law Commission's 59th and 230th Reports in which the Commission had emphatically recommended that the Court, in dealing with the disputes concerning family, ought to adopt an approach radically different from that adopted in ordinary civil proceedings and that it should make reasonable efforts for an amicable settlement, before the commencement of trial. The Court further said that, despite the amendment to the Code, it was felt that the matters concerning family disputes were not being dealt with a conciliatory approach. Highlighting the objects of the Family Courts Act, 1984, the Court held that the preamble of the Act sufficiently indicates the jurisdiction that is vested in the Family Court, under the provision of the Act, which was enacted for adopting a human approach to the settlement of family disputes. Court held that the primary purpose of the Family Court is to promote conciliation and amicably settle the matters relating to matrimonial and family disputes, rather than adjudicate on the same.²⁹

In *Smt. Padmavathi Vs. Shri M. Suresh Ballal*³⁰ the Karnataka High Court emphasized that the matrimonial matters must be considered by the courts with human angle and sensitivity. Delicate issues affecting conjugal rights have to be handled carefully. Court held that the Sub-section (2) of Section 23 is a salutary provision exhibiting the intention of parliament requiring court 'in the first instance' to make every endeavour to bring about a reconciliation between the parties. Where the estrangement between the parties to the marriage might seem to be acute, it is the duty of the court to make every endeavour to bring the parties to reconciliation. The failure to make such an endeavour deprives the court of the jurisdiction to try and decide the case. If no endeavour had been made by the court, it will undoubtedly be a serious omission which has to be taken into account.

In the opinion of Patna High Court Sub-section (2) of Section (23) of the Hindu Marriage Act, enjoins upon the Courts a duty to make a sincere effort at reconciliation before proceeding to deal with the case in the usual course.³¹

The Supreme Court of India also emphasized that the matrimonial matters must be considered by courts with human angle and sensitivity. Delicate issues affecting conjugal relations have to be handled carefully and legal provisions should be construed and interpreted without being oblivious or unmindful of human weaknesses.³²

The Apex Court also opined that a duty is also cast on the court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about a reconciliation between the parties. Under Sub-section (3) of Section 23 of the Hindu Marriage Act, the Court can even refer the matter to any person named by the parties for the purpose of reconciliation and to adjourn the matter for that purpose. These objectives and principles govern all courts trying matrimonial matters.³³

The Supreme Court here also search the answer of a question arises that can a party defeat the provisions of Sub-section (2) and Sub-section (3) of Section 23 of the Act, by remaining ex-parte and the court is helpless in requiring the presence of that party even if in the circumstances of the case so required. The Court held;

*"We are of the opinion that court in such a situation requires the personal presence of the parties. Though the proceedings were ex-parte in the case like this the court cannot be a silent spectator and it should itself endeavour to find out the truth by putting questions to the witnesses and eliciting answers from them"*³⁴

In *Jagraj Singh Vs. Birpal Kaur*³⁵ the appeal by special leave was filed by the appellant-husband against the interim order dated May 04, 2006 passed by the High Court of Punjab and Haryana at Chandigarh, issuing non-bailable warrants against him. The husband was avoiding the personal appearance before the High Court.

After hearing the parties the Supreme Court coded the relevant provisions of Code of Civil Procedure 1908 and Section 23 (2) and 23 (3) of Hindu Marriage Act, 1955 relating to matrimonial disputes. This was the first case before the Supreme Court in which Court was to interpret Section 23(2) of the Hindu Marriage Act, 1955. Hence the Apex Court also referred various cases in which different High Courts had interpreted Section 23(2). While concluding the judgment the Apex Court rejected the contentions of the appellant Counsel in the following words;

"It is clear that a Court is expected, nay, bound, to make all attempts and endeavours of reconciliation. To us, Sub – section (2) of Section 23 is a salutary provision exhibiting the intention of Parliament requiring the Court 'in the first instance' to make every endeavour to bring about a reconciliation between the parties. If in the light of the above intention and paramount consideration of the Legislature in enacting such provision, an order is passed by a Matrimonial Court asking a party to the proceeding (husband or wife) to remain personally present, it cannot successfully be contended that the Court has no such power and in case a party to a proceeding does not remain present, at the most, the Court can proceed to decide the case ex parte against him/her. Upholding of such argument would virtually make the benevolent provision nugatory, ineffective and unworkable, defeating the laudable object of reconciliation in matrimonial disputes. The contention of the learned counsel for appellant, therefore, cannot be upheld."

In *Manju Singh Vs. Ajay Bir Singh*³⁶ Delhi High Court went to the extent of even holding that if an endeavour for reconciliation is not made, the order would be illegal. Court observed that the Section 23(2) of the Hindu marriage Act, 1955 gives a direction to the courts that before proceeding to grant any relief under the Act it shall be the duty to endeavour to bring about reconciliation between the parties except in the cases mentioned in the proviso

to the sub-section. The intention of the legislature is that an attempt should be made by the court for reconciliation before proceeding with hearing of the petition. The provision is mandatory and an effort for reconciliation is to be made by the court right from the start of the case by directing and giving reasonable opportunity to the parties to appear in person before the court, even the filing of the written statement by the opposite party should not be insisted, and reconciliation should be attempted by the Court. If reconciliation attempt fails, written Statement be filed. The Court however, is to watch the proceedings during trial and make further attempt for reconciliation at any stage deemed appropriate by the court. But in any case duty is cast upon the court to try reconciliation between the parties before finally deciding the proceedings under the Act. The words "before proceedings to grant any relief" mean during the course of trial i.e., right from the date when the opposite party is served till the date of giving final decision.

Supreme Court has even appreciated role of mediation in bringing the parties at a settlement for divorce by mutual consent. There were number of proceedings filed by both the parties under section 9 and 13 of Hindu Marriage Act, 1955 and also under Section 125 of the Criminal procedure Code 1973.³⁷

During the pendency of transfer petition before the Supreme Court, the lawyers of both the parties and mediation Centre of Delhi Court due to their serious efforts brought the parties at a settlement in which husband agreed to make payment of an amount of 12 lacs to wife and in she agreed to make the statement for granting divorce and also to withdraw all the civil and criminal proceedings pending against the husband instituted by her.

Appreciating the role of the lawyers of the parties and the Delhi High Court Mediation Centre, the Apex Court held that the cases/complaints in any forum or court which have been filed by the parties and their family members against each others will be treated as compromised and settled as agreed upon by the parties. Supreme Court allowed the application of divorce by mutual consent and quashed the criminal proceedings as well.

There is another landmark decision of the Supreme Court where in it directed the Family Courts to strive to settle matrimonial disputes via mediation and to also introduce parties to mediation centres with consent of the parties, especially in matters concerning maintenance, child custody, and the lot.³⁸

In *Gaurav Nagpal Vs. Sumedha Nagpal*³⁹ an appeal against the judgment of learned single Judge of the Punjab and Haryana High Court was filed by the appellant. Actually the dispute is on the custody of child. After hearing the parties the Supreme Court observed;

"Matrimonial discords are on the rise at an alarming rate. The sanctity of marriages is under cloud, which in a great way affects the society at large. Individuals can in no way be segregated from the society to which they belong. The cultural heritage of a country is greatly influenced by a pattern of

behavior of individuals and more so in matters of matrimony. Home can be a wonderful place to live. But continuous fights between the partners of a marriage disturb the atmosphere at home and create havoc on the members of a family. One does not need a mansion to lead a happy marital home. The foundation of a happy home is love, sharing of joys and sorrows, and not in that sense bricks and concrete. There should be cementing of hearts and not the cementing of floors and walls. Life is a serious of awakening. The happiness which brings enduring worth to life is not the superficial happiness that is dependent on circumstances. Ultimately, in the fight between the partners, the victims more often than not are the children. It is unfortunate that in their fight more often on account of egoism the children suffer, more particularly when the child is a girl. It is not uncommon to see that at the time of negotiation of marriage, the boy's parents shy away because the girl is from a broken family and/ or the parents are divorced. The child has practically no role in breaking of the marriage, but he or she suffers. The marital discord sometimes reaches a stage where the parties are unmindful of what psychological, mental and physical impact it has on children. It is worse when there is a single child, be it a boy or girl."

Stressing upon the saving of marital home the Supreme Court gave a moral lesson to the parties for leading a happy marital life. It reveals that how the Court is sensitive towards saving of marriage. Court held;

"One must not lose faith in humanity. It is an ocean; if a few drops of the ocean are dirty, the ocean does not become dirty. If nothing ever went wrong in one's life, he or she would never have a chance to grow stronger. One should never forget that today well lived make every yesterday a dream of happiness and tomorrow a vision of hope. Marital happiness depends upon mutual trust, respect and understanding. A home should not be an arena for ego clashes and misunderstandings. There should be physical and mental union. Marriage is something; Ibsen said in "The League of Youth" you have to give your whole mind to. If marriage are made in Heaven as Tennyson said in "Ayloner's Field, why make matrimonial home hell is a big question".

Reconciliation in family matters is basic principle reveals from different decisions of the Supreme Court. In one of its decisions the Court refuses divorce to couple living separately for 18 years.⁴⁰ In order to bring settlement and encourage reconciliation the Court even compounded the non-compounded offences and quashes FIR and criminal proceedings initiated against the parties. The Supreme Court in *B.S. Joshi Vs. State of Haryana*⁴¹ quashed FIR lodged by wife against the husband in the family matter when the parties compromised on the divorce by mutual consent.

Supreme Court of India in one of its earlier decisions held that the marriage is a sacred ceremony, the main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which

often assume serious proportions resulting in commission of heinous crimes in which elders of the family are also involved with the result that those who could have counseled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case.⁴²

The Apex Court while dismissing the petition held that the matrimonial litigations must not be encouraged, so that the parties may ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their "young" days in chasing their "cases" in different courts.

'In one of the most leading cases, the Supreme Court summarized its observation as:

"The matrimonial dispute started with a quarrel between the elders of both sides in which initially the appellant-husband and the respondent-wife were not involved. The ego battle of the elders took an ugly turn. Parties were dragged to the court and the inevitable happened. The relations between the two families got strained. With a fond hope that we could bring about a settlement we requested the counsel to talk to the parties and convey our wishes that they should bury the hatchet and start living together. We also tried to counsel them in the Court. The respondent-wife appears to be very keen to go back to the matrimonial home and start life afresh, but the appellant husband is adamant. He conveyed to us through his counsel that by filing repeated false complaints against him and his family the respondent-wife has caused extreme cruelty to them and therefore it will not be possible to take her back. In view of this we have no option but to proceed with the case".⁴³

The Apex Court in this case⁴⁴ also observed;

"we, therefore, feel that though offence punishable under Section 498-A of the Indian Penal Code is not compoundable, in appropriate cases if the parties are willing and if it appears to the criminal court that their exist elements of settlement, it should direct the parties to explore the possibility of settlement through mediation. This is obviously, not to dilute the rigour, efficacy and purport of Section 498-A of the Indian Penal Code, but to locate cases where the matrimonial disputes can be nipped in bud in an equitable manner. The judges, with their expertise, must ensure that this exercise does not lead to the erring spouse using mediation process to get out of clutches of the law. During mediation the parties can either decide to part company on mutually agreed terms or they may decide to patch up the stay together. In either case for the settlement to come through, the complaint will have to be quashed. In that event they can approach the High Court and get the complaint quashed. If however they chose not to settle, they can proceed with the complaint. In this exercise, there is no loss to anyone. If there is settlement, the parties will be saved from the trials and tribulations of a criminal case and that will reduce the burden on the courts which will be in the larger public interest. Obviously, the High Court will quash

the complaint only if after considering all circumstances it finds the settlement to be equitable and genuine. Such a course, in our opinion, will be beneficial to those who genuinely want to accord a quietus to their matrimonial disputes. We would, however, like to clarify that reduction of burden of cases on the courts will, however, be merely an incidental benefit and not the reason for sending the parties for mediation. We recognize 'mediation' as an effective method of alternative dispute resolution in matrimonial matters and that is the reason why we want the parties to explore the possibility of settlement through mediation in matrimonial disputes".

The Supreme Court issued some direction which the Courts while dealing with the matrimonial disputes are required to be followed. These guidelines are as follows;

1. In terms of Section 9 of the Family Courts Act, the Family Courts shall make efforts to settle the matrimonial disputes through mediation. Even if the Counsellors submit a failure report, the Family Court shall, with the consent of the parties, refer the matter to the mediation centre. In such a case, however, the Family Court shall set a reasonable time limit for mediation centres to complete the process of mediation because otherwise the resolution of the disputes by the Family Court may get delayed. In given case, if there is good chance of settlement, the Family Court in its discretion, can always extend the time limit.
2. The criminal courts dealing with complaint under Section 498-A of the Indian Penal Code should, at any stage and particularly, before they take up the complaint for hearing, refer the parties to mediation centre if they feel that there exist elements of settlement and both the parties are willing. However, they should take care to see that in this exercise, rigour, purport and efficacy of Section 498-A of the Indian Penal Code is not diluted. Needless to say that the discretion to grant or not to grant bail is not in any way curtailed by this direction. It will be for the concerned court to work out the modalities taking into consideration the facts of each case.
3. All mediation centres shall setup pre-litigation desks/clinics, give them wide publicity and make efforts to settle matrimonial disputes at pre-litigation stage.

Conclusion

From the analysis of different judgment of Supreme Court on matrimonial matters one can come to the conclusion that when a petition by either of the spouse is filed against the other, the intention of the court should be;

1. To reconcile the matter so that the marital tie may be saved. In order to achieve this target the court should make every endeavour and even involve itself in the process of settlement. Recently the Apex Court held that the jurisdiction of Family Court is not just to decide a dispute, on the contrary, the court has to involve itself in the process of conciliation/mediation between the parties for assessing them not only to settle the disputes but also the secure speedy settlement of disputes.⁴⁵ Even very recently a petition for special leave to appeal has been filed by *Rajinder Parshad Vs. Kulwinder Rani* against the judgment of Punjab and Haryana High Court dated 14 – 9 – 2018. The matter was called for hearing on 28 – 01 – 2019 by

the Apex Court. The matter has been referred to the Mediation centre with a direction that after making an endeavour for amicable resolution of the dispute, the Mediation centre would send report to the Court as early as possible.⁴⁶

2. Even if the reconciliation could not be made, court should intervene the parties to settle the dispute amicably and pursue them for divorce by mutual consent. In number of cases the Supreme Court and different High Courts have compounded the offence under Section 498-A and quashed the FIR and Criminal proceeding where parties settled for divorce on mutual consent. According to Supreme Court the timely intervention of the court will not only resolve the dispute and settle the parties peacefully but also prevent sporadic litigations between them.⁴⁷
3. The third and the other important thing which a court while deciding a matrimonial dispute according to Supreme Court should consider is the privacy of the parties. Maintenance of privacy of the parties in family dispute has given a prime importance by the Apex Court. In a historical verdict, a three-judge Bench of the Apex Court, with a 2:1 majority, over ruled its earlier decision to conduct the matrimonial dispute cases through video conferencing, saying it is very doubtful whether the emotional bond can be established in a virtual meeting during video conferencing and it may even create a dent in the process of settlement.⁴⁸

Prior to this a two-judge Bench of Supreme Court while dealing with transfer petition seeking transfer of a case instituted under Section 13 of the Hindu Marriage Act, 1955 pending on the file of Ind presiding judge, Family Court Jabalpur, Madhya Pradesh to the Family Court Hyderabad, Andhra Pradesh, took note of the grounds of transfer and keeping in view the approach of the Court to normally allow the transfer of the proceedings having regard to the convenience of the wife, felt disturbed expressing its concern to the difficulties faced by the litigants travelling to this Court and, accordingly, posed the question whether there was any possibility to avoid the same.⁴⁹

The Double Bench also took note of the fact that in the process of hearing of the transfer petition, the matrimonial matters which are required to be dealt with expeditiously are delayed. Court expressed its concern over the backlog of such transfer petition before it. Accordingly, the two-judge Bench of the Supreme Court led by Justice A.K. Goel, directed all High Courts to issue administrative instructions to Family Courts across the country to open video conferencing facilities and use the technology to conduct marital disputes whenever one of the parties, husband or wife request for it. The Court said this would spare the parties the drudgery of appearing in person for the proceedings.

Later on the Apex Court, with a majority judgment agreed that the use video conferencing in matrimonial cases would destroy the privacy of the proceedings and probably defeat the cause of justice. However, the Court held that the matrimonial disputes should be conducted in Camera in spirit of Section 11 of the Family Courts Act, 1984.⁵⁰ The Court observed,

"What one party can communicate with other, if they are left alone for some time, is not possible in video conferencing the expression of desire by the wife or the husband is whittled down and smothered if the Court

directs that the proceedings shall be conducted through the use of video conferencing”.

Describing the matrimonial proceedings as “sanguinely private”, the majority judgment said that the chances of reconciliation requires presence of both the parties at the same place and the same time so as to be conducted effectively.

The Court points out that an estranged husband may file petitions to transfer the marital case from the place of residence the wife to a place inconvenient to her. Video conferencing may subsequently prove a handicap for her to state her case or reach a settlement. The Court further held,

“The statutory right of a woman cannot be nullified by taking route to technological advancement and destroying her right under a law, more so, when it relates to family matters. In our considered opinion, dignity of woman sustained and put up a higher pedestal if her choice is respected”.

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6. The Hindu Marriage Act, 1955; Section 23(2) reads as “Before proceeding to grant any relief under this Act, it shall be the duty of the Court in the first instance, in every case where it is possible so to do consistently with the nature and circumstances of the case, to make every endeavour to bring about a reconciliation between the parties”.
7. Jagraj Singh Vs Birpal Kour (2007)2 SCC 564,
8. Section 9 of the Hindu Marriage Act, provides for restitution of Conjugal Rights where as under Section 24 of the Act maintenance can be claimed by the parties.
9. H.S. Uma Vs. G.K. Somanth, (1993)2 HLR 304
10. Supra note vii
11. Balwinder Kaur Vs. Hardeep Singh AIR. 1998SC764
12. Mohini Vs. Virendra Kumar (1977)3 SCC.513
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15. Chander Dev Chadha Vs. Rani Bala; 1980 HLR 70 (Del.)
16. Chhote Lal Vs. Kamla Devi, AIR 1967 Pat.269
17. Ram Kumar Vs. Kamla Dutta (1980) Srinagar LJ 242
18. Trilok Singh Vs. Savitri Devi, AIR. 1972 (All.) 52
19. Law Commission of India, Fifty-ninth Report (1974) pp 182, 115
20. Proviso to Section 23(2) reads as “Provided that nothing contained in this Sub-section shall apply to any proceeding wherein relief is sought on any of the grounds specified in clause(ii), clause(iii), clause(iv), clause(v), clause(vi) or clause(vii) of Sub-section (1) of Section 13.
21. Akin Olawale Ogundayisi ;“Settlement of Matrimonial Causes Through ADR Mechanism: The Best Alternative to Litigation” available on <https://www.academia.edu> last access on 15-3 -2017
22. AIR 2013 SC 2176.
23. Law Commission of India, Fifty ninth Report (1974) pp.82.115
24. Hindu Marriage Act, 1955;Section 23(3): For the purpose of aiding the Court in bringing about such reconciliation, the court may, if the parties so desire or if the court thinks it just and proper so to do, adjourn the proceedings for a reasonable period not exceeding fifteen days and refer the matter to any person named by the parties in this behalf or to any person nominated by the court if the parties fail to name any person, with direction to report to court as to whether reconciliation can be and has been, effected and the Court shall in disposing of the proceeding have due regard to the report.
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