MATRIMONIAL CASES AND CHALLENGES FACED BY THE JUDICIAL OFFICERS – A REVIEW

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The human brain is an amazing and powerful tool. It allows us to learn, see, remember, hear, perceive, understand and create language. Sometimes the human brain also fails us. Study of human brain is based on cognitive behaviour of an individual. The Matrimonial disputes generally and always involve more complexities involving human brain, woven with sentiments, emotions added with ego, expectations, etc. This article though not exhaustive, may lit the spark to the Judicial Officers who handle the matrimonial cases.

The handling of matrimonial disputes is an extraordinary challenge to a Judicial Officer. Normally a Judicial Officer would face the certain challenges while handling matrimonial disputes, of which few are listed below:

1. Temperament Management.
2. Taking up the dual role of a Judge as well as a conciliator.
3. Identification of the core issue.
4. Placing both the parties in a neutral condition.
5. Application of Section 13 of Family Courts Act 1984.
6. Instant and innovative ideas in motivating the parties for settlement.
7. Out of box thinking in a result oriented way.
8. Updating the march of law and procedures.
9. Heavy pendency of cases
10. Time Management to handle all the other cases listed in his/her Court.

The prime aspect which the Judicial Officer should bear in mind is that while handling the matrimonial matters, the Judicial Officer should be capable of playing a dual role. That is to say that the Judicial Officer shall uncap from Judgeship and shall make the parties feel comfortable to open up the issues before them.

In simple words, the Judicial Officer should make the parties feel as if the Judicial Officer is one among their family members. Absolutely no symptoms of judicial powers should be exposed. Here comes the challenge where the Judicial Officer who adorns the dais as a Judge, has to suddenly change his/her mindset and conduct friendly talks with litigants. Thereafter the Judge should bounce back from conciliator to Judgeship. But for a compatible and adaptable mindset with a controlled temperament, it would be very difficult and challenging for a Judicial Officer to take up such task of playing the dual role.

The necessity of playing a dual role by the Judicial Officer is imminently necessary to handle the matrimonial disputes. More particularly, the uncapping of Judgeship would pave way for resolving many of the conflicts. In short, the Judge might be able to place both the parties in a neutral pan and could identify the core issue.

The preamble of The Family Courts Act 1984 (in short The Act) envisages the settlement of disputes by promoting conciliation. The ***preamble of The Act*** is extracted as follows:

"An Act to provide for the establishment of Family Courts with a view to promote conciliation in, and secure speedy settlement of disputes relating to marriage and family affairs and for matters connected therewith".

Thus the very objective of The Act, is to proceed with the matrimonial disputes by adopting the ***inquisitorial method*** rather than adversarial method.

While discussing the role of Judicial Officers in handling the matrimonial disputes, one shall not skip through ***section 9 of The Act*** which is the pivotal eye catching provision, which has to be read and understood very carefully. It will be useful to extract the provision of ***section 9 of The Act*** hereunder:

"Section 9. Duty of Family Court to make efforts for settlement
(1) In every suit or proceeding, endeavour shall be made by the Family Court in the first instance, where it is possible to do so consistent with the nature and circumstances of the case, to assist and persuade the parties in arriving at a settlement in respect of the subject-matter of the suit or proceeding and for this purpose a Family Court may, subject to any rules made by the High Court, follow such procedure as it may deem fit.

(2) If, in any suit or proceeding, at any stage, it appears to the Family Court that there is a reasonable possibility of a settlement between the parties, the Family Court may adjourn the proceedings for such period as it thinks fit to enable attempts to be made to effect such a settlement.
(3) The power conferred by sub-section (2) shall be in addition to, and not in derogation of, any other power of the Family Court to adjourn the proceedings".

The provision of ***section 9*** emphasizes the Court to take every effort in the first instance itself and to persuade the litigating spouses in arriving at a settlement. Therefore the role of the Judicial Officer would be very sensitive and this could be possible, only when the Judge takes up the role of a conciliator. Thus the necessity to maintain the temperament becomes a challenge which the Judicial Officer has to overcome from and out his/her own practice.

In order to persuade the parties, the Judicial Officer shall not exercise the judicial power as a Judge. Rather the Judge shall have to persuade the parties in a very friendly manner which would certainly bring about the positive response from the litigating spouses. The friendly persuasion of the Judge with the parties would set the tone for the conciliation process. The Judge has ample powers by the virtue of the above provision which could extend in arranging conciliation between the parties themselves, and or along with their parents, family members or elderly persons whom the parties trust. This would enable the Judge to identify the core issue and could make the parties move towards settlement.

The Judge may also involve himself actively in conciliation. But while making such conciliation efforts, the Judge shall not ponder deeply into the facts of the case. This is because if in case, if the matter is not settled, then the same Judge has to try the case by adopting adversarial method. While trying the case, the parties who have opened up with all the personal facts in their matrimonial life should not feel prejudiced with the Judicial Officer and rather shall feel the comfort with the Judicial Officer during the trial also. Thus the Judicial Officer shall have to play a complicated crucial dual role in discharging his duties both as a conciliator as well as a Judge.

The provisions of ***section 10 of The Act***, empowers the Court in laying down it's own procedure in arriving at settlement between the parties. Section ***10(3) of The Act*** is extracted here under.

"3) Nothing in sub-section (1) or sub-section (2) shall prevent a Family Court from laying down its own procedure with a view to arrive at a settlement in respect of the subject-matter of the suit or proceedings or at the truth of the facts alleged by the one party and denied by the other"

Thus the Judicial Officer presiding over the Family Courts would have every option to frame his/her own procedure so as to arrive at a settlement between the parties. This means that the Judge would be at liberty to fix up a specific timing for conciliation and may not insist the parties to wait from morning till they are called inside. This would ease off the mindset of the parties.

Yet another vital challenge which the Judicial Officer faces is in respect of the representations made by the legal experts (advocates). The provision of ***section 13 of The Act*** lays down that, no party, as a matter of right, shall be entitled to be represented by a legal practitioner. However the Court can seek the assistance of the Advocate as ***Amicus Curiae*****.** The provision of ***section 13*** is extracted hereunder:

"13. Right to legal representation - Notwithstanding anything contained in any law, no party to a suit or proceeding before a Family Court shall be entitled, as of right, to be represented by a legal practitioner: Provided that if the Family Court considers it necessary in the interest of justice, it may seek the assistance of a legal expert as amicus curiae".

However in practice, it is seen almost everywhere that the advocates/legal experts appear for the litigants as a matter of right and represent on behalf of the parties. In case where the petitioner/respondent is unable to appear before the Court on the date fixed by the Court, he or she would be represented by the Advocate which is a clear bar to ***section 13 of The Act***. The choice of the litigants or the advocates to file an application ***under section 13 of The Act*** in appointing an advocate of the choice of the litigant to assist them is also not in consonance with the above provision of law. Whereas, it is the duty cast on the Court to seek the assistance of a legal expert as Friend of Court (***amicus curiae***) to assist the litigant.

At any event, post filing of such petition, the advocate, who assists the litigants takes up the full role play of an advocate even during the conciliatory proceedings. Their involvement reflects more in the trial stage, where the cross examinations are made at length as if it were a trial of a civil suit. The provisions of section 15 of The Act is extracted hereunder;

Section 15: Record of oral evidence.

In suits or proceedings before a Family Court, it shall not be necessary to record the evidence of witnesses at length, but the Judge, as the examination of each witness proceeds, shall, record or cause to be recorded, a memorandum of the substance of what the witness deposes, and such memorandum shall be signed by the witness and the Judge and shall form part of the record.

Further the provision of section 16 of the Act would envisage the recording of evidence through affidavit. The provision of section 16 is extracted hereunder;

16. Evidence of formal character on affidavit.—

(1) The evidence of any person where such evidence is of a formal character, may be given by affidavit and may, subject to all just exceptions, be read in evidence in any suit or proceeding before a Family Court. (2) The Family Court may, if it thinks fit, and shall, on the application of any of the parties to the suit or proceeding summon and examine any such person as to the facts contained in his affidavit.

A conjoint reading of the above provision would enable the trial of a matrimonial case to be concluded effectively in accordance with the provisions of law. Though there is a bar under ***section 15 of The Act***, it could not be practically implemented due to the active involvement of the advocates and the cross examination goes at length. This is reported as a great challenge by many of the judicial officers who handle Family Courts. Therefore the necessity to frame rules in respect of ***section 13 of the Act***, in defining and confining the role of advocates in appearing before the Family Courts and the utilization of their services by the litigants has become the need of the hour.

When the objective of The Act is to enable the conciliation and speedy settlement of the matrimonial disputes relating to marriage and family affairs, it extends only to the Family Courts Constituted under ***The Act.*** In areas where no Family Courts are constituted, the matrimonial disputes are taken up by the Civil Courts in the cadre of District Judges, who deal with the matrimonial cases related to Divorce Act 1869 as well as the disputes related to Guardians and Wards Act 1890, the Subordinate Judges who deal with the Hindu Marriages Act 1955 as well as the Special Marriage Act 1954 and in the cadre of District Munsifs, who deal with matrimonial disputes related to Mohammedan Law.

In the Civil Courts, the procedures for conciliation as laid down in the Family Courts Act 1984 are not followed in letter spirit for want of time and for want of specific legislation. Further the Judicial Officers in the civil courts are overburdened with other sorts of litigations also.

In disputes related to Hindu Marriages, the Hindu Marriage Act 1955 would apply. Generally the spouse who raises the matrimonial dispute would normally approach the Court of Subordinate Judge in a place, where there is no Family Court is constituted. Such an authorization to the Subordinate Courts has been provided under **The Hindu Marriage (Validation of Proceedings) Act 1960. Section 2** of the above Act is extracted hereunder.

"(1) All proceedings taken and decrees and orders passed before the commencement of the Act by any of the Courts referred to in sub-section (2), exercising or purporting to exercise jurisdiction under the Hindu Marriage Act, 1955, shall, notwithstanding any judgment, decree or order of any Court, be deemed to be as good and valid in law as if the Court exercising or purporting to exercise such jurisdiction had been a District Court within the meaning of the said Act.

(2) The Courts referred to in sub-section (1) are the following namely:— The Court of an Additional Judge, Additional District Judge, Joint District Judge, Assistant District Judge, Assistant Judge and any other Court, by whatever name called not being lower in rank than the Courts of a Subordinate Judge".

Thus the Subordinate Judge who is already over burdened with so many civil suits, appeal suits, etc., would not be able to spend his valuable time in sitting with the spouses for conciliation. At the most if an attempt is to be made, there are no adequate infrastructure in Subordinate Courts for arranging conciliation between the parties.

The stake holders shall have to be sensitized in respect of the importance of conciliation in matrimonial proceedings. The need for conciliation contemplated under the statute has to be mandatorily followed. Non compliance of the statute would result in the miscarriage of justice. This position has been emphasized in **Shivkumar Gupta Vs Smt. Lakshmidevi Gupta[1].** The relevant observations from the above decision are extracted hereunder.

"On a reading of Section 23(2) of the Act and on a perusal of the judgment in Balwinder Kaur on the interpretation of Section 23(2) this Court held that the decree, which was passed without complying with Section 23(2) of the said Act, cannot be sustained. Now, it appears that the very basis on which the Court passed its order on 13.05.02 is nonexistent."

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[1] **I(2005)DMC272**

This position has been laid in **Jagraj Singh Vs Birpal Kaur**[2], wherein the Honourable Supreme Court of India has emphasized the importance of conciliation as follows;

"The Act (Hindu Marriage Act, 1955) is a special Act dealing with the provisions relating to marriages, restitution of conjugal rights and judicial separation as also nullity of marriage and divorce. Chapter V (Sections 19 to 28A) deals with jurisdiction and procedure of Court in petitions for restitution of conjugal rights, judicial separation or divorce. Sub-section (1) of Section 23 expressly states that where a petition for divorce is filed under Section 13 of the Act on certain grounds, before proceeding to grant any relief, the Court, 'in the first instance', should make an endeavour to bring about reconciliation between the parties."

Only two among the catena of decisions are highlighted here. When there is a mandate in the statute, the same shall have to be followed without any deviation. The judicial officer shall have to ensure that the obligations under the statute are complied with due conscience and has to ascertain whether the efforts have been made in letter and spirit.

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[2] AIR 2007 SUPREME COURT 2083

However there is a restriction laid in the ***proviso to section 23(2) of the Act***[3], which states that the said attempt of reconciliation mandated under section 23(2) of the Act would not be applicable to the proceedings under subsections (ii), (iii), (iv), (v), (vi) and (vii) of section 13(1) of the Act. However the Family Courts Act 1984 supersedes the Hindu Marriage Act 1955 in terms of it's procedural applicability. Thus the Courts other than Family Courts alone would have to follow the provisions in terms of section 23(2) of the Hindu Marriage Act 1955.

According to ***section 3 of The Act,*** the State Government shall establish Family Courts in areas as it deems necessary, where the population exceeds one million. Section 3 is extracted hereunder.

"3.Establishment of Family Courts—(1) For the purpose of exercising the jurisdiction and powers conferred on a Family Court by this Act, the State Government, after consultation with the High Court, and by notification,—

(a) shall, as soon as may be after the commencement of this Act, established for every area in the State comprising of city or town whose population exceeds one million, a Family Court;

(b) may establish Family Courts for such other areas in the State as it may deem necessary.

[3] Inserted by Act 68 of 1976, w.e.f. 27.5.1976

(2) The State Government shall, after consultation with the High Court, specify, by notification, the local limits of the area to which the jurisdiction of a Family Court shall extend and may, at any time, increase, reduce or alter such limits".

The contents in section 3(1)(a) above, such that the establishment of Family Court based on the population which exceeds one million is absolutely an improper concept. This is because one cannot predict that in a town or city where the population is more than one million the matrimonial dispute will be more and equally in a town or city where the population less than a million, the matrimonial disputes would be less. There are every possibility for a vice-versa situation. Therefore in order to facilitate the litigants facing the matrimonial issues, an uniform procedure is to be followed in the State which would certainly be an advantage for all the stakeholders.

The tradition and culture and the day today habits differ from place to place. The cause of action varies from case to case. An uniform application of the thought process cannot be emphasized in every area. Even in less populated area, say as less than one million, there might be innumerable matrimonial disputes, and vice versa, there might be very less number of matrimonial disputes at Family Courts constituted by virtue of the population of one million and above.

Therefore, the safer and best way could be the analysis of pendency of matrimonial cases in the Subordinate Courts at District Head Quarters as well as Taluk Headquarters and such data could be taken up as a yardstick in constitution of Additional Family Courts across the State including the Taluks. This would certainly reduce the burden of the existing Family Courts as well as the civil courts which are handling matrimonial disputes.

The Judicial Officer who handles the matrimonial matters shall be well equipped. The Judicial Officer shall have to be sensitized in reconstructing human relationships and shall develop a passion in handling the imbalanced mindset. The estranged couples are not in need of sympathy. They need to be treated empathetically. The apathetic approach would certainly result in the miscarriage of justice. Equally, the Judicial Officer should be updated in the march of law which would result in a very better desired output.

CONCLUSION:

A Judicial Officer, after completing his/her day's work and while leaving the office, would be carrying the case bundles all along to the residential office to continue reading and working on the cases. This has become inevitable. But this could be possible, only when the Judicial Officer strikes a balance towards the official and personal commitments and develops a passion towards the work.

A Judicial Officer is completely accountable and shall be transparent in approach so as to inspire confidence of the stake holders. Amidst all the routine challenges, the following few are the desired requirements, which if a Judicial Officer equips and develops, would be much appreciable and would support the improvisation of the justice delivery system not only in dealing the matrimonial disputes, but also while handling any other dispute while taking over any other Court. This might seem to be part of mediation skills. But such skill development would help the Judicial Officers to overcome the challenges which are being faced by them on day today basis.

1. Trust building efforts.

2. Patient hearing and gender unbiased.

3. Out of box thinking.

4. Allowing the parties to express their views freely.

5. Assertive and confident approach.

6. Positive and Pragmatic approach.

7. Innovative and Instantaneous decision making.

8. Capacity of identifying the mindset of the spouses.

9. Good communication skills.

10. Ability to have control over the conciliation proceedings.

Only few are quoted above. The rest would emanate on it's own, from the own efforts of the Judicial Officer, from time to time, resulting in successful handling of matrimonial disputes for which sensitization of the Judicial Officer would be the need of the hour. The art of understanding the mindset of the litigants, the development of the art of conciliation, anger management are certain areas to be focused upon. Learning and become an expertise in a particular skill, depends on the situation and the involvement shown by the Judicial Officer for which there cannot be any specific training. The day today practice of certain habits such as yoga, walking, meditation etc., might be useful in maintaining good mental and physical health. More importantly, the spending of quality time with family and friends and creating a stress free environment would be an added advantage yielding to good productive output in work.

Last but not the least, a Judicial Officer may have adequate knowledge and skills in handling the matrimonial matters. But such skills could be evinced and well utilized only if the Judicial Officer possesses good communication skills immaterial of language. More particularly, the Judicial Officer should not be Judgemental and should not have an approach of standard formulae for all the matrimonial disputes. Satisfying with all the above criterion would result in more productivity resulting in fulfilling the objectives of ***The Act.***

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